

(2010) 10 DEL CK 0129

In the Delhi High Court

Case No : Writ Petition (C) No. 13999 of 2009

Bhushan Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Citation : (2010) 10 DEL CK 0129

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : Rekha Palli, Poonam Singh and Amrita Prakash, for the Appellant;
Chandan Kumar, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—The Petitioner was recruited with the Railway Protection Force on 9th November, 1975 on the post of Constable and subsequently stood promoted on the post of Head Constable in the same Force.

2. It appears that the issue of the plight of railway employees who were medically de-categorized for the job they were holding who could not be offered any alternative job with the same emoluments as well as the contingency with such railway employees who were offered alternative employment on the same emoluments but were not willing to accept service had engaged the attention of the Railway Protection Force. On such deliberations, a policy was framed and a decision was taken to offer compassionate appointment to the wife/wards/dependants of such medically de-categorized staff. It appears that instructions in respect of such appointments were issued by the Respondents on 7th April, 1983 and 3rd September, 1983.

3. The matter of employees who do not wait for the administration to identify alternative job for them but chose to themselves retire and made a request for such compassionate appointment was also considered by the Railway Board resulting in issuance of a supplementary circular on this subject bearing No.

E(NG)II/95/RC-1/94 dated 22nd September, 1995. The relevant extract thereof provides as follows:

3. After careful consideration of the matter Board have decided that in partial modification of Board's letter No. E(NG)III/78/RC-1/1 dated 3.9.83, in the case of medically decategorized employee, compassionate appointment of an eligible ward may be considered also in cases where the employee concerned does not wait for the administration to identify an alternative job for him but chooses to retire and makes a request for such appointment.

4. It appears that there were further modifications and alterations to the policy and even the employees who were partially medically de-categorized were recognized for the purposes of similar benefits. In this regard, the Petitioner has placed before this Court a copy of a circular dated 14th June, 2006 which was in consonance with the object, spirit and intendment of the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This Circular inter alia prescribed as follows:

2. Even if the employees to retire voluntarily on his (illegible declared medically decategorized if he, so desires he may be permitted but without extending the benefit of appointment on compassionate ground to ward (para-4 of Board's letter of even number dated 18.01.2000 refers). xxxx 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 decategorized staff who seeks voluntary retirement may be given subject to the following provisions:

xxxxxx

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

5. This circular was followed by further amendments on 2nd November, 2006 whereby the Respondents prescribed the cut-off date for being eligible for consideration under the aforementioned scheme. The Respondents in this circular provided as follows:

On some of the Railways instances have come to notice where all such cases including those where the employee has been medically decategorized after 14.06.2006 are also being submitted for General Manager's consideration. With regard to the same, it is clarified that para (6) of Board's letter dated 14.06.2006 is applicable only in those cases where employee have been medically decategorized between 18.01.2000 and 14.06.2006 and cases where decategorization has occurred after 14.06.2006 may be dealt in the same way as done prior to issuance of Board letter dated 18.1.2000.

6. A bare reading of the circulars dated 14th June, 2006 and 2nd November, 2006 show that the Respondents restricted the available benefit under the

circular dated 14th June, 2006 to such persons who stood medically de-categorized between 18th January, 2000 and 14th June, 2006. However, it is important to note that in case the de-categorization had occurred after 14th June, 2006, the Respondents had clearly and unequivocally declared that they would be dealt with in the manner as was prevalent prior to the issuance of the letter dated 18th June, 2000.

7. It appears that the Petitioner was medically de-categorized as unfit and placed in the medical category B-1, B-II and C-I. As a result of this medical de-categorization, the Petitioner made an application to the Respondents which was captioned as "Request for retirement under PS 13167 on medical de-categorization". In the body of his application to the Respondents as well, the Petitioner requested that he be retired under circular bearing No. PS 13167 on his medical de-categorization and that his son Shri Mukesh Kumar may be provided employment in his place on compassionate grounds.

