

04.10.2021

Court No.16

rpan / **06**

W.P.C.T. 75 of 2016

In re: An application under Article 226 of the
Constitution of India filed on 25.11.2020;
And

In re: **Smt. Kanan Dey & Anr.**

- Versus -

Union of India & Ors.

Mr. S. S. Mandal,
Mr. Nirmal Roy
... for the Petitioners.

Mr. R. N. Bag (through v.c.),
Mr. Ajay Chaubey (through v.c.),
Ms. Shakshi Rathi
... for the Respondents.

The subject matter of challenge in the present writ
petition is an order dated 6th July, 2015 passed by the
learned tribunal in O.A 142 of 2011.

Records reveal that one Kanailal Dey (in short,
Kanailal), being the father of the petitioner no.2, applied
for voluntary retirement on medical ground by a
representation dated 27th July, 2000. The said
application was accepted with effect from 31st October,
2000. Since his family was suffering from extreme
financial distress, Kanailal submitted an application for
compassionate appointment of his son on 19th April,
2005 as he had voluntarily retired being medically unfit.
The said application was dismissed by an order dated
11th September, 2007 observing *inter alia* that Kanailal
had taken voluntary retirement on normal course and

was not declared medically unfit. In the midst thereof, Kanailal unfortunately expired on 26th January, 2007. Challenging the said order and stating that the respondents have granted appointment to several persons adopting a pick and choose policy, the petitioners preferred an application being OA 142 of 2011. The learned tribunal rejected the said application on 25th April, 2012 observing *inter alia* that the petitioners have sought for multiple reliefs. The said order was, however, set aside by a coordinate Bench of this Court by an order dated 18th February, 2014 in WPCT No.102 of 2014 and the matter was remanded to the learned tribunal. Thereafter by an order dated 6th July, 2015, the learned tribunal dismissed the original application.

Mr. Mandal, learned advocate appearing for the petitioners contends that the arguments advanced on behalf of the petitioners while challenging the order dated 11th September, 2007 passed by the Deputy Chief Personnel Officer were not taken into consideration by the learned tribunal and the application was dismissed without disclosing any cogent reason.

He further submits that the learned tribunal passed the order impugned being oblivious of the fact Kanailal was suffering from the dreaded disease of cancer and that due to such ailments and medical

incapacitation, he was constrained to apply for voluntary retirement.

Per contra, Mr. Bag, learned advocate appearing for the Railways/respondents submits that Kanailal submitted an application on 27th July, 2000 seeking voluntary retirement. Such application was accepted by the competent authority with effect from 31st October, 2000. Thereafter, Kanailal applied for compassionate appointment of his son as a special case on medically unfit ground. Such claim was rightly rejected by the learned tribunal since Kanailal was not declared medically unfit. There is no provision for compassionate appointment of wards of employees retiring on superannuation or on voluntary retirement ground.

The issue which arose for consideration before the learned tribunal was as to whether Kanailal voluntarily retired due to medical incapacitation or as to whether he retired on normal course.

We have perused the application submitted by Kanailal seeking voluntary retirement. While submitting such application for voluntary retirement, Kanailal did not submit any prayer for medical examination contemporaneously. It is not a case that upon examination Kanailal was declared medically unfit. The findings that Kanailal had taken voluntary retirement on normal course and that he was not declared medically unfit do not suffer from any infirmity.

The learned tribunal, upon dealing with the factual issues, has arrived at specific findings and we do not find any error in the decision making process. The order also does not suffer from any patent error of law.

For these reasons, we are unable to grant the relief, as prayed for by the petitioner and the writ petition, being WPCT 75 of 2016 is, accordingly, dismissed.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Hiranmay Bhattacharyya, J.) (Tapabrata Chakraborty, J.)