

CASE DETAILS

ASHOK KUMAR MEWARI

v.

UNION OF INDIA & OTHERS

(Civil Appeal No. 7956 of 2023)

DECEMBER 05, 2023

[J.K. MAHESHWARI AND K.V. VISWANATHAN, JJ.]

HEADNOTES

Issue for consideration: Appellant made a composite prayer for voluntary retirement on medical ground subject to the condition that his son may be appointed in his place on compassionate ground, in terms of the Circular dtd.14.06.2006. Whether the respondents were justified in only accepting his prayer for voluntary retirement, without accepting the prayer of compassionate appointment to his son.

Service Law – Conditional voluntary retirement application, partially accepted – Impermissibility:

Held: A conditional request was made by the appellant to retire him voluntarily instead of offering him an alternative post and that his son be appointed at his place – Meaning thereby, that his request for voluntary retirement may be allowed only if his simultaneous request for compassionate appointment of his son is accepted – Thus, the prayer of voluntary retirement and to grant compassionate appointment were composite – Respondents by segregating the same, only accepted the prayer for voluntary retirement, without accepting appellant’s prayer of compassionate appointment to his son – In view of the ratio of the judgment in *Ram Kesh Yadav* such action is not justified when a request for voluntary retirement has been made subject to the condition stipulated in the letter to grant the compassionate appointment to his son, it ought to be accepted by the Board compositely, i.e., accepting both the requests, or rejected in toto – Further, applicability of the Circular dtd. 14.06.2006 was independent of the subsequent clarification of the Board’s letter dtd.12.11.2014 explaining medical de-categorization of the employees – Application for grant of voluntary retirement was made on

18.06.2013, prior to the purported clarificatory Circular dtd.12.11.2014 – Circular dtd.14.06.2006 is independent of other circulars – There is also no reference to the letter of 03.03.2009 in the Circular of 12.11.2014 – Order passed by the West Central Railway, Jabalpur Division, Jabalpur rejecting the claim of the appellant again, quashed – Orders passed by the Tribunal in the Original Application and review as also the order of the High Court, set-aside – Compassionate appointment, in the applicable post, be given to the Appellant’s son. [Paras 11, 12, 9, 14 and 15]

LIST OF CITATIONS AND OTHER REFERENCES

Food Corporation of India and Another vs. Ram Kesh Yadav and Another, [2007] 3 SCR 336 : (2007) 9 SCC 531 – relied on.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal No.7956 Of 2023.

From the Judgment and Order dated 13.11.2018 of the High Court of M.P., Principal Seat at Jabalpur in WP No. 25302 of 2018.

Appearances:

Nilendra Pratap Singh, Abhishek Raj, Dr. Sushil Balwada, Advs. for the Appellant.

Mrs. Aishwarya Bhati, A.S.G., Ms. Poornima Singh, Raj Bahadur Yadav, Amrish Kumar, Ruchi Kohli, Ms. Swarupma Chaturvedi, Anmol Chandan, Adit Khorana, Shantnu Sharma, Durga Dutt, Raghvendra Srivastava, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

ORDER

The Appellant who was an employee of the Railways applied for voluntary retirement on the ground of medical ailments, subject to appointment of his son Mukesh Mewari on compassionate ground. The Respondent-Union of India through Divisional Railway Manager, W.C. Railways, Jabalpur allowed the request of the Appellant, in part, by accepting the voluntary retirement without considering the prayer for grant

of compassionate appointment to his son. Dissatisfied, the appellant filed Original Application No. 200/00398/2015 before the Central Administrative Tribunal, Jabalpur Bench, Jabalpur, (for short “Tribunal”) which was allowed vide order dated 11.2.2016. The directions issued by the Tribunal are as under:

