
(2008) 04 P&H CK 0103
In the Punjab And Haryana At Chandigarh

Union of India (UOI) and Another	Vs	APPELLANT
Vinod Kumar and Another		RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226, 227

Citation : (2008) 2 PLR 581

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mohinder Pal, J.—In this petition filed under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of certiorari, thereby quashing the order dated May 28, 2007 (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the Tribunal") whereby Original Application No. 257-PB of 2006 filed by Vinod Kumar (respondent No. 1) u/s 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act"), was allowed and further for quashing the order dated August 02, 2007 (Annexure P-2) passed by the Tribunal whereby Review Application No. 36 of 2007 preferred by the petitioners to review the order dated May 28, 2007 (Annexure P-1) was dismissed.

2. The facts of the case are that Ram Naresh (since deceased), father of Vinod Kumar (respondent No. 1) was working as a "Keyman" in the pay scale of 825-1200 with the Indian Railways (hereinafter referred to as the "petitioner-department"). Ram Naresh was decategorised as he was declared unfit by the Medical Board for the post of Key-man. However, he was found fit for the post "Safaiwala" in the pay scale of 800-1150. He was asked to exercise option vide order dated October 28, 1996, for providing him alternative appointment. He was posted as "Safaiwala" vide order dated May 06, 1997 and was asked to join duty.

However, Ram Naresh made representation dated December 24, 1997 requesting for providing him alternative job in the same scale i.e. in the pay scale of Keyman or he may be retired from service and name of his son may be considered for appointment on compassionate ground. Vide letter dated January 12, 1998, he sought retirement with effect from January 31, 1998. He was retired on invalid pension with effect February 14, 1998. Ram Naresh expired on October 30, 1998. Respondent No. 1 had not attained the age of 18 years by that time. He completed 18 years of age in 2002. A request was made by respondent No. 1 for appointment on compassionate grounds. His request was pending in Central Lok Adalat when he filed Original application before the Tribunal, which was allowed vide the impugned orders.

3. We have heard Mr. Jagdish Manchanda, Advocate, appearing for the petitioners and Mr. H.S. Saini, Advocate, appearing for respondent No. 1 and have been perused the record. The claim of respondent No. 1 before the Tribunal was that his mother had given in writing to the petitioner-department that her elder son was not medically fit and, therefore, the offer of appointment on compassionate grounds may be made in favour of respondent No. 1. Respondent No. 1 claimed that case of his father was not of simple voluntary retirement, but a case in which he was retired on medical grounds prematurely and as such he (respondent No. 1) was entitled to appointment on compassionate grounds. However, considering that father of respondent No. 1 had taken voluntary retirement without any condition and he did not make any request for compassionate appointment at the time of voluntary retirement and the same was made after his death, claim of respondent No. 1 for compassionate appointment was rejected by the petitioner-Department.

4. The case of the petitioner-Department before the Tribunal was that case of respondent No. 1 for compassionate appointment was not covered under Circular dated December 24, 1995 (Annexure P-12) as his father did not choose to accept alternative appointment and sought voluntary retirement, nor did he make any request for compassionate appointment while seeking retirement. However, it was admitted that in the suitability test, respondent No. 1 was found fit for the post of "Safaiwala".

5. We have perused the Circular dated December 24, 1995 (Annexure P-12), in para No. 3 whereof it has been categorically mentioned that in the case of medically decategorised 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. The only objection taken by the petitioner Department is that father of respondent No. 1 had sought voluntary retirement without any condition, which was accepted by the competent authority. However, it has been pointed out by the learned Counsel for respondent No. 1, that father of this respondent had submitted an application (Annexure P-6) in which it was clearly stated that in view of his adjustment in a

lower pay scale of Rs. 800-1150, he may be given either alternative job in the pay scale of Rs. 825-1200 or he may be retired from service and name of his child, who is minor, be registered for appointment on compassionate grounds.

6. Admittedly, the father of respondent No. 1 was given invalid pension as he was declared unfit for his original job of "Keyman" by the Medical Board. Thus, the stand of the petitioner-Department that father of respondent No. 1 retired voluntarily without any pre-condition, as not correct. In these circumstances, we are of the view that respondent No. 1 cannot be deprived benefit of the provisions contained in Circular dated December 24, 1995 (Annexure P-12), which entitles him to seek appointment on compassionate grounds. Consequently, we find no merit in this writ petition and dismiss the same.