

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY
W.P. No. 15199 of 2018

M. Veilsh Kumar

...Petitioner

Vs.

1. The Union of India, rep by
The Divisional Railway Manager (Personnel),
Railway Divisional Office,
Southern Railway,
Madurai - 625 016.

2. The General Manager,
Southern Railway HQRS,
Park Town,
Chennai - 600 003.

3. The Registrar,
The Central Administrative Tribunal,
Chennai - 600 104.

...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the impugned order dated 16.04.2018 passed in by the 3rd respondent O.A. No. 310/01/01885 of 2016 and quash the same and direct the respondents 1st and 2nd for the issuance of posting order on compassionate grounds with all monetary and service benefits within the prescribed date.

For Petitioners : Mr. M. Muthukaruppan

For Respondents : Mr. P.T. Ramkumar,
Spl. Panel Counsel for Railways
for R1 and R2
R3 - Tribunal

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

This is the third round of litigation initiated by the petitioner seeking compassionate appointment pursuant to the death of his father who admittedly died eight months after the

date of his retirement on 17.11.2012. The father of the petitioner retired from service after completing 60 years of age on 29.02.2012.

2. The petitioner's father was suffering from tuberculosis. It appears that he gave a representation prior to his retirement seeking to declare himself as unfit to work any longer and consequently, a request was made for compassionate appointment to the petitioner. However, he continued to serve thereafter and reached the age of superannuation.

3. Two years thereafter, the petitioner filed an Original Application before the Tribunal. While condoning the delay on the first occasion, the Tribunal directed the 1st and the 2nd respondent to consider the request of the petitioner. By a reasoned order, the request made was rejected inter alia holding that the petitioner's father was not so crippled and therefore, the petitioner cannot be given any appointment on the compassionate ground, more so, when he reached the age of superannuation and retired from the service. This was again put into challenge. The Tribunal, by an earlier order passed in OA No. 310/01248/2015 dated 29.04.2016 held as follows:-

"A perusal of the said extract would reveal that in the cited case, even though the applicant was medically decategorised, the respondent department failed to implement the mandates as contained in the relevant circular of the department. Hence the said Judgment emerged. Here, absolutely there is no clinching evidence to show that the applicant was medically decategorised and for that matter, there was nothing to prove that his health was so bad warranting decategorisation. This Tribunal cannot assume and presume certain facts which are not before it. As such, this case is distinguishable from the case cited on the side of the applicant. However, the learned counsel for the applicant would implore and entreat that the respondent authority shall be directed to reconsider his case in view of the factual scenario as found set out in the OA. I am of the considered view that since there is a submission made by the learned counsel for the applicant on behalf of his client that in view of the above factual scenario, the applicant might be permitted to provide additional evidence to prove the deplorable health condition of his deceased father to the appropriate authority of the Railways, this OA is disposed of with the following directions:

The applicant is given liberty to submit a representation to the appropriate authority concerned and provide additional evidence if

necessary to show the alleged deplorable health condition of his deceased father, within a period of one month from the date of receipt of a copy of this order, whereupon the appropriate authority shall reconsider the case of the applicant and pass a speaking order within a period of two months thereafter. No costs."

4. Thereafter, once again an order was passed rejecting the request made by the petitioner on the premise that there is no material to hold that his father was so crippled to the effect that he was unable to do any work. Challenging the same, OA No. 310/01885 of 2016 was filed, which was once again dismissed on the ground that there is no substantial evidence to show that the petitioner's father was so crippled. Hence the present writ petition.

5. Learned counsel appearing for the petitioner would submit that the tuberculosis by its own nature is a deadly disease, for which, there is no cure. The petitioner's father contracted disease during the course of employment and therefore, he cannot be treated as suffering from partially crippling disease. His case would come under complete crippling to the extent of creating an inability to work. Therefore, the writ petition will have to be allowed.

6. Learned counsel appearing for respondents 1 and 2 would submit that the petitioner's case would not come under the purview of circumstances in which the compassionate appointment may be made. Admittedly, the petitioner's father completed his tenure. There is no material to show that he was so crippled. In fact, salary was paid to him for the services rendered by him. There is no provision under the Rule to give employment for the legal heir of the deceased on compassionate ground. Even assuming that the petitioner's father was partially crippled, as per letter No. E(NG)II/95/RC-1/94 dated 14.06.2006, a period of 5 years before making a request is mandated on the part of partially, medically de-categorised employee. There is no such compliance made. Therefore, no interference is required.

7. A compassionate appointment is not a matter of course but only subject to the rules and regulations governed. Admittedly, the petitioner's father completed his period of service and worked up to the age of 60 years. Thereafter, he reached the age of superannuation and died. There is no material to hold that he was so crippled leading to inability to work. If that is a case, the petitioner's father himself would have taken up the issue while he was alive. If the petitioner's case is to be treated as one coming under partially, medically de-categorised employee, there is a mandatory requirement of

five years of service is required before such a request is made. Admittedly, there is no such compliance. Thus, looking from any perspective, we do not find any merit in the writ petition. The contention of the learned counsel appearing for the petitioner on the nature of the disease also cannot be accepted. The inability to cure would depend upon the stage of the disease and not the disease by itself.

Thus, writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssm/mmi

To

- 1.The Divisional Railway Manager (Personnel),
Railway Divisional Office,
Southern Railway,
Madurai - 625 016.
- 2.The General Manager,
Southern Railway HQRS,
Park Town,
Chennai - 600 003.
- 3.The Registrar,
The Central Administrative Tribunal,
Chennai - 600 104.

+1cc to Mr.M.Muthukaruppan, Advocate, S.R.No.76990
+1cc to Mr.P.T.Ramkumar, Advocate, S.R.No.77082

सत्यमेव जयते W.P. No. 15199 of 2018

SKV(CO)

rrs 26/11/2018

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