“8. The reliance placed by the learned counsel for the respondent on circular No. E(NG)II/2009/RC-1/CR/2 dated 12.11.2014 issued by the Railway Board wherein it is clarified that a railway employee can be termed as medically decategorized only when he/she has been declared unfit in his/her original post as well as original medical category but fit in lower medical category/post, is misplaced since the applicant had already voluntarily retired with effect from 18.09.2013 i.e. before coming into existence of circular dated 12.11.2014 and, therefore, the applicant’s case is fully covered by the earlier circular dated 14.05.2006. The reliance placed by the learned counsel for the respondents on the decision of Hon’ble Supreme Court in the matters of S.S. Grewal Vs. State of Punjab and others, 1993 Supp (3) SCC 234 also cannot strengthen their case.

9. In the result, the Original Application is allowed. The respondents are directed to consider applicant’s claim for appointment of his son on compassionate ground in terms of the circular dated 14.05.2006 within a period of three months from the date of communication of this order. No costs.”

The said order was challenged in Writ Petition No. 7540 of 2016 before the High Court, which was allowed in part vide order dated 12.1.2017. The High Court remitted the matter with certain observations. The operative portion of the order is reproduced as thus:

“However, while doing so, the Tribunal lost sight of the crucial fact that circular dated 12.11.2014 was not a circular which created a right for the first time. It was only a clarification of the circular dated 14.06.2006 (wrongly been mentioned as 14.05.2006 by the Tribunal in its order) where the right for claiming appointment and question of invalidation on medical ground was laid down and circular issued on 12.11.2014 was only a clarificatory circular. Without taking note

of the circular dated 14.06.2006, merely allowing the application by holding that the circular dated 12.11.2014 would not be applicable, we are of the considered view that the Tribunal has committed a manifest error in dealing with the matter. The Tribunal should have first examined the matter in terms of circular dated 14.06.2006, interpreted it in the manner as canvased by the parties and thereafter the effect of its clarification on 12.11.2014 should have been taken note of by the Tribunal. That apart, once the claim of the employee for granting compassionate appointment was rejected on 11.02.2015 without challenge to this order, the question would be as to whether the application itself was maintainable before the Tribunal is also a crucial question. As all these questions have not been adverted to by the Tribunal in right perspective, we allow this petition, quash the order passed by the Tribunal and remand the matter back to the Tribunal for reconsideration. The Tribunal is directed to proceed in the matter and decide the application now within a period of three months.

With the aforesaid, the petition stands allowed and disposed of.”

On remand, the Tribunal vide order dated 18.12.2017 dismissed the same with an observation that the Board Circular dated 12.11.2014 gives clarification to the words “medically de-categorised” which is clarificatory to the original circular dated 14.6.2006 and would apply from the date of the said circular. In view of the clarificatory nature of the circular, it was observed that the appellant has been declared fit in his original medical category but unfit for the post he occupied, therefore, he is not entitled for the relief as prayed.

The review filed by the Appellant against the said order was dismissed on 16.7.2018 by the Tribunal. Being aggrieved, the appellant filed Writ Petition No. 25302 of 2018 before the High Court of Madhya Pradesh, Principal Bench at Jabalpur which came to be dismissed vide order dated 13.11.2018, putting a stamp of approval to the findings recorded by the Tribunal, which resulted in filing of this appeal.

During pendency of the appeal in the proceedings of the case, this Court on 10.10.2023 passed the following order:

“The petitioner was an employee of the Railways who applied for voluntary retirement on medical ground and submitted an application on 18.06.2013 with a request to retire him voluntarily and instead of granting alternative post, his son Mukesh Mewari who is B.Com (Pass) may be considered for appointment at his place. On considering the said application, by the office of Divisional Railway Manager vide communication dated 12.09.2013 informed to the petitioner that his request for voluntary retirement has been accepted by the competent authority from 18.09.2013 (Afternoon) and he be treated as retired but no order was passed on the prayer of grant of compassionate appointment to his son.

