

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE MRS. JUSTICE ANIS**

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WRIT PETITION No.24368 of 2015

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ORDER: (per Hon'ble Sri Justice Nooty Ramamohana Rao)

The Union of India represented by the General Manager, South Central Railway and 2 other officials of the said Railways are the petitioners in this writ petition. The 1st respondent herein who was employed as Senior Trackman with the Railways, who was due to retire from service on attaining the age of superannuation on 30.06.2012, suffered a setback to his health on 02.12.2006. He reported sick and continued to be on sick leave up to 26.07.2007, when he was finally declared medically unfit for A-III, B-I and B-II categories and he is only fit for C-I and below categories. In view of his deteriorated health condition, he submitted a representation on 28.09.2007 seeking voluntary retirement from service of the Railways with a request to provide employment to his son on compassionate grounds. However, the Ministry of Railways has called Sri Upender, the 1st respondent herein, for screening on 22.02.2008, 30.07.2008 and 27.10.2009 for providing alternative employment which suits his medical classification. However, in the meantime they have adopted a pragmatic approach and allowed him to retire voluntarily with effect from 31.12.2009. Thus, leaving only 2 ½ years of service behind for his eventual retirement on superannuation basis on 30.06.2012. The application for consideration of the case of his son for compassionate appointment has not fructified. The only reason assigned for not considering the case of the son of Sri Upender for appointment on compassionate grounds is that there should have been 5 years or more number of years left over service on the date of voluntary retirement for considering the cases of the wards of medically de-categorized employees. In the instant case, though Sri Upender, the 1st respondent

herein, has reported sick on 02.12.2006, by then he has nearly 5 years 7 months of service left behind for his eventual retirement. But however, he was actually de-categorized medically only on 26.07.2007 and in that process the Railways considered that the case of 1st respondent fell short by 25 days for consideration of the case of his ward for appointment on compassionate basis. In the meantime, Sri Upender died and his legal representatives namely wife, 2 sons and daughter have pursued the legal remedy.

The Central Administrative Tribunal by its order dated 15.04.2015 allowed the O.A. and directed the respondents to consider the case of the 3rd applicant namely Sri Ch.Srinivas for appointment on compassionate grounds as per rules. Against this order, the present writ petition is filed.

Heard Ms.Pushpinder Kaur for the petitioners at considerable length of time.

Learned counsel for the Railways would submit that the crucial date for considering the case of the ward of medically de-categorized employee is the actual date on which the medical de-categorization has taken place. Reliance was placed on certain serial instructions passed by the Ministry of Railways (Railway Board) in that regard.

We have perused the instructions. The extract of the instructions was placed at Page No.52 of the paper book filed along with this writ petition. Paragraph 4 (b) thereof reads as under:

“Such an appointment should only be given in case of employees who are declared partially decategorised at a time when they have at least 5 years or more service left.”

The Ministry of Railways has couched this instruction very carefully. It has pointed out that at least 5 years of service to be left behind. There is a difference in using expression ‘a minimum of 5 years of service’ to that of ‘at least 5 years’. Therefore, the Ministry of Railways has left discretion in the hands of the competent authority, for it to regulate the exercise of

making compassionate appointments for the wards of the medically de-categorized employees and consequently the instructions are read as guidelines. They should be applied taking into account the facts and circumstances of each case.

Indian Railways is a manpower intensive industry. It runs its operations essentially for purpose of transporting commercial freight across the breadth and length of the country and also to ferry the passengers safely from various places in the country by charging them moderately. Indian Railways, hence, plays a very vital role on the economy of the country. In such an intensive manpower industry, the pressures and pulls suffered by the employees may sometimes make them loose out in maintaining appropriate standards of medical fitness. Unfortunately, some of the employees, not all the employees, may not have realized the significance of maintaining appropriate standards of medical fitness. In such unfortunate cases, the Ministry being the model employer has conceived of a social welfare scheme by trying to provide for a source of living for the otherwise distressed family members of the railway servant. That is how, the appointment on compassionate ground in case of medically de-categorized employees is conceived and put in place, but at the same time some safety mechanism has also got to be provided for insulating against non genuine claims. To prevent any such non genuine claims gaining ground, the scheme evolved required at least 5 years of service to be left behind from the date of de-categorization to eventual retirement on attaining the age of superannuation. In the instant case, the man by the date on which he was medically de-categorized i.e. 26.07.2007 has left behind 4 years 11 months and 5 days of service for his eventual retirement. Therefore, it is a clear case where the discretion ought to have been exercised by the competent authority. It is all the more so, when we take into account and consideration the fact that the individual employee reported sick as on 02.12.2006 and in spite of receiving the necessary

medical aid/attention he was ultimately medically de-categorized on 26.07.2007. That means for more than 7 ½ months prior to the date of de-categorization the individual has suffered medical disability. It is, therefore, not a case where the sickness reported by the individual concerned is an artificial one, for the Railways to ignore the case of the 3rd applicant before the Central Administrative Tribunal for consideration of compassionate appointment.

We are at a loss to understand as to why the Ministry is causing lot of stress and strain by indulging in litigation of this nature by preferring Writ Petitions. The precious financial resources at its disposal get stressed out by litigating in such cases also. Obviously, these are the kind of cases which require compassion to be shown that was the very essential requirement to be exhibited under the scheme. For the sheer failure to act with the necessary compassion as is required by the scheme this writ petition deserves to be dismissed and accordingly we dismiss it at the admission stage. Though, we would have been justified in imposing costs on Railways, but however to save it from any further burden, we refrained ourselves from imposing costs.

The miscellaneous applications, if any shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

17.08.2015
Ksp

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

WRIT PETITION NO.24368 OF 2015

Between:

Union of India and 2 others

... Petitioners.

And

Upender and 5 others.

... Respondents.

DATE OF JUDGMENT PRONOUNCED:17.08.2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | No |
| 2. Whether the copies of judgment may be marked
to Law Reporters/Journals | No |
| 3. Whether Their Ladyship/Lordship wish to see the
fair copy of the Judgment? | No |