

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH  
KOLKATA

Original Application No. 914/2013

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member  
Hon'ble Ms Jaya Das Gupta, Administrative Member

Smt Anjali Guha Chowdhury

...Applicant

-Vs -

Union of India & ors. (N.F.Railway)

.....Respondents

For the petitioner : Mr K. Chakraborty, Counsel

For the respondents : Ms S. Choudhury, Counsel

Date of Hearing : 19-02-2016.

Date of Order : 03/03/2016. ✓

**ORDER**

**JUSTICE V. C. GUPTA, JM:**

The applicant Smt Anjali Guha Chowdhury claimed the following reliefs :

- (A) Do issue mandate upon the respondents their men and agents and each of them to forthwith rescind, recall and/or withdraw the purported :-
- (i) Charge Memo dated 01.02.2008 being Annexure A-11 hereto;
  - (ii) Enquiry report dated 30.9.2010 communicated to the husband of the applicant under Memo dated 01.11.2010 being Annexure A-15,
  - (iii) Order of the Disciplinary authority dt. 30.11.2010 being Annexure A-18 hereto;
- (B) Do issue further mandate upon the respondents, their men and agents and each of them to forthwith accept the application submitted by the husband of the applicant on 25.11.2009 seeking voluntary retirement and then treat the husband of the applicant to have retired from service w.e.f. 12.11.2009 on "All Category Unfit" i.e. the date when the opinion of the Medical Board declaring thereby the husband of the applicant found to be "All Category Unfit" was accepted by the Medical Director and to act on that basis.;

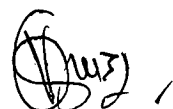
(C) Do issue mandate upon the respondents, their men and agents and each of them to forthwith certify and transmit all the papers and documents in connection with the instant list before this Learned Tribunal for kind perusal of the same and on such kind perusal do conscionable justice to the applicant.

(D) To allow this applicant being the illfated widow of the railway employee namely Swapan Kumar Guha Chowdhury, Ex-Guard/Mail/Alipurduar Junction, N.F.Railway to present the instant Original application and be accepted for adjudication and/or treat this application as an appeal to the orders of the disciplinary authority dt. 30.11.2010;

(E) Pass such other of further order or orders, direction or directions, mandate or mandates as may appear to be fit and proper."

2. The brief facts necessary for disposing this application are that the husband of the applicant Swapan Kumar Guha Chowdhury was working as a Mail Guard at Alipurduar Junction of N.F.Railway suffered from chronic ailment and after prolong treatment he was declared unfit in A/2 category and found fit for category B/2 which was communicated to him vide order dated 3.11.2008 being Annexure A-2 to this application. The husband of the applicant fell ill again and after treatment he could not be recovered. A Medical Board has been constituted on the basis of memo of CMS of Alipurduar Junction Division and husband of the applicant was referred for medical examination before the Medical Board to determine the percentage of ailment. The Medical Board declared him all category unfit by the certificate No.66(IV) dated 23.11.2009 with effect from 12.11.2009. The husband of the applicant was also found unfit for physically handicapped quota. Thereafter the applicant's husband applied for voluntary retirement vide letter dated 25.11.2009 but his voluntary retirement has not been accepted on account of pending vigilance related DAR case against him and non acceptance of voluntary retirement was communicated to the husband of the applicant vide letter dated 30.08.2010 (Annexure A-10).

3. So far as the departmental proceedings are concerned the applicant's husband was served with a memo of charge on 01.02.2008 for misconduct of taking Rs.50/- from



one Sri N.C.Kalita for loading of 22 packages of Khira to the guard barrack booked under PB No.196150 dated 28.11.2007 Ex-NBQ to PNBE. It was alleged that this amount was taken by him for his personal gain. After conducting the enquiry in accordance with law, the applicant was punished with the penalty of compulsory retirement on 30.11.2010 as Annexure A-18. The husband of the applicant was due to retire from service on 31.12.2010 who passed away on 26.01.2013.

