
(2016) 07 RAJ CK 0081

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7885 of 2015

Bhagwan Sahai

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-07-2016

Acts Referred:

Citation : (2016) 4 WLN 476 : (2016) 4 WLN 104

Hon'ble Judges : Mr. Navin Sinha, CJ. and Vijay Kumar Vyas, J.

Bench : Division Bench

Advocate : Mr. Shailendra Srivastava, Advocate, for the Petitioner; Smt. Archana Mantri, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, CJ—The writ petition arises from order dated 08.07.2014 dismissing O.A. No.647 of 2011 declining interference with the rejection of the application of petitioner No.1 for compassionate appointment to his son ? petitioner No.2 consequent to the medical de-categorisation of the former.

2. Learned counsel for the petitioners submits that the Circular dated 14.06.2006 issued by the Railway Board provides for appointment on compassionate grounds of Ward/Spouse of medically de-categorised staff of the Railways. Even in cases of voluntary retirement by a medically de-categorised employee, the scheme visualizes grant of compassionate appointment to one member of the family. The petitioner was de-categorised by delayed medical examination barely 14 days after his attaining the age of 55 years. The petitioner initially asked for voluntary retirement after medical de-categorisation on 19.02.2009 which was accepted on 22.04.2009. Without delay he sought compassionate appointment which was rejected on 20.04.2010 on the ground that he was over 55 years of age. The petitioner crossed the bar of 55 years barely by 13 days. The Circular dated 14.06.2006 being beneficial in nature should have been given a more liberal interpretation. The Tribunal erred by taking into consideration extraneous material that no request for compassionate appointment was made along with

the request for voluntary retirement on 19.02.2009.

3. Counsel for the respondents opposing the application submitted that it is not in dispute that the petitioner is over 55 years of age and thus not eligible under the Circular dated 14.06.2006. His request for voluntary retirement dated 19.02.2009 was accepted on 22.04.2009. He did not make any request for compassionate appointment to his ward along with the original application. The request is an afterthought to the acceptance of his application for voluntary retirement and was therefore rightly not considered. The order of the Tribunal calls for no interference.

4. We have considered the submissions of the parties.

5. The Circular dated 14.06.2006 provides for appointment on compassionate grounds of ward/spouse of a medically de-categorised staff. The circular was therefore a policy matter with a beneficial purpose. Quiet obviously, the respondents were satisfied that in such cases where an employee was de-categorised on medical grounds, the necessary consequence was a sudden and premature loss of income for the family. Grant of an appointment on compassionate grounds in case of medical de-categorisation has already been held to be permissible.

6. The Circular dated 14.06.2006 is not a rule or regulation having statutory force. It is administrative in nature and flexibility is inherent in the language used. The relevant extract of the circular reads as follows:-

"4. Pursuant to the demand raised by staff side the issue has been deliberated upon at length in the full Board meeting and it has been decided that compassionate ground appointment to the wife/wards/dependants of partially medically de-categorised staff who cases voluntary retirement may be given subject to the following provisions:-

(b) Such an appointment should only be given in case of employees who are declared partially de-categorised at a time when they have at least 5 years or more service left."

"6. While considering such request for compassionate ground appointment the General Manager should satisfy himself on the basis of a balanced and objective assessment of the financial and other conditions of the family, that the grounds for compassionate ground appointment in each such case, is justified (Board's letter No. E(NG)II of 1993 of RC-1 of 1964 dated 28.07.2000 refers)".

7. Evidently, there was no mandatory requirement that the employee on the date of medical de-categorisation must necessarily have 5 years or more of service left. If that was the intention, the words "at least" would not have been used. Even otherwise, any direction or administrative instruction has to be interpreted reasonably keeping in mind the beneficial purpose of circular rather than giving it a pedantic and stultified interpretation defeating the very beneficial purpose of the policy. The flexibility in clause 4(b) is evident from column 6 which calls for a

balanced and objective assessment of the financial and other conditions of the family. Apparently, there has been no application of mind to the aforesaid factors by the respondents.

8. Had it been the case where the requirement for compassionate appointment was made after an unreasonably long delay on basis of medical de-categorisation, matters would have been entirely different. The petitioner has already urged that medical examination leading to his de-categorisation was delayed for reasons attributable to the respondents by 14 days from the date he attained the age of 55 years. He crosses the age limit by 13 days only.

9. No sooner that acceptance of voluntary retirement was communicated to him on 22.04.2009, he moved the authorities for compassionate appointment to his son rejection of which was communicated to him on 20.04.2010 and the Original Application was preferred after that. We see no contradiction in the conduct of the petitioner at all. It is always possible that considering the post of Gangman that he held, he believed that unless his application for voluntary retirement on medical de-categorisation was first not accepted, the question of his staking a claim for compassionate appointment would not arise. It was only after his request for voluntary retirement due to medical de-categorisation was informed to him that he acted with an alertness.

10. The order dated 20.04.2010 passed by the respondents as also of the Tribunal dated 08.07.2014 are therefore held to be not sustainable and are set-aside.

11. The matter is remanded to the respondents for considering the claim for compassionate appointment of petitioner No.2 consequent to medical de-categorisation of petitioner No.1 within a maximum period of three months from the date of receipt or production of the copy of the order before them. In the event of an adverse order, the respondents are required to pass a reasoned and speaking order disclosing full application of mind.

12. The writ petition is allowed.