

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, CALCUTTA

O.A. 1332 of 2013

Order dated: 07.03.2016 19.4.16 B.

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

SMT. MANJU CHANDRA &amp; ANR.

VS.

UNION OF INDIA &amp; ORS. (E. Rly.)

For the Applicant : Mr. T.K. Biswas, Counsel

For the Respondents : Mr. B.K. Roy, Counsel

ORDER

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. This application has been filed seeking the following reliefs:

"8.(a) An order directing the respondents to give the compassionate appointment in favour of the applicant No. 2 in terms of the Hon'ble Tribunal order dated 11.4.2008;

(b) An order directing the respondents to consider the representation dated 14.7.2010 (Annexure A-7) in terms of the Hon'ble Tribunal direction dated 11.4.2008 within specific period;

(c) Leave may be granted to the applicants to move this application jointly under section 4(5)(a) of the CAT Procedure Rule, 1987;

(d) Any such order or orders as to this Hon'ble Tribunal may deem fit and proper."

3. The applicant had filed an earlier O.A. being O.A. 1045 of 1994 for a declaration that he should be treated to have retired from railway service on medical ground w.e.f. 17.2.92 or 5.11.2 instead of his normal retirement on superannuation from 1.5.94 which was disposed of on 26.2.1997 with the following orders:

"8. A chronology of the events as will appear from the various annexures appended to the application given the following impression. On 10.12.1991, applicant no.1 had applied before the authorities for his examination by a special

medical board for declaring his medically incapacitated, to which we have adverted already above. This was followed by a reminder by applicant no.1 on 4.2.1992. On 11.2.1992, applicant no.1 was directed to attend the office of the Chief Hospital Superintends Sealdah, for his special medical examination with 8-37 memo duly filled in and signed by Sr. Scale Officer in his favour. On 27.3.1992, the CMS did not approve for the examination of applicant no.1 by the medical board, but advised to keep him in sick list and to continue treatment of his eyes. On 30.3.1992, information regarding the applicant no.1 was furnished by the office of the Sr. Divisional Personnel Officer. On 17.7.1992, the applicant no.1 was still kept on sick list w.e.f. 17.2.1992. On 5.11.1992, Chief Hospital Superintendant, B.R. Singh Hospital, Sealdah, gave his report that applicant No.1 right eye had.....(not legible) blind and the left eye had advanced cataract vision for which lens extraction can be....(not legible) but visual progress is very such unfavourable. On 18.3.1993, he was adv advised to report to Sr. DZO(Eye), B.R. Singh Hospital, for further treatment. On 22.5.1993 his VCR report showed prolonged latency and (L) side within visual limit and there was gross diminution of vision to both eyes. Opinion of Ophthalmologist was advised. It is clear from all the documents and the above situation that there was gross diminution of vision of applicant no.1 in both the eyes his right eye was totally blind and the left eye had advanced cataract vision. Further the applicant no.1 had himself reported certain other disabilities including a broken wrist and a heart.....(not legible) with respiratory trouble. The General impression we get from the above picture is that the retention of the applicant in Railway service would not have be much beneficial in the interest of the public and there is a good case for premature retirement of applicant no.1 on the ground of his medical incapacitation. In this connection, we have perused the provision for declaring a Railway employee to be medically incapacitated, as contained in the Railway Board's circular dated 21.6.1990, appended to the reply as annexure 'R-B'. Serial no.2 of the said letter runs as follows:

"General Manager would be competent authority to accept this invalidation after the age of 57 years action on the expert advice of the CMO. He will was discretion."

We are, therefore, of the view that since there is a provision for exercising discretion of the General Manager, this case should be referred to the General Manager, Eastern Railway, for taking a considered view of the matter in the peculiar facts and circumstances of the case, even though the applicant no.1 might have retired on normal superannuation in 1994. We are inclined to pass this order in view of the fact that while applicant no.1 had himself applied for ....medically examined and for being declared medically incapacitated as early as in 1991, the various actions taken by the respondents were on a very slow puce with the result that the physical disability of the applicant no.1 and aggravated for so may years so much so that the might have been declared medically incapacitated and not fit for further Railway service.

9. We are, therefore, of the view that the appropriate order to be passed in this case is to give a suitable direction to respondent no.1 i.e. the General Manager Eastern Railway, to consider the case of applicant no.1 in this regard.

10. In view of the above, the application is disposed of with a direction that the General Manager Eastern Railways who is respondent no.1, shall within 4 months from the date of communication of this order re-consider the praying regarding premature retirement of applicant no.1, on the ground of medical incapacitation, in terms of the Railway Board letter appended as annexure 'R-0' to the reply, and his considered decision should be communicated to the applicants within a period of 2 months after the decision has been taken. If after perusal of such reconsideration applicant no.1 is considered to have retired

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peculiarly on medical incapacitation, the consequent benefits shall be given to the applicant no.1 as per rules.

11. We order is passed as regards costs."

4. On 27.6.1997 the order infra was communicated to the applicant:

"Shri J.N. Chanda,  
Ex-HS Fitter Gr.I,  
Under CTTN/JIU/SDAH Through GM/SDAH

Sub.: Disposal of Hon'ble CAT/Calcutta redirections on the medical incapacitation of Shri J.N. Chandra, H.S. Fitter under CTTS/MTS/SDAH.

