

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.6.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.26440 of 2017

M.Gurrappa

... Petitioner

Versus

- 1 Union of India rep by the
Chief Personnel Officer
Southern Railway HQ Office
Park Town Chennai-600 003
- 2 The Senior Divisional Personnel Officer
Southern Railway Chennai Division
Park Town Chennai-600 003
- 3 The Registrar
Central Administrative Tribunal
(Madras Bench)
Chennai-600 104

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for records relating to 3rd respondent / Tribunal's order made in O.A. No.310/ 01622 of 2015 dated 03.05.2017, to quash the same and to consequently direct the 1 & 2 respondents to consider the case of the petitioner's son Shri.G.Raghavendra for appointment in suitable post in Railways as per the instructions in force sequel to the medical invalidation / incapacitation of the petitioner.

For petitioner : Mr.L.Chandrakumar

For RR1 and 2 : Mr.S.Muthusamy, Standing Counsel

ORDER

(Order of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties.

2. Aggrieved by the order passed by the Central

Administrative Tribunal, an employee of the Southern Railway, who opted and went on voluntary retirement, has filed the present writ appeal challenging the order passed by the Tribunal in declining to entertain the claim of the appellant.

3. It appears that the appellant, who had joined the services of the Southern Railway on 10.6.1956, was medically de-categorised on 1.6.2005 when he was working as a Senior Trackman and opted for voluntary retirement and got relieved from service on 9.1.2013 on the assurance that his son would be considered for appointment on compassionate grounds, however, since the same was rejected by the Railway, he had filed the Original Application before the Tribunal and since the same was dismissed by the Tribunal, the present writ petition has been filed.

4. It appears that though the petitioner was medically de-categorized because of poor eyesight by 1.6.2005 itself, he could not opt for the scheme of voluntary retirement as he was only a minor by then and therefore, he requested for continuation of his service in a supernumerary post for two years considering the fact that he had no other source of income. Subsequently, when he expressed unwilling to join in the alternate post of Senior Store Watchman provided to him and opted to go on voluntary retirement with the benefit of appointment to his son on compassionate ground, the same was accepted, however, the request for appointment to his son on compassionate ground was rejected while accepting his voluntary retirement and therefore, the Original Application was filed.

5. The Tribunal, accepting the stand of the Railways that the appellant was provided with alternative post in the light of para 1306 of the Indian Railway Establishment Manual, concurred with the view taken by the Railways to reject the claim of the appellant.

6. However, it is brought to our notice that there is a subsequent circular dated 6.10.2006 in PBC 168 of 2006 issued in modification to the Circular G.O. 78 of 2006 dated 14.6.2006 which says that 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 and in such cases, request for appointment of compassionate ground to an eligible ward may be considered.

7. Having gone through the papers placed before this court and also heard the counsel appearing for the respective parties, we are of the view that there is non-consideration of the grievance of the petitioner as per the latest circular in PBC No.168/2006 dated 6.10.2006.

8. The learned counsel appearing for the Southern Railway

submitted that the employee must have a minimum service of 5 years or more left when he seeks for appointment on compassionate of the wards.

9. No doubt, when the appellant was medically de-categorized on 1.6.2005, he was having more than five years of service left for superannuation. Therefore, the non-consideration of the case of the petitioner in the light of latest Circular of the Southern Railway in PBC No.168 of 2006 dated 6.10.2006 prejudiced the case of the petitioner. In that view of the matter, we direct the respondents herein to re-consider the case of the petitioner in the light of the above referred latest Circular dated 6.10.2006 which also provides for such contingency as is pleaded by the petitioner on merits and in accordance with law, without being influenced by the observation made by the Tribunal and such exercise shall be done within a period of three months from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS. VI)

//True Copy//

Sub Assistant Registrar

ssk.

To:

- 1 The Chief Personnel Officer
Southern Railway HQ Office
Park Town Chennai-600 003
- 2 The Senior Divisional Personnel Officer
Southern Railway Chennai Division
Park Town Chennai-600 003
- 3 The Registrar
Central Administrative Tribunal
(Madras Bench)
Chennai-600 104

+1cc to Mr.S.Muthusamy, Advocate, S.R.No.41152

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.41520

W.P.No.26440 of 2017

GSP(01/08/2018)