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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8312/2018

HARISH TANDON

..... Petitioner

Through: Mr. Salman Khurshid, Sr. Advocate
with Ms. Kamna Singh, Advocate.

versus

GERNERAL MANAGER NORTHERN RAILWAY AND ANR.

..... Respondents

Through: Ms. Shipra Shukla, Advocate.
Mr. Firoz Alam, OS/CG Cell, DRM
Office.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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06.12.2018

1. The petitioner has preferred the present writ petition to assail the order dated 31.01.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (in short 'Tribunal') in OA No.4295/2016. The Tribunal rejected the said Original Application preferred by him wherein he assailed the rejection of his application to seek compassionate appointment vide letter dated 01.09.2016.
2. The father of the petitioner was a Railway servant. While he was serving in the post of Office Superintendent-I, he submitted an application on 20.05.2005 giving notice of three months to voluntarily retire from service due to ailing health. He sought voluntary retirement w.e.f. 31.08.2005. Before his application could be accepted, he withdrew the same

on 28.06.2005 on the ground that he was feeling better and that he wanted to serve the Railways upto his normal date of retirement i.e. 31.08.2007. However, he again changed his mind and sought voluntary retirement on 01.06.2006 by stating that he cannot serve due to his ill health. Consequently, the competent authority accepted his application for voluntary retirement on 27.11.2006 and he was voluntarily retired w.e.f. 27.11.2006 from his service. Since his normal date of superannuation would have been 15.08.2007, his date of birth being 15.08.2007, his voluntary retirement was made about nine months and four days prior to his actual date of superannuation.

3. The petitioner's father passed away on 05.08.2008. The petitioner, in order to seek compassionate appointment, made representations to the Hon'ble President and Hon'ble Prime Minister of India in April and July, 2016 i.e. nearly eight years after the normal date of his retirement and also around eight years after the demise of petitioner's father i.e. after attaining the age of superannuation. His application was not favourably considered and consequently, he approached the Tribunal. The petitioner sought to place reliance on the circular dated 30.04.1979 of the Railway Board, which, *inter alia*, states that appointments on compassionate grounds may also be offered in cases where the employees while in service become crippled, develop serious ailments like heart diseases, cancer, etc. or otherwise become medically de-categorised for the job they are holding. If no alternative job with the same emoluments can be offered to them, one son/daughter should be eligible for compassionate appointment if such an employee opts to retire. The Tribunal has examined the said circulars and the other circulars relied upon by the petitioner and did not find merit in the

Original Application. The submission of Mr. Khurshid, learned senior counsel for the petitioner is that the circumstances of the petitioner were pathetic and compassion should have been shown by granting employment to the petitioner as when the petitioner's father passed away, he was only 15 years of age. Thus, he was not even eligible to seek compassionate employment in the year 2008 when his father died. He also refers to the Circular dated 30.04.1979, and in particular Clause 3, which reads as under:

“The appointments on compassionate grounds may also be offered in cases where the employees while in service become crippled, develop serious ailments like heart diseases, cancer, etc. or otherwise become medically decategorised for the job they are holding. If no alternative job with the same emoluments can be offered to them, one son/daughter should be eligible for compassionate appointment if such an employee opts to retire.”

4. Having considered the submissions of Mr. Khurshid, learned senior counsel for the petitioner and after perusing the impugned order, we are of the view that there is no merit in this petition. The compassionate appointment is granted in case of demise of a Government servant while in harness to save the family from penury distress and to tide over the immediate need of the family left by the deceased Government servant. In the present case, the petitioner's father did not die while in harness; he sought voluntary retirement, though, on account of his ill health. The petitioner's father was not medically de-categorised for the job that he was performing; it was not a case where on account of medical de-categorisation of the job being performed by the petitioner's father, he could not be offered an alternative job with the same emoluments. The first application made by

the petitioner seeking compassionate appointment was around eight years after the demise of his father. The compassionate appointment, being an exception to the normal mode of recruitment through public advertisement, can be granted strictly in terms of the Scheme, and, not otherwise. Compassion either by the Authorities or by the Courts has to be shown in terms of the prescribed guidelines and Rules and not otherwise, lest, it can lead to favouritism and arbitrariness.

5. For the aforesaid reasons, we do not find any merit in this petition. Same is dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

DECEMBER 06, 2018

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