

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 682 of 2018

Singheshwar Prasad Singh, aged 62 yrs. s/o Late Bhuneshwar Singh
resident of Qr. No. 198/E, Durga Para, P.O. & P.S. Gomoh, District-
Dhanbad (Jharkhand)

... .. Appellant/ Petitioner

Versus

1. Union of India through, General Manager, East Manager, East Central Railway, P.O. & P.S. Hajipur, District-Vaishali (Bihar).
2. Sr. Divisional Security Commissioner, Railway Protection Force, East Central Railway, P.O. & P.S. & District-Dhanbad.
3. Sr. Divisional Personnel Officer, East Central Railway, P.O. & P.S. & District-Dhanbad.
4. Chief Medical Superintendent, East Central Railway, P.O. & P.S. & District-Dhanbad.

... .. Respondents/Respondents

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Appellant : Mr. Anil Kr. Sinha, Sr. Advocate
Mr. Rakesh Kumar, Advocate

For the Respondents : Ms. Leena Mukherjee, C.G.C.

ORAL JUDGMENT

08/Dated 19th September, 2022

1. The instant intra-court appeal preferred under Clause 10 of the Letters Patent is directed against the order/judgment dated 21.08.2018 passed by the learned Single Judge of this Court in W.P.(S) No. 2268 of 2017, whereby and whereunder, the writ petition has been dismissed declining to pass positive direction in favour of the writ petitioner to the effect to keep the period from 26.05.2015 to 31.08.2016 under sick period and to make payment for the said period and to revise post retiral benefit in terms of 7th Pay Commission and to grant compassionate appointment to the son of the petitioner.
2. The brief facts as per the pleading made in the writ petition which require to be enumerated, read as hereunder:

The writ petitioner was posted as Head Constable in the Railway Protection Force, Dhanbad and he retired from his service on 31.08.2016 and while working as such, the writ petitioner fell ill w.e.f. 20.06.2015 due to paralysis attack and on 01.07.2015 he was referred to Patna from Dhanbad Railway Hospital but due to non-availability of neuro doctor, the writ petitioner was referred to Indira Gandhi Institute of Medical Sciences, Patna.

It is the case of the writ petitioner that prior to treatment, the application dated 22.08.2016 was given to the respondent that since 25.06.2015 he would be under treatment and would not be able to work. The writ petitioner, by way of representation dated 28.03.2016 intimated the authorities regarding death of his wife and also prayed for release of RELHS card and also prayed for benefit of compassionate appointment.

It is the case of the writ petitioner that right from 26.05.2015 till the date of retirement, i.e., 31.08.2016, the writ petitioner was never declared unfit but till date no payment of last ten months' salary since November 2015, the amount of PF and gratuity have not been paid according to 7th Pay Commission as also the amount of 40% commutation of pension has not been paid and no decision has been taken for the benefit of compassionate appointment for the ward of the writ petitioner.

3. It is the grievance of the writ petitioner that he was on sick leave from 26.05.2015 to 31.08.2016 and the aforesaid period was adjusted with the leave admissible to him, as such, the appointment on compassionate ground cannot be declined. The writ petitioner, being aggrieved with

the action of the respondent, approached this Court by filing writ petition being W.P.(S) No. 2268 of 2017 seeking following reliefs:

“... for issuance of appropriate writ/(s), order/s, direction/s upon the respondent to treat the period of 26.5.15 to 31.8.16 as sick period and to release the entire payment of the period.

AND/OR

To revise the post retiral benefits as per VIIth pay commission & also to fix the pension & continuation of pension according to VIIth pay commission.

AND/OR

For direction upon the respondent to give the benefit of compassionate appointment to the son of the employee.”

4. The learned Single Judge has considered the fact in entirety and after taking into consideration the fact that the writ petitioner has failed to produce any scheme for appointment on compassionate ground as also the sick leave which is being sought for by the writ petitioner has already been treated to be leave without pay, therefore, has declined to pass any positive direction by dismissing the writ petitioner holding the writ petitioner as not entitled either for appointment on compassionate ground or arrears of salary for the period from 26.05.2015 to 31.08.2016 or to extend the benefit to be paid under 7th Pay Commission.
5. Mr. Anil Kr. Sinha, learned senior counsel appearing for the writ petitioner has submitted that the learned Single Judge without appreciating the fact that the sick leave having been granted for the period from 26.05.2015 to 31.08.2016 but the benefit of the same has not been provided to the writ petitioner.