During hearing, it is urged by the petitioner that a composite prayer was made by him asking voluntary retirement and to grant compassionate appointment to his son, therefore, accepting the prayer of voluntary retirement only is not justified. In support of his contention, reliance is placed on the judgment of this Court in the case of Food Corporation of India and Another v. Ram Kesh Yadav and Another (2007) 9 SCC 531. In the facts and circumstances of this case, we find substance in the argument as advanced by the petitioner.

We have also perused the order passed by the Tribunal and the High Court. On perusal thereof, it appears that the clarification issued subsequently on 12.11.2014 by the Railways has been made applicable in the case of the petitioner though the request for voluntary retirement and to grant compassionate appointment to the petitioner's son was prior to the said clarification. It is seen from record that the order accepting the voluntary retirement was passed on 18.09.2013 prior to the said clarification.

At this stage, learned counsel appearing on behalf of the Railways submits that the Circular dated 12.11.2014 is a clarificatory in nature, therefore, it will be applicable to the date of the main Circular but we are not impressed by the said submission, in particularly the prayer made by the petitioner in the application dated 18.06.2013 which was composite, i.e., for voluntary retirement and to grant compassionate appointment to his son. The Department accepted the prayer of voluntary retirement prior to issue of the clarification.

In view of the above, we thought it appropriate to give one chance to the respondent to decide the claim of the petitioner for grant of compassionate appointment expeditiously in view of the above observations.

We direct the authorities to do the needful within four weeks and file an affidavit on or before the next date of hearing.

List the matter on 21st November, 2023.”

As per the above observations, this Court was clearly of the view that one chance ought to be given to the authorities to decide the application afresh filed for composite relief by the appellant asking voluntarily retirement subject to appointment of his son. However, the claim of the appellant has again been rejected vide order dated 10.11.2023. The operative portion of the said order is reproduced as thus:

“Compassionate appointment on medical grounds is considered where employee is either totally incapacitated for continuation in job or medically decategorized i.e. unfit in one medical category but fit in another lower medical category. Time and again, Board has clarified that the concept of extending compassionate appointment is not applicable in a case where an employee is unfit in a medical category for a particular job but fit in the same medical category for other job. Thus, an employee is considered medically decategorized only when he is unfit for his original category and post but fit for posts with lower medical category i.e. where change in medical category is taking place. In this regard, Board’s letter No. L.No.E(NG)II/2009/RC1/CR/2 dated 03.03.2009 has also been perused which is much prior to the same clarification reiterated by Board vide L.N. E(NG)II/2009/RC1/CR/2 dated 12.11.2014.

In the light of the above clarification of Board issued vide letter dated 03.03.2009, reiterated vide letter dated 12.11.2014, the matter is not considered fit for appointment on compassionate ground. The retired employee (Petitioner) may be advised accordingly.”

In the order extracted above, the respondent has again reiterated their understanding and relied upon the circular dated 12.11.2014.

During hearing, Ms. Aishwarya Bhatti, learned ASG placed a letter of clarification dated 03.03.2009 issued by the Government of India, Ministry of Railways. It is urged that the subsequent clarification dated 12.11.2014 is based on the said letter dated 03.03.2009, and contended that the request of the Appellant was subsequent to the Board letter dated 03.03.2009. Therefore, according to the learned ASG, the findings as recorded by the Tribunal and confirmed by the High Court are in conformity with the said letter.

We have perused the Circular dated 14.6.2006, and on going through the same, it is clear that the Ministry of Railways through the Railway Board has laid down that *“in case where an employee has been medically invalidated/de-categorised and where the administration cannot find alternative posts 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 suitable post can be identified or till his retirement, whichever is earlier.”* It was decided that a medically de-categorized employee may be retired voluntarily and be allowed to work on supernumerary post. In the same Circular in paragraphs 4 and 5, the directions have been issued as under:

“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/ depended of partially medically de-categorized staff who seeks voluntary retirement may be given subject to the following provisions: -

a) The appointment will be given only in the eligible group ‘D’ categories. ‘Eligible’ would mean that in case group ‘D’ recruitment is banned for any particular category, the same would also apply for the compassionate ground appointments.