4. When applicant was declared all category unfit vide his letter dated 25.11.2009 he sought voluntary retirement with the further request to grant compassionate appointment to his son. As stated earlier his voluntary retirement was not accepted due to pendency of vigilance related DAR case. Therefore, the request of grant of compassionate appointment was also not accepted. In view of the aforesaid facts the applicant aggrieved by order of punishment as well as declining to accept the voluntary retirement of the husband of the applicant along with declining the benefit of compassionate appointment this O.A has been filed.

5. There is a Scheme in the Railways declared for those employees who had been all category unfit. The Railway give options to such an employee to seek voluntary retirement and the authorities may consider the dependents of such employee for granting compassionate appointment. In such situation if the employee opted for voluntary retirement the authorities are bound to accept the same and may consider the appointment and may provide employment to the family members on compassionate ground. On the strength of this scheme which has been formulated by Office Memorandum annexed with this application as Annexure A-9. The relevant portion of the scheme is reproduced below :

"The matter has been reviewed pursuant to a demand raised by the staff side in the DCJCM and it has now been decided that in cases where an employee is totally incapacitated and is not in a position to continue in any post because of his medical condition he may be allowed to opt for



retirement. In such cases request for appointment on compassionate ground to an eligible ward may be considered.

In the cases of medical decategorisation i.e. those cases in which an employee becomes medically unfit for the post held at present but is fit to perform his duties of an alternative suitable post in lower medical category, the request for appointment on compassionate ground to an eligible ward will not be admissible, even if the employee chooses to retire voluntarily on his being declared medically decategorised. Such an employee may then either be continued in a supernumerary post or allowed to retire voluntarily if he so desires but without extending the benefit of appointment on compassionate grounds to a ward."

6. It was further pleaded in the application that as per Railway Board's Circular model time schedule for finalisation of disciplinary proceeding was circulated by E(D&A)88 RG 6-100 of 22.9.1988 (RBE 215/88)SC 197/88). He also referring another Circular of the Railway Board which has been annexed as Annexure A-20, wherein authorities were directed to adhere to time schedule in disposing of all the departmental proceedings pending against the Railway employees and expressed anguish for pendency of those proceedings for more than two years and further directed by letter dated 9.8.1989 that limit of 150 days should be adhered to and all the pending enquiry should be disposed of as per Railway Board's instruction. On the strength of the circular it has been alleged that pending enquiry which was initiated by serving the charge sheet on 8.2.2008 virtually ended on 30.11.2010 and two years and 9 months has been taken to conclude the same. As such the punishment awarded is liable to be ignored as the proceeding has not been concluded within time schedule. It was further alleged that if the judgment is ignored the authorities are under obligation to accept voluntary retirement and to provide compassionate appointment as well as the release of the post retiral dues.

7. Reply has been filed, wherein almost all the facts were admitted. But it was alleged that the voluntary retirement was rightly refused in view of extant rule of voluntary retirement on account of pending vigilance DAR case against the husband of

the applicant. It was further alleged in the reply that after declaration of the husband of the applicant as unfit in A/2 category a supernumerary post in Pay Band of Rs.9300-34800/- with Grade Pay of Rs.4200/- was created in favour of the applicant's husband vide O.M. No.ES/7071 dated 27.7.2010 till his normal date of superannuation on 31.12.2010. It was also submitted that the departmental proceeding ended in punishment of compulsory retirement. Therefore, the scheme which is meant for the benefit of the Railway employee was not at all applicable.

8. We have heard the learned counsel for the applicant and the learned counsel appearing for the respondents and perused the record.

The short question for consideration before this Tribunal is that if a Railway employee declared in all category unfit the benevolent scheme meant for such employee would be applicable to such employee, who are involved in departmental proceedings ?

Learned counsel for the respondents stated that though there is no specific mention in this benevolent scheme but it is a specific rule that voluntary retirement cannot be accepted if the employee is facing any departmental enquiry.