Further, even though there is scheme under Circular dated 18.01.2000 but no direction has been passed upon the respondent to consider the case of the writ petitioner for appointment of his son on compassionate ground.

Further, the writ petitioner was also entitled for the benefit under 7th Pay Commission, as such, the same ought to have been extended in his favour and by extending the said benefit, the consequential relief ought to have been granted but the learned Single Judge without appreciating the fact in right perspective, has dismissed the writ petition, therefore, the same is not sustainable in the eyes of law.

6. Ms. Leena Mukherjee, learned Central Government counsel representing the respondent-Union of India, has submitted by defending the order passed by the learned Single Judge taking the ground that there is no infirmity in the order impugned since the son of the writ petitioner is not at all entitled for appointment on compassionate ground reason being that there is no circular to that effect and it is settled that unless there is scheme for appointment on compassionate ground, the case of one or the other dependants of the deceased employee cannot be considered.

She further submits so far the reference of Circular dated 18.01.2000 is concerned which has been made referred in the impugned order, the same cannot be said to be applicable in the facts and circumstances of the case since the same pertains to the case of providing appointment only in case when the concerned employee is found to be medically incompetent but there is no certificate to that effect, therefore, there is no case of consideration of the dispute of the writ petitioner for appointment on compassionate ground.

She further submits that so far as the period of sick leave is concerned, the respondent authorities have considered in right

perspective by taking into consideration the applicable leave rule wherefrom the calculation has been made by treating the period of leave to be leave half pay (LHAP), leave average pay (LAP) and leave without pay (LWOP). Therefore, the learned single judge after taking into consideration the aforesaid aspect of the matter, is correct in not passing any positive direction. So far as the salary for the period from 26.05.2015 to 31.08.2016 is concerned, the learned counsel submits that the order passed by the learned Single Judge is based upon the cogent reasons, therefore, the same may not be interfere with.

7. This Court has heard the learned counsel for the parties, perused the documents available on record as also the finding recorded by the learned Single Judge.
8. It is the case of the writ petitioner that he was working as Constable in the Railway Protection Force, Dhanbad from where he retired on 31.08.2016 under sick condition since he was a patient of sugar and other ailment. The writ petitioner fell sick due to paralysis attack from 20.06.2015 and on 01.07.2015, he was referred to Patna from Dhanbad Railway Hospital but due to non-availability of the neuro doctor, he was referred to Indira Gandhi Institute of Medical Science, Patna. The writ petitioner was never declared unfit during the treatment rather he was under treatment and due to paralytic attack, severe diabetese and other ailments lastly in the sick condition petitioner retired from service on 31.08.2016.

The writ petitioner, therefore, claims that he was under treatment for the aforesaid period, as such, he ought to have been declared sick and the salary for the said period ought to have been

released in his favour. Further he has also claimed that after declaring him medically unfit, one of the dependants of his family ought to have been provided appointment on compassionate ground. The writ petitioner has also prayed that he is entitled for the benefit of recommendation of the 7th Pay Commission since he has attained the age of superannuation on 31.08.2016. The grievance having not been redressed, the writ petitioner approached this Court by filing writ petition under Article 226 of the Constitution of India being W.P.(S) No. 2268 of 2017 but the same having been dismissed, the instant intra court appeal has been preferred.

9. This Court, after going through the record and considering the documents placed on behalf of the parties, has found that altogether three reliefs have been sought for, i.e.,:
 - (i) to treat the period from 26.05.2015 to 31.08.2016 as period of sick leave;
 - (ii) to provide appointment to the son of the writ petitioner on compassionate ground by declaring him medically unfit;
 - (iii) to grant the benefit of recommendation of 7th Pay Commission along with other consequential benefits.
10. So far as the claim pertaining to treat the period from 26.05.2015 to 31.08.2016 under the sick period is concerned, it is evident from the material available on record as has been recorded by the learned Single Judge in the impugned order that the entire period which the writ petitioner is claiming as sick leave has been calculated under the applicable leave rule as would appear from the pleading made in the counter affidavit which has been taken into consideration by the learned

Single Judge in the impugned order wherefrom it is evident that 50 days' leave was in the credit of the writ petitioner; he was given 50 days of LHAP (leave half pay) and 77 days of LAP (leave average pay), therefore, no leave was in there in the credit of the writ petitioner, as such, the period from 05.10.2015 to 31.08.2016, i.e., 308 days, was treated as LWOP (leave without pay).