8. This application of the Petitioner was favourably considered by the Respondents. The recommendation on the Petitioner's application was communicated to the Petitioner by the Divisional Security Commissioner/RPF of the Northern Railway/Ambala Cantt. by the letter dated 29th January, 2009, the relevant extract whereof reads as follows:

The above named employee i.e. Sh. Bhushan Kumar HC/RPF/UMB is an uniocular patient having a vision 6/24 in right eye and PL Negative left eye. Hence, he is unfit in medical category Bee-One, Bee-Two and Cee-One. However, he is fit for medical category Cee-two for alternative job.

The said de-categorization HC was called by the committed for providing him alternative job. The HC concerned submitted in writing to DPO/UMB that he is not able to do any job and requested CG appointment to his son in Group D category under PS No. 13167.

9. It is undisputed before us that the Respondents have acted upon this representation and relieved the Petitioner from his duties on 31st March, 2009. The Petitioner was also paid all the retirement dues and benefits and he is receiving pension ever since.

10. Difficulty, however, arose when the Respondents sent the further communication dated 14th July, 2009 to the Petitioner informing him that the case for appointment of the Petitioner's son on compassionate grounds could not be considered in view of the Railway Board's circular dated 2nd November, 2006 bearing PS No. 13229/06.

11. The Petitioner had immediately submitted the written request to the Respondents seeking re-consideration of the matter and pointed out that he had sought retirement based on the representation of the Respondents to the effect that, in view of his having more than five years of service still left with him, his son would be given a job in place of the Petitioner if he takes voluntary

retirement. The Petitioner clearly informed the Respondents that he had sought voluntary retirement from his service based on this representation only. The Respondents, however, refused to re-examine the matter resulting in filing of the present writ petition. It is noteworthy that the Petitioner has made an alternative prayer seeking appointment of his son on compassionate grounds on group "D" post in terms of the representation and circular of the Respondents. In the alternative, the Petitioner has prayed for re-instatement with entire salary and allowances with effect from 31st March, 2009 treating him to be in continuous service till his actual date of superannuation on 31st August, 2014.

12. We have heard learned Counsel for the parties. Examination of the circular dated 2nd November, 2006 relied upon by the Respondents shows that it has prescribed the cut-off date so far as the medical de-categorization is concerned. It further restricts the benefits of the circular dated 14th June, 2006 to such employees who stood medically de-categorized between 18th January, 2000 and 14th June, 2006. However, the same circular clearly prescripts that so far as the persons who were medically de-categorized after 14th June, 2006 would be governed by the circulars which were prior to the issuance of the Board letter dated 18th January, 2000. In this regard, the Respondents have placed the aforementioned circular dated 22nd September, 1995 before us which clearly prescripts that the voluntary retirement of an eligible ward may also be considered where the employee does not wait for the administration to identify an alternative job for him but opts for voluntary retirement.

13. In view of the above, even if it were to be held that Respondents were justified in their decision by operation of the circular dated 2nd November, 2006, we find that the Petitioner was entitled to the consideration of his request for compassionate appointment of his son in terms of the para 3 of its circular dated 22nd September, 1995.

14. There is another aspect to this whole matter. The Petitioner had made a composite request to the Respondents when he sought voluntary retirement from his service. The Petitioner had unequivocally captioned his request as being made under "PS 13167". When he requested the Respondents to permit him to voluntary retire, he again reiterated that the Respondents should retire him "under PS 13167" and his son be provided compassionate ground appointment in the Group "D" post.

15. This composite request by the Petitioner was considered by the Respondents. The communication dated 29th January, 2009 clearly notes that when the Petitioner was called by the authorities for providing him alternative job, the Petitioner had in writing informed them that he was not able to do any job and requested for a compassionate ground appointment of his son, again under PS No. 13167. These facts are noticed by the Respondents in the communication dated 29th January, 2009 whereby the Divisional Security Commissioner/RPF has confirmed that the Petitioner "fulfills the condition of PS 13167". The relevant extracts of this communication reads as follows:

The HC fulfill the condition of PS 13167 which are as under:

1. His son is eligible for Group D post as per his education qualification.
2. The balance service of HC on the date of De-categorization is more than five years.
3. The HC is partially medical de-categorized and seeks voluntary retirement.

