

23.06.2023
(as/akd)
Ct.No.12
02

W.P.C.T. 404 of 2013

Smt. Alpana Roy & Anr.

-vs-

Union of India & Ors.

Mr. Sudipto Moitra .. Sr. Advocate
Mr. Vijay Verma
Mr. Dwaipayan Biswas
... for the Petitioners.

The petitioner no.1 is the widow and petitioner no.2 is the son of one Akshay Kumar Roy who had voluntarily retired with effect from 20.11.1987. According to the petitioners, in the year 2004 the employee sought for compassionate appointment of the petitioner no.2 herein. The petitioners filed OA 7754 of 2004. The Tribunal by the order dated 21.04.2005 directed the respondents to consider the representation of the petitioners.

As per the order of the Tribunal, the respondents rejected the request of the petitioners by the order dated 06.10.2005. Subsequently, again the petitioners filed OA 146 of 2009 and the Tribunal by the order dated 23.03.2009 directed the respondents to consider the representation of the petitioners. The respondents by the order dated 21.07.2009 rejected the request of the petitioners. The petitioners filed OA 1671 of 2010. The respondents resisted the same. The Tribunal by the order dated 11.01.2013 dismissed the Original Application.

Against the said order, the petitioners have come out with the present writ petition.

Learned Senior Counsel appearing for the petitioners submitted that the father of the petitioner no.2 was medically decategorised under the Railway service on 20.11.1987 as per the circular of the respondents issued in the year 1995. There is no delay in submitting the application by the petitioners. As per the circular, the petitioners are entitled to submit application within twenty years from the date of voluntary retirement. In any event, the petitioners applied for compassionate appointment within two years from the date of attaining majority of petitioner no.2. The Tribunal, when there is no document with regard to medical categorization, should have given benefits to the petitioners. Delay in filing the application cannot stand in the way of considering the application since it is a statutory right of the petitioners.

Learned Senior Counsel appearing for the petitioners in support of his contention relied on the judgment reported in (2006) 9 SCC 195 [*Syed Khadim Hussain vs. State of Bihar & Ors.*] and submitted that the petitioners have submitted the application within two years of attaining majority of the petitioner no.2 and hence, there is no delay.

Learned Senior Counsel for the petitioners also relied on the other three judgments reported in 2011 (2) CHN (Cal) 17 [*Syed Iftikar Ali vs. State of West Bengal*], (2000) 6 SCC 493 [*Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors.*] & 2009 (1) CHN (Cal) 23 [*Tapan Kumar Barman vs. State of West Bengal & Ors.*] and submitted

that it is well settled that the application for appointment on compassionate ground cannot be rejected on the ground that the employee has received the retiral benefits and is receiving pension.

Heard Mr. Sudipto Moitra, learned Senior Counsel for the petitioners. Perused the materials on record.

It is an admitted fact that the employee, Akshay Kumar Roy had voluntarily retired from service on 20.11.1987. The petitioners claim that he had voluntarily retired on being medically decategorised. The petitioners have not produced any material to substantiate their claim that the employee had retired on medical decategorization except producing a letter of the respondents dated 21.08.1987 to show that the employee, Akshay Kumar Roy was declared unfit for service in the category of driver but fit in the category of Supervisor.

The application is alleged to have been made in the year 2004 seeking compassionate appointment for the petitioner no.2. Even though the respondents submitted that no such application was available, the respondents, as per the orders of the Tribunal, treated the application filed before the Tribunal as the representation of the petitioners and considered the request as per the order of the Tribunal dated 23.03.2009 passed in OA 146 of 2009.

According to the respondents, due to lapse of 22 years, inspite of their earnest effort, they could not trace the records regarding voluntary retirement of the employee. When the petitioners have come out with a

specific case that the employee had voluntarily retired on 20.11.1987 due to medical decategorisation, it is for them to substantiate the said claim. They failed to substantiate the same. The respondents have taken another objection that when an employee is medically unfit, he would have offered for alternate employment and there is no record with regard to the request of the employee for alternate employment. They also made another objection when an employee voluntarily retired due to medical decategorisation, his request for compassionate appointment for his wife or children only if the service left is less than three years. At the time of voluntary retirement, the employee was 54 years old.

This contention of the respondents that at the age of 54 years the employee had voluntarily retired was not disputed by the petitioners. Further, the appointment on compassionate ground is given only to meet out the indigenous circumstances of the family on sudden death of an employee or when the employee is medically incapacitated.

In the present case, even though the application was made only in the year 2004 i.e. after 17 years from the date of voluntary retirement, it was not admitted by the respondents.

The petitioners have not denied that employee has not made application for appointment on compassionate ground immediately on voluntary retirement of the employee. Further, the claim of the petitioners was not

rejected only on the ground of receipt of retiral benefits. In view of the same, the judgments relied on by Counsel for the petitioners are not applicable to the facts of the present case.

From the above materials, it is seen that the Tribunal has considered all the materials including the order of the respondents dated 21.07.2009 and dismissed the Original Application by giving valid reasons. There is no error warranting interference by this Court.

For the aforementioned reasons, the writ petition is dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(V. M. Velumani, J.)

(Rai Chattopadhyay, J.)