

THE HON'BLE THE CHIEF JUSTICE SHRI MADAN B. LOKUR
AND
THE HON'BLE SHRI JUSTICE SANJAY KUMAR

W.P. No.5352 of 2012

DATED:29-02-2012

Between:

Md. Mastan Shareef and another.

... Petitioners

And

The General Manager, South Central Railways,
Secunderabad and others.

... Respondents

THE HON'BLE THE CHIEF JUSTICE SHRI MADAN B. LOKUR
AND

THE HON'BLE SHRI JUSTICE SANJAY KUMAR

Writ Petition No. 5352 of 2012

ORDER: (per the Hon'ble the Chief Justice Shri Madan B. Lokur)

1. The petitioners are aggrieved by an order dated 24.2.2011 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad in O.A. No.621 of 2010.

2. The 1st petitioner was working as a Technician Grade-I. He was declared unfit in B- one category post, but was declared fit for C-one category post by a Medical Certificate issued by the Chief Medical Superintendent, Vijayawada on 4.5.2007.

3. The 1st petitioner made an application for voluntary retirement on 5.11.2007 with a request that his son may be appointed on compassionate grounds in view of his medical de-categorization. The application was returned by the respondents on 31.12.2007. It was clearly mentioned in this letter dated 31.12.2007 that the 1st petitioner has less than five years of left over service before superannuation. As such, his son is not eligible to be considered for appointment on compassionate grounds. The 1st petitioner was informed that despite this, if he chooses to seek voluntary retirement from service, he may submit another application for voluntary retirement without any pre-condition.

4. Thereafter, the 1st petitioner made another application on 19.11.2008 seeking voluntary retirement. The application was accepted by the respondents and he was retired with effect from 1.3.2009.

5. On 12.3.2009, the 1st petitioner made an application for

appointment of his son on compassionate grounds.

6. The application of the 1st petitioner was rejected on the ground that in terms of the extant rules, the petitioner had less than five years for his superannuation and therefore, the case of his son for appointment on compassionate grounds could not be considered.

7. Feeling aggrieved, the petitioners preferred an Original Application before the Tribunal, which came to be rejected by the impugned order.

8. It is submitted by learned counsel for the petitioners that the 1st petitioner falls short of the five years limit by just four days and therefore, the case of the 1st petitioner's son for appointment on compassionate grounds may be sympathetically considered.

9. Unfortunately, we are unable to agree with learned counsel for the petitioners. The fact remains that the 1st petitioner is fit for C-one category post after being declared unfit for category B-one post. The 1st petitioner chose not to exercise the option to continue in service but sought voluntary retirement. The 1st petitioner was informed by the respondents by letter dated 31.12.2007 that his son could not be considered for appointment on compassionate grounds since he has less than five years of left over service. In spite of this caution, the 1st petitioner went ahead with his application for voluntary retirement while rejecting the Category C-I post, which he was entitled to hold. Under the circumstances, it is quite clear that the decision taken by the 1st petitioner was a conscious decision to retire voluntarily knowing fully well that his son would not be considered for appointment on compassionate grounds.

10. Under the circumstances, we do not think it possible to direct the respondents to consider the application of the 1st petitioner's son for compassionate appointment.

11. We are of the view that the Tribunal was not in error in rejecting the original application filed by the petitioners.

12. There is no merit in this writ petition.

13. The writ petition is accordingly dismissed.
14. The miscellaneous application is also dismissed.

MADAN B. LOKUR, CJ

SANJAY KUMAR, J

29-02-2012

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