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

c) CMD of the Railways should keep a watch over the trend of de-categorization so that the present figures do not get inflated. CMD should also get 10% partially de-categorized cases re-examined by another medically Board not belonging to Divisional Hospital which initially declared them unfit.

5. All those employees medically de-categorized after issuance of Board's letter No. E(NG)II/95/RC-1/14 dated 18.01.2000 will also be covered under these instructions. However, such cases which have already been finalized in terms of Board's letters No. E(NG) II/95/RC- 1/94 dated 18.01.2000, 10.11.2000 and No. E(NG)II/2000/RC-1/ Genl./17 dated 06.03.2002 & 26.05.2004 need not be reopened."

It is not made clear whether the Board's letter dated 03.03.2009 and the Circular dated 12.11.2014 are in continuation of or in reference to the Circular dated 14.06.2006. The said fact may have relevance to construe Instruction No. 5 afore-mentioned, by which it was made clear that those employees who were medically de-categorized after the issuance of the Board's letter dated 18.01.2000 will also be covered by the said instruction except in cases which have already been finalized and their cases need not be re-opened. Therefore, in our view, the applicability of the Circular dated 14.06.2006 is independent of the subsequent clarification of the Board's letter dated 12.11.2014 explaining medical decategorization of the employees. It is not out of place to state that the application for grant of voluntary retirement was made on 18.06.2013, prior to the purported clarificatory Circular dated 12.11.2014. The Board's letter dated 03.03.2009 was never placed before the Tribunal or the High Court to support the contention presumably because the Circular dated 14.06.2006 is independent of other circulars. There is also no reference to the letter of 03.03.2009 in the Circular of 12.11.2014. It has also not been clearly explained as to whether that wide publicity was given to the internal letter of 03.03.2009.

In addition to the above, it is also relevant to refer to the request made by the appellant seeking voluntary retirement. The contents of the letter dated 18.6.2013 are relevant, therefore reproduced as under:

"To

The Divisional Rail Manager (ka.)
Jabalpur

Sub: By granting voluntary retirement to the applicant also give appointment to my son Mukesh Mewari.

Ref: Your letter No. Jabal./ka./620/appointment/Medi./Part 06
dated 11.2.2013

Sir

With regard to the above reference letter you are requested to the applicant Ashok Kumar Mewari, Pointsman, Kachhpura was declared unfit for the aforesaid post by the Railway Hospital on the basis I was given alternative post of UDC.

Sir, I am suffering from kidney ailment and neither I can work for a long time by sitting at one place nor I can move frequently.

Therefore, you are requested to give me voluntary retirement instead of alternative post and my son Mukesh Mewari who is B.Com pass be appointed at my place.

I will be highly obliged.

Dated 18.06.2013.

Applicant

Sd/-

Ashok Kumar Mewari
Pointsman, Kachhpura
Jabalpur.”

From a bare reading of the contents of the aforesaid letter, it is clear that a conditional request was made by the appellant to retire him voluntarily instead of offering him an alternative post and that his son Mukesh Mewari, who is B.Com pass, may be appointed at his place. Meaning thereby, that his request for voluntary retirement may be allowed only if his simultaneous request for compassionate appointment of his son is accepted. This Court had the occasion to consider a similar issue in the case of ***Food Corporation of India and Another vs. Ram Kesh Yadav and Another (2007) 9 SCC 531***, wherein this Court considered whether a conditional voluntary retirement application can be partially accepted, by granting only the request for voluntary retirement without acceding to the condition. The relevant paragraphs of the said judgment are reproduced for ready reference as thus:

“11. But on facts, this case is different. The second respondent’s application dated 26.4.1999 was a composite application for conditional voluntary retirement on medical grounds, subject to

appointment of his son in his place. The application specifically stated that he desired to go on retirement on medical grounds if his son was provided with employment in his place. The second Respondent had thus clearly indicated that if employment on compassionate ground was not provided to his son, he was not interested in pursuing his request for retirement on medical grounds. FCI ought to have informed the employee that he could not make such a conditional offer of retirement contrary to the scheme. But for reasons best known to itself, FCI did not choose to reject the conditional offer, but unconditionally accepted the conditional offer. There lies the catch.

