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

+ **W.P.(C) 6464/2018**

SOMBIR SINGH

..... Petitioner

Through: Mr.Bhushan Kapur, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms.Shipra Shukla, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

10.04.2019

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1. On the previous date which is 20th February 2019, the following order was passed:

“1. The case of the Petitioner is that when he applied for voluntary retirement from the Railway Protection Special Force (RPSF), with effect from 30th November 2016, subsequent to the order dated 3rd February 2007 whereby the Medical Board had de-categorized him on medical grounds, he expressly asked that his son be given employment in terms of a Railway Board letter No. E(NG) II/95/RC-1/94 and PS 13167.

2. It appears that in terms of Battalion Order No. 160/2016 dated 17th November 2016, the Appellant's request was treated as one for "conditional voluntary retirement" and accepted as such. This was, "due to appointment of his son group 'D' category on medical ground in reference of Railway Board letter No.E(NG)II/95/CR-1/94 dated 14.06.2006 and No.2016 Se (ABE) CGA/2/6 dated 09.05.2016 has been accepted by competent authority wef. 30.11.2016A/N." Also placed on record by the Petitioner is a copy of the Battalion Order No.

163/2016 which clearly states that the Petitioner has "conditionally voluntarily retired from railway service wef 30.11.2016 A/N" and that his name was "struck off from the Battalion records from that date onwards.

3. However, when it came to appointing the Petitioner's son on compassionate grounds, it appears that notwithstanding the recommendation of the RPSF, the Railway Board, relying on its letter dated 12th November 2014, declined to do so on the ground that the Petitioner was not declared unfit in his "original medical category", although he was declared unfit for his original post. This was despite the letter dated 10th August 2014 issued by the RPSF to the Railway Board referring to the earlier circular dated 14th June 2006 regarding grant of compassionate appointment to the wife/wards/dependents of "partially medically de-categorised staff who seek voluntary retirement.

4. Learned counsel for the Petitioner has relied upon the decisions in *Food Corporation of India v. Ram Kesh Yadav AIR 2007 SC 1421* and decision dated 26th October 2010 of this Court in Writ Petition (Civil) No. 13999/2009 (*Gulshan Kumar v. Union of India*) to urge that with the offer for VRS being conditional, it was not open to the Respondent to accept one part of the offer of the Petitioner i.e. of relieving him from service but not accepting the other condition viz., that his son should be given compassionate appointment.

5. Learned counsel for the Petitioner states that Respondents themselves have acknowledged that the Petitioner's VRS application was a conditional one. He submits that if the Respondents are not prepared to accept the condition of his son's appointment on compassionate grounds, then the Petitioner should be reinstated in service. That is the alternate prayer in the writ petition.

6. Learned counsel for the Respondents states that the Railway Board having reconsidered the entire matter has taken a firm decision that its letter dated 12th November 2014 applies and the Petitioner's request for the compassionate appointment of his son cannot be acceded to. However, she needs time for instructions as regards the alternate prayer of the Petitioner that he be reinstated in service.

7. At her request, list on 10th April 2019.”

2. Today, learned counsel for the Respondents states that the Respondent is ready to take the Petitioner back in service subject to his returning the retiral benefits at the time of his voluntary retirement from service. The total recoverable amount according to the Respondent is Rs.8,52,366/-.

3. Learned counsel for the Petitioner points out that while the Petitioner may not be able to pay the entire amount in one go he is willing for his monthly salary to be debited with a fixed amount for recovery of the aforementioned amount.

4. It will be open to the Respondents to work out that precise monthly amount which should be recovered from the Petitioner which in any event should not be more than 5% of the salary. The necessary orders now be issued within a period of 8 weeks. The Petitioner shall be reinstated on the same post that he was at the time of his voluntary retirement. While the Petitioner would not be entitled to any arrears of pay, for all other purposes it will be treated as if there was no break in service. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 10, 2019 / tr