9. Contrary to it, learned counsel for the applicant would submit that when a Railway employee declared all category unfit then Railway authorities are bound to give an option to such a Railway employee to seek voluntary retirement and to provide appointment on compassionate ground to one of the members of his family. The benefit of this benevolent scheme cannot be taken away only for simple reason that the employee was facing a departmental enquiry on the date when he was declared all category unfit.

10. The Hon'ble Supreme Court in **General Manager, State Bank of India & Ors. vs Anju Jain, (2008) 8 SCC 475** has held that the past conduct of the deceased employee is

a relevant consideration while considering the compassionate appointment to one of the dependant. In this case the Apex Court held that the deceased employee was punished, the benefit of compassionate appointment cannot be claimed as of right. It is the discretion of the authority which has to be exercised considering all the facts and past conduct of the employee. The relevant para 35 is extracted below :

"35. The learned counsel for the Bank invited our attention to a decision of the High Court of Delhi in Suman Lata Yadav v. Union of India & Anr., (2004) 113 DelLT 152. In that case, widow of a deceased employee sought employment on compassionate ground following death of her husband. The request was declined. The widow approached the High Court by filing a writ petition. A counter affidavit was filed by the Union of India stating therein that on account of disciplinary proceedings and punishment meted out to the deceased, the request of the widow for appointment on compassionate ground was turned down. It was contended on behalf of the widow that the action of the Union of India was illegal and appointment on compassionate ground could not be denied. Dismissing the petition and negating the argument on behalf of the widow, a Single Judge of the High Court stated;

"9.....I am unable to accept this submission. While it is true that the prime object is to provide succour and immediate relief, yet the deceased's service record or the factum of disciplinary proceedings and punishment meted out to him, cannot be said to be an irrelevant factor. The possibility of denial of compassionate appointment to the LRs of deceased on account of deceased employee having a tainted service record, would serve as a deterrent to employees from indulging in misconduct. It can act as an incentive for those maintaining discipline and probity. Besides, when the availability of appointment and opportunities is limited, there is nothing wrong in preferring LRs, of those employees with clean record over the LRs, of those, who have had a tainted record."

In our opinion, the above observations lay down correct proposition of law and we approve them."

11. This O.A has been filed by the wife of deceased employee who has been punished for his misconduct in 2010. The employee died on 26.01.2013. The employee did not prefer any appeal against the order of punishment. The remedy of preferring an appeal is available to the legal heir of punished employee and in this case without



exhausting the remedy of filing appeal this O.A has been filed challenging the punishment order. Hence in view of Section 20 of Administrative Tribunals Act 1985 the appeal is not legally maintainable against the punishment order. Moreover, this O.A is also barred by limitation, so far as the alleged punishment order is concerned in view of Section 19 of the Administrative Tribunals Act, 1985.

12. So far as the order refusing compulsory retirement and refusal to grant compassionate appointment are concerned, the deceased employee during his life time has not challenged those orders. He was compulsorily retired on 31.12.2010 and the order of refusal to accept his resignation was during his service tenure i.e. on 25.11.2009. Hence, in such a way, the application is highly barred by limitation and delay in preferring the application neither sought to be condoned nor so motto condoned by this Tribunal.

13. So far as the order of voluntary retirement and punishment order are concerned, the question whether compassionate appointment can be granted during pendency of the disciplinary proceedings may be agitated before the appellate authority as the time schedule has not been adhered to by disciplinary authority in concluding the proceeding. In such a situation the appellate authority may give his verdict. The manner in which the Tribunal has been approached considering the circumstances and the legal aspects we do not find any merit in the O.A.

14. In view of the above, O.A is liable to be dismissed. O.A is accordingly dismissed. However, there will be no order as to costs.

(Jaya Das Gupta )  
Administrative Member

(Justice V.C. Gupta)  
Judicial Member