

(2019) 08 CAT CK 0070

In the Central Administrative Tribunal

Case No : Original Application No. 1808 Of 2018

Jeewan Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 38

Citation : (2019) 08 CAT CK 0070

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : BL Wanchoo, Dr. Ch. Shamsuddin Khan

Final Decision : Dismissed

Judgement

1. The applicant has filed the present OA, seeking the following reliefs:-

"(a) To quash and set aside R-3 order dated 15.3.2018 whereby the representation of the applicant for grant of employment on compassionate grounds for any Group "C" post in respect of his son, has been rejected.

(b) To direct Respondent No.2 to consider the applicant's son for appointment to any Group "C" post on compassionate grounds in terms of DoP&T Instructions.

(c) To direct the R-3 to credit leave of 04 months and 4 days w.e.f. 19.2.2015 to 22.6.2015 during the period applicant was reported to PL Sharma Hospital, Meerut as per the Departments directions and was not allowed to join in between and consequently pay leave encashment for that period.

(d) To pass any order/directions as deemed fit and proper in the circumstances of the case and in the interest of justice."

2. It is the case of the applicant that on 19.02.2015, he had submitted an application for voluntary retirement w.e.f. 31.07.2015, Thereafter, he was referred by Establishment Office vide letter datd 19.02.2015 to SMO (MI Room) of 510 Army Base Workshop for a medical check up and to ascertain the physical

ability where he was referred for further examination by Medical Board to CMO Civil Hospital, Meerut stating that he was having problem while standing, walking and doing physical action. Thereafter, the Board of Doctors gave a report stating that he is not fit for cooking purpose and machinery or vehicle driving as he is suffering from Par lein sonism (severe tremors) and COPD (Acute on chronic exacerbation). He has alleged that in between during the period of 4 months and 4 days, he was not permitted to join the duty and was told to report back with the Medical Board Report. He has thus submitted that being a civilian employee, when he had been referred by the Department for Medical Examination, the aforesaid period of 4 months and 4 days had to be treated as "spent on duty" because he had not gone to the Hospital on his own, whereas contrary to the rules on the subject, whole period of 4 months and 4 days were deducted from my leave account thereby causing financial loss to the tune of over Rs.1 lakh. The applicant has further pleaded that finally, he was granted voluntary retirement w.e.f. 31.07.2015 which is technically not a voluntary retirement but premature retirement on medical grounds. He has further pleaded that as per the instructions contained in DoPT OM dated 16.01.2013, the person, who dies in harness while in service, or who is declared medical unfit and discharged from service by way of voluntary retirement, their wards are eligible for compassionate appointment. He has thus submitted an application on 08.03.2018 seeking compassionate appointment of his son in Group "C" post, which was rejected by the respondents vide their letter dated 15.03.2018 stating that he was retired from service on voluntary premature retirement and hence, his case was not covered under the compassionate appointment scheme. Being aggrieved with this impugned order, the applicant has filed the present OA.

3. The respondents, while controverting the aforesaid averments of the applicant, have filed their reply. They have contended that while posted to 510 Army Base Wksp., Meerut Cantt, the applicant had submitted an application on 31.01.2015, requesting for voluntary retirement from service due to self sickness. They have urged that subsequently, a general medical check up was carried out by Senior Medical Officer of 510 Army Base Workshop, Meerut Cantt on 19.02.2015 where the applicant was advised by SMO Army Base Workshop, Meerut Cantt that his physical fitness and ability may be done by a Board of CMO/ CHS Meerut but was not officially referred from 510 Army Base Workshop and the applicant on his own volition get himself medically checked through PL Sharma Hospital (District Hospital, Meerut) without prior permission from the department and obtained medical certificate dated 22.06.2015 from the officed of Supdt. in Chief PL Sharma Hospital, Meerut. They have also contended that that before obtaining the medical certificate dated 22.06.2015 from the office of Supdt. in Chief PL Sharma Hospital, the application dated 31.01.2015 of the applicant for voluntary retirement was accepted by the Comdt. & MD and resignation order dated 15.04.2015 was issued which was acknowledged by the applicant on 16.04.2015. They have also contended that as the applicant was

retired from service on voluntary premature retirement, the compassionate scheme is not applicable to him, as it is applicable only for the dependent family member of a Government servant who dies during service and retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations. The respondents, while refuting the claim of the applicant that leave of four months and four days be counted as spent on duty, have submitted that as per the leave record, the applicant remained on leave continuously from 17 Jan 2015 to 30 June 2015 and during the said period he had availed Earn Leave, Commuted Leave and EOL WOP. They have further contended that the applicant was never refused to report for duty in this Unit and his leave were also managed/deducted as per existing leave. They have also mentioned in their CA that had the applicant been retired on medical grounds, the application for compassionate appointment would not have been considered because as per DoPT letter No.14014/02/2012-Estt(D) dt. 30.05.2013, the compassionate appointment case can only be considered if the Government servant has retired on medical grounds before attaining the age of 55 years but in the instant case, the applicant was 56 years and 10 months old at the time of retirement. They have thus prayed that the present OA is liable to be dismissed.

4. After hearing both the sides and perusing the record, including the voluntary retirement application dated 31.01.2015, it is noticed that the applicant had applied for voluntary retirement on account of ill health w.e.f. 31.07.2015 which was accepted by the respondents vide their order dated 16.4.2015 and acknowledged by the applicant on the same date. Hence, as there is no provision for the compassionate appointment to the dependent family member of the Government employee who retired from service on voluntary premature retirement, the Scheme for Compassionate Appointment is not applicable to the applicant. Even if we assumed that the applicant had retired on medical grounds, his application for compassionate appointment could not have been entertained because as per DoPT OM No. 14014/02/2912-Estt(D)dt.30.05.2013, the compassionate appointment case can only be considered if the Government servant has retired on medical grounds before attaining the age of 55 years, whereas at the time of his voluntary retirement the applicant was 56 years and 10 months old, which was neither disputed by the applicant in his rejoinder nor during his arguments. We also find no merit in the submission of the applicant that he was directed to SMO Base Workshop for general medical check-up, as the respondents had accepted his resignation letter and issued voluntary retirement order dated 16.04.2015, i.e., much before the date of his medical examination. Hence, the leave of four months and four days have rightly been deducted by the respondents as per rules.

5. In view of the totality of facts and circumstances of the case, we do not find any merit in the OA and the same is dismissed accordingly. No order as to costs.