

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7086 OF 2013

SHALIGRAM JAGAN CHAVRIYA AND ANOTHER
VERSUS
THE GENERAL MANAGER, CENTRAL RAILWAY AND OTHERS

...

Advocate for Petitioners : Mr. Patil Vijay Y.
Mr. GR Ingole, AGP for State;
Mr. Navandar Manish N., Adv. For R/1 And 2

**CORAM : S.S.SHINDE &
 P.R.BORA, JJ.**

DATE : 20th April, 2015.

PER COURT :

1) Heard. This petition is filed with
following prayers, -

“(B) To issue writ of mandamus or any other appropriate writ or direction in the like nature, to direct the Respondent No. 1 to 3 to pay the salary and consequential benefits along with interest on retiring premature i.e. 21.08.2008 to the petitioner No.1 on medical ground and not providing suitable job to the petitioner No.1.

(C) To issue writ of mandamus or any other appropriate writ or direction

in the like nature, to quash and set aside the letter dated 30.08.2012 issued by the respondents and to consider the petitioner No.2 for the appointment and compassionate ground by counting 18 months period spent by the petitioner No.1 for medical treatment

(D) To issue writ of mandamus or any other appropriate writ or direction in the like nature to direct the Respondent Nos. 1 to 3 to provide and give appointment to my son namely Sunil Shaligram Chavriya on compassionate ground, i.e. petitioner No.2.".

2) Learned Counsel appearing for the petitioners submits that the petitioner No.1 was declared medically unfit on 21.08.2008. However, no alternate job was provided to him till 30th April, 2013 and, therefore, the petitioner No.1 is entitled for getting salary for the period w.e.f. 21.08.2008 to 30.04.2013.

. Learned Counsel further invited our

attention to Master Circular No.16 (Page 20 to 29), and in particular clauses V and VIII thereof. It is submitted that, clause V provides for appointment on compassionate ground, if a railway employee, who is declared medically unfit, and leaves less than three years' service at the time of de-categorization, legal heir of such employee; (in the present case, petitioner no.2 herein,) is entitled for appointment on compassionate ground. He also invited our attention to clause VIII of the said Master Circular. Therefore, in the light of clauses V and VIII of the said Master Circular, petitioner No.1 seeks directions to Respondent Nos.1 to 3 to provide employment to his son i.e. petitioner No.2 herein, on compassionate ground.

3) In pursuance to notice issued to the respondents, Respondent Nos.1 and 2 have filed an affidavit in reply and in Para 4 thereof, it is stated that petitioner No.1 has been declared medically unfit for Aye-II, Aye-III, Bee one and

Bee two and fit leg one and under with glasses for DV & NV for permanent sedentary job. It is further stated in Para 5 of the reply that the petitioner was offered job of Call Boy under Station Superintendent, Badnera but he did not join the said post. Taking a lenient view, the petitioner was also posted as a Cook in NS Canteen, Bhusawal inasmuch as this fact is admitted by the petitioner in his application. It is further stated in Para 6 of the reply that in view of letter of Railway Board bearing No. E(NG)/II/95/RC-1/94 dated 14.6.2006, appointment on compassionate ground can only be given in case of employees, who are declared partially de-categorized at the time when they have to leave at least five years or more service.

4) Learned Counsel appearing for Respondent Nos. 1 and 2, invited our attention to other averments in the reply and submits that none of the prayers in the petition can be granted. He further submits that the petitioners have a

remedy available before Central Administrative Tribunal (CAT) for redressal of their grievances. It is further submitted that, the petitioners have raised several disputed questions of fact in the Writ Petition. It is submitted that so far as post-retiral benefits are concerned, same is not the subject matter of the present writ petition and, therefore, the petitioner may be entitled to receive such benefits in terms of relevant Rules. Therefore, the counsel appearing for Respondent Nos. 1 and 2 submitted that the petition is devoid of any merits and same be dismissed.

5) We have heard learned counsel appearing for the petitioners as well as Respondent Nos. 1 and 2. With their able assistance, perused the pleadings/grounds raised in the petition, annexures thereof; relevant Circulars and affidavit in reply filed by Respondent Nos. 1 and 2. So far as prayer clause (B) of the petition is concerned, upon considering the documents placed on record; and in particular the reply

filed by the Respondents, it appears that the petitioner No.1 was offered job of a Call Boy and later on as a Cook. However, the petitioner declined to accept the said job. According to counsel for the petitioner, since the said job was not suitable inasmuch as the petitioner was advised to keep himself away from water and fire and, therefore, the petitioner did not accept the said job. An adjudication as regards prayer clause (B), would certainly lead to disputed questions of fact. The counsel appearing for the petitioners has disputed the fact that, the petitioner No.1 was not offered the job of Call boy or Cook. In that view of the matter and in the light of above discussion, adjudication of prayer clause (B) is not possible.

6) So far as prayer clause (C) is concerned, we have considered the submissions of the counsel appearing for the petitioners, in the light of both the Circulars, which are on record. However, the Circulars/Instructions

issued by Government of India, Ministry of Railways, dated 14th June, 2006, at present govern the field. In view of the said circular, appointment on compassionate ground should only be given in case of employees who are declared partially de-categorized, at a time, when they have at least five years or more service left. Therefore, the prayer clause (C) deserves no consideration. Since, petition cannot succeed in terms of prayer clause (C) the question of offering employment on compassionate ground to son of the petitioner No.1 would not arise, as prayed in the prayer clause (D). In that view of the matter, there is no merit in the petition, and the same stands dismissed. So far as prayer clause (B) is concerned, the petitioners will be at liberty to resort to appropriate remedy for redressal of their grievances.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

bdv/