The learned Single Judge, in view of the aforesaid calculation as has been brought to the notice by way of counter affidavit, has declined to pass positive direction with respect to this claim.

11. This Court, after considering the aforesaid calculation, is of the view that no public servant can be allowed to take sick leave beyond its admissibility.

Herein, as per the applicable rule, 50 days' leave was in the credit of the writ petitioner, therefore, he was given 50 days of LHAP (leave half pay) and 77 days of LAP (leave average pay), as such, there was no leave in the account of the writ petitioner, as such, if the respondent authorities have treated the period from 05.10.2015 to 31.08.2016, i.e., 308 days, as LWOP (leave without pay), the same according to our considered view, cannot be considered to suffer from any infirmity.

The learned Single Judge, after taking into consideration the aforesaid aspect of the matter, if had declined to pass positive direction, the same cannot be faulted with.

12. So far as the claim (ii) which pertains to appointment on compassionate ground, is concerned, it is evident from the material available on record

that the writ petitioner has failed to produce any scheme pertaining to appointment on compassionate ground, however, a circular dated 18.01.2000 had been brought to the notice of the learned Single Judge basis upon which the appointment of the son of the writ petitioner has been claimed.

The learned Single Judge has not considered the aforesaid circular to be fit to extend the benefit of appointment on compassionate ground holding in the impugned order that there is no scheme to provide appointment on compassionate ground.

13. Learned senior counsel appearing for the writ petitioner has given emphasis upon the Circular dated 18.01.2000 appended as Annexure-3 to the memo of appeal.
14. This Court, in order to appreciate the aforesaid argument, thought it proper to consider the aforesaid circular and has found therefrom that the same has been issued for appointment on compassionate ground in case of medical invalidation/decategorization. The aforesaid circular has been notified taking into consideration the provision of “The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995”, hereinafter referred to as the Act, 1995. It appears from the aforesaid circular that such policy decision has been taken in a case where an employee has been medically invalidated/decategorized and where the administration cannot find a suitable alternative post for such an employee, he may be kept on a supernumerary post in the grade in which he was working on regular basis, till such time a suitable post can be identified or till his retirement, whichever is earlier.

It has further been provided that in case of matter of medical decategorisation, i.e., those cases in which an employee becomes medically unfit for the post held at present but is fit to perform the duties of an alternative suitable post in lower medical category, the request for appointment on compassionate ground to an eligible ward will not be admissible, even if the employee chooses to retire voluntarily on his being declared medically decategorized. Such an employee may then either be continued in a supernumerary post or allowed to retire voluntarily if he so desires but without extending the benefit of appointment on compassionate grounds to a ward. For ready reference, the content of the aforesaid circular reads as under:

“ ...

Pursuant to the notification of “The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998”, instructions were issued vide Board’s letter no. E(NG)I/96RE-3/9(2) dated 29.4.99, laying down inter-alia that, in cases where an employee has been medically invalidated/decategorised and where the Administration cannot find a suitable alternative post for such an employee, he may be kept on a supernumerary post in the grade in which he was working on a regular basis, till such time a suitable post can be identified or till his retirement, whichever is earlier. As these instructions provided for continuation in service of a medically invalidated decategorised employee, there would be no occasion for an employee to be retired from service on a medical ground. Therefore, according to these instructions, in such cases, the occasion to consider a request for appointment on compassionate ground of an eligible ward would not arise.

The matter has been reviewed pursuant to a demand raised by the staff side in the DC/JCM and it has now been decided that in cases where an employee is totally incapacitated and is not in a position to continue in any post because of his medical condition, he may be allowed to opt for retirement. In such cases request for appointment on compassionate ground to an eligible ward may be considered.

