

(2016) 07 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13334 of 2015

The Union of India

APPELLANT

Vs

Jainath

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 PLJR 561

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. A.B. Ojha, Sr. Advocate and Mr. Nagendra Upadhayay, Advocate, for the Respondent; Mr. D.K. Sinha, Sr. Advocate and Mr. Anil Singh, Advocate, for the Petitioners

Final Decision : Dismissed

Judgement

Mr. Hemant Gupta, J. (Oral) - Heard learned counsel for the parties.

2. The challenge in the present writ application is to an order passed by the Central Administrative Tribunal, Patna Bench, Patna (for short "the Tribunal") on 22nd of January, 2015 in O.A. No. 292 of 2013, whereby an Original Application filed by the respondent was allowed with a direction to reconsider the case of the applicant for appointment on compassionate grounds keeping in view the observations made in the order.

3. The respondent (hereinafter referred to as "the applicant") was working as a Gateman in Engineering Department. He was initially appointed on 18th of December, 1978. He was examined by the Medical Board at New Jalpaiguri Railway Hospital on 25th of January, 2011 and declared medically unfit for service. The grievance of the applicant is that since he has become medically unfit, the administration has to make an effort to give him alternative appointment. Since no such effort was made, therefore, one ward or son of the employee has to be given appointment.

4. The stand of the petitioners, inter alia, is that after being declared unfit for service, the applicant applied for voluntary retirement and also sought appointment on compassionate grounds of his son. It was pointed out by the petitioners that the applicant was having nine month's service left for superannuation. Therefore, his request for voluntary retirement was not accepted. Thus, the question of appointment of his son does not arise.

5. The learned Tribunal allowed the application relying upon an order passed by the Calcutta High Court in W.P.C.T. No. 412 of 2012. The Tribunal found that there is a provision to consider the request for appointment on compassionate grounds in case of totally incapacitated employee. Therefore, the claim of the applicant for appointment of his son on compassionate grounds cannot be declined.

6. We have heard learned counsel for the parties and find that the order of the Tribunal cannot be sustained.

7. The appointment on compassionate grounds is dealt with a circular RBE No. 8/2000, Annexure-R-2 to the writ application. The relevant extract from the Circular reads as under :-

"2. Pursuant to the notification of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995," instructions were issued vide Board's letter No. E(NG)I/96/RE-3/9(2) dated 29.04.1999 (RBE 89/1999) laying down inter alia that, in cases where an employee has been medically invalidated decategorised and where the administration cannot find a suitable alternative post for such an employee, he may be kept on a supernumerary post in the grade in which he was working on regular basis, till such time a suitable post can be identified or till his retirement, whichever is earlier. As these instructions provided for continuation in service of a medically invalidated decategorised employee, there would be no occasion for an employee to be retired from service on medical ground. Therefore, according to these instructions, in such cases, the occasion to consider a request for appointment on compassionate ground of an eligible ward would not arise.

3. The matter has been reviewed pursuant to a demand raised by the staff side in the DC/JCM and it has now been decided that in cases where an employee is totally incapacitated and is not in a position to continue in any post because of his medical condition, he may be allowed to opt for retirement. In such cases request for appointment on compassionate ground to an eligible ward may be considered.

4. In the cases of medical decategorisation i.e. those cases in which an employee becomes medically unfit for the post held at present but is fit to perform the duties of an alternative suitable post in lower medical category, the request for appointment on compassionate ground to an eligible ward will not be admissible, even if the employee chooses to retire voluntarily on his being declared medically decategorised. Such an employee may then either be continued in a

supernumerary post or allowed to retire voluntarily if he so desires but without extending the benefit of appointment on compassionate grounds to a ward."

8. The circular contemplates that appointment on compassionate grounds is to be considered if an employee is totally incapacitated and is not in a position to continue in any post. But if the employee is medically unfit for the post held at present but is fit to perform the duties of an alternative suitable post in lower medical category, the request for appointment on compassionate ground to an eligible ward will not be admissible. In the present case, there is no finding that applicant was totally incapacitated to work. The medical certificate is that the applicant is unfit permanently. There is no finding that he is incapacitated to do any work. He continued to work till his superannuation which was nine months later. In fact, the applicant has sought alternative duty. Thus, he is capable to work.

Therefore, it is paragraph 4 of the circular which will be applicable and that the request for appointment on compassionate grounds is thus not admissible. The direction issued by the Tribunal in these circumstances runs counter to the circular. It is not in public interest to appoint son of the applicant on compassionate grounds when he had only nine months of service left. The public posts are to be filled up by giving opportunity to all eligible candidates and not in the manner adopted by the Tribunal.

9. Consequently, the writ application is allowed, the order passed by the Tribunal is set aside and the Original Application filed by the applicant is dismissed.