

Court No. - 6

Case :- WRIT - A No. - 52956 of 2017

Petitioner :- Neeraj Kumar

Respondent :- General Manager Northern Central Railway
Alld. And 4 Others

Counsel for Petitioner :- Araf Khan, Lihazur Rahman Khan

Counsel for Respondent :- Vivek Kumar Rai, Rajnish Kumar Rai

Hon'ble Yashwant Varma, J.

Heard learned counsel for the petitioner and Sri Rajnish Kumar Rai, who has appeared for the Union respondents (Railways).

This petition assails three orders passed by the respondents negating a claim raised by the petitioner for appointment on compassionate grounds. On facts which are not in dispute, it is evident that the father of the petitioner obtained V.R.S. on 20 April 2003. He is stated to have died thereafter on 20 March 2004. The petitioner raised a claim through his mother for appointment on compassionate grounds sometime in 2008. The learned counsel appearing in this petition has drawn the attention of the Court to a Circular issued by the Ministry of Railways dated 14 June 2006 to submit that even in cases where employees have taken voluntary retirement their wards were entitled to be considered for appointment on compassionate grounds. In view thereof, he contends that the orders impugned insofar as they reject the claim of the petitioner in this respect are rendered unsustainable.

The Court however notes that initially the respondents had turned down the claim for appointment on compassionate grounds by an order dated 4 January 2011. This order was challenged before the Administrative Tribunal in **O.A. No. 209 of 200 (Smt. Angoori Devi and Another Vs. Union of India and Others)** which came to be dismissed in the following

terms:

"8. Respondents have annexed the application given by the ex-employee for seeking voluntary retirement (page 49). Perusal of same shows the ex-employee had sought voluntary retirement on domestic grounds by giving 3 months notice by specifically stating that he has completed more than 35 years of service. Due to his domestic and health grounds, his request for voluntary retirement may be accepted.

9. It is relevant to note that this application was given on 19 December 2002 when there is nothing on record to show that he was declared medically unfit. His request was accepted on 28.3.2003 w.e.f. 30.4.2003 meaning thereby the husband of applicant No.1 was allowed to go on voluntary retirement in 2003 itself. As per applicant's own averment, he died subsequently on 10.2.2004, i.e., after his retirement. Applicant has not been able to show us any rule where compassionate appointment can be granted to the ward of an employee who takes voluntary retirement in normal course."

The prayer for appointment on compassionate grounds appears to have been reiterated which again did not find favour with the respondents and was rejected on 2 July 2012. This was assailed by the mother of the petitioner yet again by way of O.A. No. 1260 of 2013. This too was dismissed by the concerned Administrative Tribunal with the following observations:

"9. It is thus clear that the matter in issue in the present Original Application has already been decided by this Tribunal, vide its order dated 4.1.2011 passed in OA No.209 of 2010 which was filed by the applicant along with her son Shri Neeraj Kumar. Though the applicant challenged the Tribunal's order dated 4.1.2011 by filing W.P. (C) No. 4007 of 2011, yet on the prayer made by her the Hon'ble High Court permitted withdrawal of the said Writ Petition. In view of this, the order dated 4.1.2011 (ibid) passed by the Tribunal operates as res judicata and bars trial of the same issue in the present O.A. filed by the applicant.

10. In the above view of the matter, it is held that the present Original Application is liable to be dismissed as being barred by res judicata. The O.A. is accordingly dismissed. No costs."

Undisputedly, these decisions of the Tribunal have attained finality and have not been assailed either by the petitioner or his mother at any point of time.

The orders impugned herein appear to have been passed on the basis of subsequent representations made by the petitioner.

Be that as it may and once a judgment *inter partes* which settles the issue has come to be passed by the Tribunal, this Court finds no ground to either evaluate the correctness of the orders

impugned or to re-open an issue which stands settled against the petitioner.

The writ petition is misconceived and is consequently **dismissed**.

Order Date :- 13.2.2019

Arun K. Singh

(Yashwant Varma, J.)