12. When an offer is conditional, the offeree has the choice of either accepting the conditional offer, or rejecting the conditional offer, or making a counter offer. But what the offeree cannot do, when an offer is conditional, is to accept a part of the offer which results in performance by the offeror and then reject the condition subject to which the offer is made.

14. When FCI accepted the offer unconditionally and retired the second respondent from service by office order dated 29.7.2000, it was implied that it accepted the conditional offer in entirety, that is the offer made (voluntary retirement) as also the condition subject to which the offer was made (appointment of his dependant son on compassionate grounds). In his application, the second respondent made it clear that he desired to retire voluntarily on medical grounds only if his son (first respondent herein) was provided with employment. If FCI felt that such a conditional application was contrary to the Scheme or not warranted, it ought to have rejected the application. Alternatively, it ought have informed the employee that the compassionate appointment could not be given to his son because he (the employee) had already completed 55 years of age and that it will consider his request for retirement on medical grounds delinking the said issue of retirement, from the request for compassionate appointment. In that event, the employee would have had the option to withdraw his offer itself. Having denied him the opportunity to withdraw the offer, and having retired him by accepting the conditional offer, FCI cannot refuse to comply with the condition subject to which the offer was made.”

In the case at hand the appellant applied for voluntary retirement subject to the condition that his son Mukesh Mewari may be appointed in his place, in terms of the Circular dated 14.6.2006. Thus, the prayer of voluntary retirement and to grant compassionate appointment were composite. The respondents by segregating the same, only accepted the prayer for voluntary retirement, without accepting the prayer of compassionate appointment to the appellant's son. In view of the ratio of the judgment in ***Ram Kesh Yadav*** (supra) such action is not justified. It is not the case of the Respondent's Board that it had informed the appellant that the request of conditional voluntary retirement (as made) was contrary to the Circular, and that the Board was not willing to consider the same. It is also not the case of the Respondent's Board that it had informed the Appellant that on account of the existing norms, compassionate appointment to his son cannot be granted, and that therefore he has to apply unconditionally for voluntary retirement. In our view, when a request for voluntary retirement has been made subject to the condition stipulated in the letter to grant the compassionate appointment to his son, it ought to be accepted by the Board compositely, i.e., accepting both the requests, or rejected in toto.

As held in ***Ram Kesh Yadav*** (supra), the employer had an option to inform the employee that compassionate appointment could not be given in view of the existing norms, and that it would consider the employee's request for retirement on medical grounds by delinking the request of voluntary retirement from the request of compassionate appointment. As per above discussion, this was not done in this case.

In view of the foregoing legal position, vide order dated 10.10.2023 referred above, we requested the Board to decide the claim of the appellant afresh. But again, it was rejected without considering the ratio of the judgment of ***Ram Kesh Yadav*** (supra) which, in our view, is without application of mind and contrary to the law as laid down by this Court.

In view of the above discussion, we allow this appeal and set-aside the orders dated 18.12.2017 and 16.07.2018 passed by the Tribunal in the Original Application and review respectively and the order dated 13.11.2018 of the High Court. We also quash the order dated 10.11.2023 passed by

the West Central Railway, Jabalpur Division, Jabalpur. Consequently, we direct that compassionate appointment, in the applicable post, be given to the Appellant's son Mukesh Mewari within a period of 4 weeks from the date of communication of this order. No order as to costs.

Headnotes prepared by:
Divya Pandey

Appeal allowed.