In cases of medical decategorisation i.e., those cases in which an employee becomes medically unfit for the post held at present but is fit to perform the duties of an alternative suitable post in lower medical category, the request for appointment on compassionate ground to an eligible ward will not be admissible, even if the employee chooses to retire voluntarily on his being declared medically decategorized. Such an employee may then either be continued in a supernumerary post or allowed to retire voluntarily if he so desires but without extending the benefit of appointment on compassionate grounds to a ward.”

15. It is, thus, evident that the said circular does not speak about the policy decision to provide appointment on compassionate ground rather the

same can be construed to be in view of the provision of Section 47 of “The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995” wherein it has been provide that on the ground of medical disability there will be no discrimination and a provision has been made out that in case of disability if the concerned employee is not in a position to perform his duties, for adjusting such public servant, a supernumerary post is to be created as would appear from Section 47 of the Act, which reads as under:

“47. Non-discrimination in Government employments. –

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service: Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

16. Admittedly, herein, the writ petitioner claims to be sick but no invalidation certificate or disability certificate has been brought on record.

This Court has put a pin pointed question upon the learned senior counsel as to whether any disability certificate has ever been issued by the competent authority as per the provision made under the Act, 1995. It has been submitted that no such medical certificate has been issued by any of the competent authority or empowered to issue such certificate.

The aforesaid circular also does not speak to provide appointment on compassionate ground rather the policy decision

suggests that in case of medical decategorization or invalidation, the concerned employee is to perform his duties on supernumerary post or even in the lower post, therefore, the aforesaid circular cannot be construed to be a scheme to provide appointment on compassionate ground, as such, the emphasis which has been made upon the circular to consider it a policy decision to provide appointment on compassionate ground, cannot be said to be a valid argument. Accordingly, the same is, hereby, rejected.

17. The third claim pertaining to benefit of recommendation of 7th Pay Commission is concerned, the learned Single Judge has considered the aforesaid aspect of the matter by taking into consideration the pleadings made by the respondent in the counter affidavit wherein it has been stated that all admissible post retiral benefits has been paid to the writ petitioner. The writ petitioner has been paid DCRG and commutation and pension and his pay has been fixed at Rs. 43,600/- w.e.f. 01.01.2016 on the basis of his last pay which was Rs.16,470/- plus other allowances as would appear from the specific stand taken by the respondent in the counter affidavit. Paragraphs-9 & 10 of the counter affidavit reads as under:

“9. That it is stated and submitted that although, his PF Contribution has also paid to his aforesaid SBI/AC in terms of 7th Pay Revision Commission as his last pay was Rs. 43,600/-. Similarly, Commutation of pension has been paid amounting to Rs. 8,57,420/- as per 7th Pay Revision Commission and pension has been released being fixed after Commutation of pension (40%) i.e. Rs.13,080/- + relief. Therefore, nothing remains due to be paid to the petitioner.

10. That it is stated and submitted that petitioner having wrong conception that his pension has been fixed in terms of 6th pay Revision Commission, whereas, he has been paid all his payments in terms of 7th Pay Commission w.e.f. 01.01.2016 and as per extant rule.”

18. This Court, after having discussed the fact in entirety, has scrutinized the order passed by the learned Single Judge and has found therefrom

that the learned Single Judge has considered each and every aspect of the matter regarding his claim for sick leave for the period from 26.05.2015 to 31.08.2016; the claim for appointment on compassionate ground and having not found any ground to extend such benefit has declined to pass positive direction.

So far as the benefit of 7th Pay Commission is concerned, the learned Single Judge, after taking into consideration the stand of the respondent in the counter affidavit that the benefit based upon 7th Pay Commission has already been extended in favour of the writ petitioner, no further direction has been passed.

19. This Court, after considering the finding recorded by the learned Single Judge and considering the discussion made hereinabove, is of the view that the order passed by the learned Single Judge suffers from no error.
20. Accordingly, the instant appeal fails and stands dismissed.

(Dr. Ravi Ranjan, C.J.)

(Sujit Narayan Prasad, J.)

Saurabhi

N.A.F.R.