Re. Judgement dated 26.2.97 of the Hon'ble CAT/Calcutta in the case No. O.A. 1045 of 1994.  
Shri J.N. Chanda Vs. Union of India & Ors.

In pursuance of the Judgement dated 26.2.97 in the above case the merit of the above case of the applicant has been pleased considered meticulously and the considered decision of the under signed is communicated as under:-

Every possible medical help was rendered to the applicant Shri J.N. Chanda and all efforts were made to get the vision of his left eye retrieved by operative methods. However, the applicant refused to accept the benefit of operation by constantly refusing to get his eyes operated in the meanwhile the applicant petined on superannuation on 30.4.94.

In the light of the Railway Board's letter No. 85/H/5/10 dated 27.6.90, the applicant does not come under any of the categories for giving policy and hence could not be considered. His application was dealt with under para-3 of the Board's letter referred to above.

In view of the above, the earlier decision of granting leave under para 529 of the Railway medical annual stands as it is and the decision is hereby communicated to the applicant."

5. The applicant assailed the order dated 27.6.97 in O.A. 1281/97. The said O.A. was disposed of with the order infra:

"7. However, during the course of hearing Id. Counsel for the applicant submits that if the applicant was declared medically fit for further service and was retired on that ground prematurely, his son could have applied for compassionate appointment. He has placed reliance on a decision of this Bench in the case of Adhir Kumar Nath -vs- UOI & Ors. 1989(2) ATJ 32.

8. Without going into the merit of the claim of the applicant we dispose of this OA with liberty to the applicant to apply for compassionate appointment in favour of his son and if such an application is made, the respondents shall consider the same as per rules and keeping in view of the decision cited above within three months from the date of receipt of such representation. No costs."

6. The applicant would rely upon a decision rendered by this Tribunal in O.A. 959/1987, reported in 1989(2) ATJ 32 where, in a case of rejection of prayer for employment assistance on compassionate ground on the ground of having attained 58 years of age (on 2.1.84) before being declared medically incapacitated, this Tribunal found that the contention of the applicant that he was in no way responsible for the lapses of time between 6.9.83 and 18.1.84, as valid. In the said case, the applicant was found unfit to do any duty permanently, on 6.9.84, by the competent medical officer but due to observance of some formalities it took time till 18.1.84 for the Medical Board to be convened. The Bench observed *"On this ground also we are of the opinion that the contention of the respondents that the applicant was declared medically unfit after attaining the age of 58 years is not tenable. The applicant was medically unfit before he attained the age of 58 years"*.

It held *"in view of the discussions made in the foregoing paragraphs, we are of the opinion that the decision of the competent authority rejecting the prayer of the applicant for employment of his son on compassionate ground is not maintainable"*.

*"In the result the application succeeds Respondents are directed to consider the prayer of the applicant for employment of his son on compassionate ground as per instruction of the Railway Board contained in the Circular No. E (NG, III/79/RCI/I dated 7-4-83 at Annexure B-1."*

*"It is, however, seen that when the applicant first made the representation to the Divisional Railway Manager, Eastern Railway, on 12.10.84, his son was nearly 30 years of age. In other words, his son was over-aged by nearly five years and the applicant had in his representation prayed for relaxation of the age limit. If the applicant's son is found otherwise fit for employment, the prayer for relaxation of age shall be considered in accordance with the circular of the Railway Board mentioned above ignoring the period after 12-10-84."*

7. The respondents in their reply have stated the following:

Set out verbatim hereinbelow:

"The applicant's husband attained the age of superannuation on 30.04.94 subsequently died on 26.10.09. He applied for medically decategorisation and every possible medical help rendered to the husband of the applicant Sri J.N. Chanda and all efforts were made to get the vision of his left eye retrieved by operative methods. However, He refused to accept the benefit of operation by constantly refusing to get his eyes operated in the meanwhile he retired on superannuation on 30.04.84.

The applicant applied for compassionate ground appointment for which she is not eligible as the ex-employee was not died in harness. Hon'ble CAT/CAL directed vide order dated 11.04.08 in O.A. No. 1281 of 1997 to consider her appeal and disposes of the cases but she failed to submit proper CGA appeal. Hence, the CGA was not considered.

That the instant case the applicant does not come under the purview of compassionate ground appointment as her husband continued his Railway Service till his normal retirement i.e. 30.04.2004."

8. Ld. Counsels were heard and the documents perused:

In view of the facts recorded in the O.A. 1045 of 1994 clearly demonstrating that the employee had turned completely blind in right eye and suffered from advanced cataract in the left eye with gross diminution of vision and this retention in railway service would not have been much beneficial in the interest of public and therefore a good case for premature retirement was made out, the attempts on the part of the respondents to get it corrected by way of surgery was uncalled for. No medical certificates have been placed on record to demonstrate that with such surgery his vision would have improved.

Therefore, I would direct the respondents to reconsider the case in the light of the decision rendered in O.A. 1045 of 1994, and pass appropriate reasoned and speaking order within 3 months from the date of communication of this order.

9. Accordingly the O.A. is disposed of. No costs.

(Bidisha Banerjee)  
JM

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