The application of voluntary retirement of the above said staff is considered and accepted by the competent authority. The said HC/RPF will be retired from service voluntarily w.e.f. 31.03.2009.

Please ensure that the HC/RPF in question will relived from his duty on 31.03.09. A/N on voluntary retirement.

16. It appears that the appointment on compassionate ground was to be finally processed by the Railway Board. It was thereafter that the matter of appointment on compassionate basis was returned on the aforenoticed grounds. This has necessitated the present writ petition.

17. In this behalf, learned Counsel for the Petitioner has placed before us the decision of the Apex Court on similar facts in the judgment returned as in Food Corporation of India and Another Vs. Ram Kesh Yadav and Another,

18. Learned Counsel for the Respondents has sought to draw a distinction with the case placing reliance on the pronouncement of the Apex Court in a subsequent judgment dated 23rd March, 2010 in titled Food Corporation of India and Anr. v. Nizamuddin and Anr. W.P.(C) No. 2627/2010 It is urged by learned Counsel for the Respondents that the Petitioner's application did not state that he was making a prayer for compassionate appointment for his son in lieu of his voluntary retirement. In our view such a distinction in the facts of the instant case would be of not much importance inasmuch as the Petitioner had clearly indicated the details of the circular under which he was making the request and its processing.

19. The Petitioner was voluntarily retired from service pursuant to his aforenoticed application. The Respondents thus acted upon the recommendation of the Respondents to the effect that he fulfills the condition of PS 13167 but refrained from effecting the compassionate appointment at the final stage when the offer was required to be made. The Petitioner has been persuaded to proceed on voluntary retirement based on the clear representation by the Respondents that he was entitled to all benefits under PS 13167 which included the appointment of his son on the group "D" post on compassionate basis. The Respondents have also informed the Petitioner that his son was eligible for such appointment. In view of the above, there is certainly force in the Petitioner's contention that it was implicit in the recommendation by the Respondents and acceptance of his application that he would be entitled to all benefits available under circular bearing No. PS 13167. The Petitioner had clearly and

unequivocally informed the Respondents that he was making an application in terms of the said circular and seeking to retire on medical grounds linking it with the compassionate appointment of his son in terms thereof. His offer had been accepted unconditionally.

20. In the given facts, it cannot be denied that the Respondents have clearly and unequivocally held out to the Petitioner that he was covered under the benefits of circular dated 14th June, 2006 and processed his application thereunder. The Respondents have also scrutinized the eligibility of the Petitioner's son and entitlement to appointment on group "D" post on compassionate basis. We have also noticed hereinabove the applicability of the circular dated 22nd September, 1995 which clearly and unequivocally comes to the rescue of the Petitioner. The Petitioner would in any case be entitled to the relief he has sought under this circular. For all the above reasons, we are of the view that the Petitioner would be entitled to favourable consideration of his application and petition.

21. Ms. Rekha Palli, learned Counsel for the Petitioner submits that the Petitioner primarily based his prayer for compassionate appointment of his son for the reason that the Petitioner has been permitted to retire and has been receiving retiral benefits for a substantial period. It is contended that in view of his medical de-categorization, he would be suffering irreparably in case the order permitting him to retire was recalled and he was to be reinstated. It is submitted that there would also be doubt as to the work which the Petitioner would be able to discharge if he was required to go back into duty with his medical de-categorization.

For all the foregoing reasons, this writ petition deserves to be favourably considered.

We accordingly direct as follows:

(i) The Respondents shall proceed in the matter and by consider the appointment of Mukesh Kumar, son of the Petitioner on group "D" post in terms of the recommendation contained in the communication dated 29th January, 2009 of the Respondents and the circular dated 22nd September, 1995.

(ii) Such consideration shall be completed within a period of four weeks from today and the order which is passed shall be positively communicated to the Petitioner forthwith.

(iii) We make it clear that the appointment shall be effected with effect from the date on which the offer is made to the Petitioner.

This writ petition is allowed in the above terms