



2025:AHC-LKO:48813-DB

Neutral Citation No. - 2025:AHC-LKO:48813-DB

Court No. - 1

Case :- WRIT - A No. - 14817 of 2019

Petitioner :- Union Of India Throu.General Manager Northern Railway And Ors.

Respondent :- Central Administrative Tribunal Lucknow Bench Lko And Anr.

Counsel for Petitioner :- Pratyush Chaube, Varun Pandey

Counsel for Respondent :- Ashwani Kumar Singh, Mohd. Azhar Siddiqui, Praveen Kumar, Raj Kumar Singh

Hon'ble Rajan Roy, J.

Hon'ble Manjive Shukla, J.

1. Heard Sri Raj Kumar Singh along with Sri Ashwani Kumar Singh, learned counsel for the petitioners and Sri Sudhanshu Srivastava, learned counsel for respondent no.2.

2. By means of this petition, the petitioners have challenged the judgment and order dated 18.01.2019 passed by the Central Administrative Tribunal, Lucknow Bench in O.A. No.159 of 2012.

3. The facts of the case in brief are that original opposite party no.2-Ram Kumar was working as Senior Loco Pilot Goods in Northern Railway under Divisional Railway Manager, Northern Railway, Lucknow. He was medically de-categorized in June, 2008. Consequently, as he was disabled, therefore, he was offered another/alternative job. Proof in this regard has been submitted before this Court by means of supplementary affidavit and is contained as Annexure no. 1 thereof. This document was not submitted before the Tribunal. He did not accept the said offer and submitted an application for voluntary retirement and consideration of his ward i.e. substituted opposite party no.2- Chandra Mohan for compassionate appointment. In fact, the said application dated 14.03.2009 itself makes it clear that alternative job was offered to him after his medical de-categorization. Based on the said, a composite prayer for voluntary retirement and consideration of his ward for compassionate appointment was made and the petitioners herein considered and accepted his voluntary retirement vide order dated 26.06.2009, which is on record. By a subsequent order dated 21.10.2009, the period of service from 16.06.2008 to 28.06.2009 i.e. the period after his medical de-categorization, has been treated on supernumerary post. The said document contains a stipulation that Late Ram Kumar has requested vide application dated 27.03.2009 for compassionate

appointment of his ward as per P.S. No. 13167, which is a Circular dated 14.06.2006. By a subsequent order dated 29.06.2011, the request for compassionate appointment of his ward was rejected with reference to circular P.S. No. 13167, according to which, such compassionate appointment in the eventualities mentioned therein, and as were existing in this case, could only be offered if not less than five years of service remained on the date of voluntary retirement of the officer or employee, whereas in the case of Late Ram Kumar, only three years six months and thirteen days remained i.e. less than five years of service. The circular P.S. No. 13167, which is dated 20.07.2006, was never challenged by Late Ram Kumar, in fact, he did not approach the Tribunal or the Court even after acceptance of his voluntary retirement in 2009 raising any grievance that the composite request of voluntary retirement and compassionate appointment of his ward had not been considered and accepted simultaneously and had he been informed that compassionate appointment was not permissible he may not have volunteered to retire. It is only after rejection of the said request vide order dated 29.06.2011 that O.A No.159 of 2012 was filed by him seeking following reliefs:-

“to direct the respondents to consider the appointment of applicant’s son having been medically de-categorized on compassionate ground on the basis of instructions governing the compassionate appointment that are existing the compassionate appointment that are existing from time to time through instruction/circular of Ministry of Railways, Railway Board, even by obtaining approval of General Manager in the deserving circumstances of the applicant’s case and to set aside impugned order dated 29.06.2011 filed as Annexure no.1 to this original application.”

4. The said O.A. of course has been allowed by the impugned judgment. We have perused the judgment impugned by the petitioner-Union of India and we find that the said O.A has been allowed firstly on the ground that no alternative job was offered and there was no proof thereof. Secondly, the composite request was not considered. Thirdly, reliance has been placed on PS No.11109 of 2005 to allow the O.A.

5. As regards the first ground, when we peruse the application for voluntary retirement, in the said application itself, Late Ram Kumar has mentioned that he is not in a position to work on any other post, which is obviously a reference to the alternative job and is indicative of the fact that such job was offered. Even otherwise, if it was offered, he was not in a position to work on the same on account of his medical condition as mentioned in his application, but this aspect has been lost sight of by the Tribunal. This is in addition to the fact that now proof of alternative job having been offered to Late Ram Kumar has been brought on record. Therefore, we are of the opinion that the Tribunal erred on this count.

6. Secondly, as regards non-consideration of composite request, no doubt the same should have been done at the appropriate stage, when the request for voluntary retirement was considered and accepted but then, as already stated, Late Ram Kumar did not approach the Tribunal/Court in 2009 itself raising a grievance in this regard nor did he claim to be taken back in service on the ground that the composite request has not been accepted. In fact, from his application dated 14.03.2009, we find that he was unable to work on account of his medical condition, therefore, it was not a situation where he could have joined back. He approached the Tribunal only in 2012 after the order dated 29.06.2011 had been passed rejecting the request of compassionate appointment of his ward.

7. Now further this rejection is based on a circular dated 14.06.2006. This circular has not at all been considered by the Tribunal, although a cursory reference to it has been made in para 9, instead, another circular PS No.11109 of 2005 has been referred. In spite of being asked repeatedly, the counsel for the opposite party no.2 could not inform us as to whether this circular i.e. PS No.11109 was on the records of the Tribunal or not, he could not satisfy us that it was, in fact, the petitioners herein had taken a specific objection in para 8 of the writ petition that this circular was not on record of the Tribunal, and in fact there was no pleading in the OA referring to it, yet it has been considered by the Tribunal. Even otherwise, we find that, if at all, the said circular PS No.11109 appears to have been issued in 2005, the circular dated 14.06.2006 on which reliance has been placed by the petitioners and which was on the record of the Tribunal, is of a subsequent date, which contains a specific embargo on considering the wards of voluntary retirees for compassionate appointment if the remaining services of the retiree is less than five years. This aspect has been completely lost sight of by the Tribunal. Thus, the third reasoning given by the Tribunal is also erroneous and dehors the circular dated 14.06.2006. Even otherwise, it is erroneous for the reasons already discussed herein above.

8. The judgment of the Tribunal had been stayed on 24.05.2019. It has not been given effect. We are now in 2025.

9. As regards, the reliance placed by the counsel for the opposite party no.2 upon the decision of Hon'ble the Supreme Court dated 05.12.2023 rendered in a ***Civil Appeal arising out of SLP (Civil) No.5921 of 2019; Ashok Kumar Mewari vs. Union of India and others***; the facts of the said case were different. It was not a case where the embargo under the circular dated 14.06.2006, which is attracted herein, was applicable, rather rejection of the request for compassionate appointment in that case, which was also a composite request with the request for voluntary retirement, was rejected on other grounds. This is a case where the request for compassionate

appointment itself was barred in view of the circular dated 14.06.2006, therefore, a request which could not have been made and was impermissible, if it could not be considered compassionately with the request for voluntary retirement for some reason it would not render the action impugned before the Tribunal illegal merely on this count. The facts mentioned above differentiate this case so far as applicability of the decision relied by Sri Sudhanshu Srivastava is concerned as the facts of the said case were very different from this one.

10. For the facts and the reasons mentioned herein above, the judgment impugned cannot be sustained and the same is accordingly quashed. The petition is **allowed**.

Order Date :- 20.8.2025

Renu/-