
(2010) 07 CHH CK 0016
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 6542 of 2008

Amarkant Rao

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47

Citation : (2011) 2 MPJR 7

Hon'ble Judges : P.K. Mishra, J;I.M. Quddusi, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Prashant Kumar Mishra, J.—The petitioners herein challenging common order dated 29-8-2008 passed by the Central Administrative Tribunal, Jabalpur Bench (henceforth "the Tribunal") in O.A. No 161/2008 (Amarkant Rao vs. Union of India and others) and O.A No. 165/2008 (Abdul Rahim vs. Union of India and others). The Tribunal, by the impugned order dated 29-8-2008 has also decided O.A. No. 166/2008 (M.L. Khan vs. Union of India and others), however, the said applicant, namely, M.L. Khan is not before us in writ petition.

2. The Tribunal has dismissed the O.As., By which petitioners had sought for a direction to the respondents/Railways to grant appointment on compassionate ground to their wards on petitioners" being declared medically decategorised.

3. Petitioner no. 1 Amarkant Rao, a Diesel Driver was declared Partially medically unfit and was decategorised due to low vision vide CMS Letter dated 5-11-1999 and was offered an alternative appointment keeping in view all the provisions of the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (henceforth "The Act, 1995"), however, he refused the alternative appointment and applied for appointment of his ward on compassionate ground. He prayed for voluntary retirement which was accepted with effect from 2-1-2002, otherwise he was to retire on attaining the age of

superannuation with effect from 28-02-2002. The respondents/Railways rejected his request for appointment on compassionate ground to his ward vide communication dated 09-05-2007 (Annexure A-1 in the original application). Petitioner No. 1 Amarkant Rao had earlier preferred O.A.No.92/2007 along with petitioner No.2 Abdul Rahim, Ramandas Rao and M.L. Khan. The said original application was disposed of on 9-2-2007 with a direction to the respondents to consider and decide the representations pending with them by a speaking order.

4. Petitioner no.2 Abdul Rahim, also a diesel Driver was declared partially medically unfit and was decategorised due to low vision vide CMS order dated 6-8-2001. He also refused offer for absorption in an alternative post and subsequently applied for voluntarily retirement, which was accepted with effect from 2-1-2002, otherwise he would have retired on attaining the age of superannuation with effect from 31-7-2004. His request for appointment on compassionate ground to his son was also rejected vide communication dated 9-5-2007, Which was challenged in the O.A.

5. The representations preferred by the respective petitioners were rejected on the ground that under the extant policy such an appointment can only be given to employees who are declared partially decategorised at a time when they have at least five years or more of the service left and such not being the case with the petitioners, their request for appointment on compassionate ground to their wards/son was turned down. It was stated in the order deciding representation that their claim did not fall within the zone of consideration being outside the purview of Railway Board's Circular in the subject.

6. The Tribunal dismissed the original applications separately preferred by both the petitioners.

7. Learned counsel for the petitioners vehemently urged that in view of the provisions contained in section 47 of the Act, 1995, which is mandatory in nature, an employee shall not be dispensed with or reduced in rank on acquiring a disability during his service. However, the respondents/railways, in absolute violation of the said mandate, compelled them to submit and request for voluntary retirement and their applications for appointment on compassionate ground in favour of their wards has been refused in an arbitrary and unjust manner. Relying on the Supreme Court judgment in Kunal Singh Vs. Union of India (UOI) and Another, , learned counsel for the petitioners contended that once it is held that the employee has acquired disability during his service and if found not suitable for the post he was holding, he should be shifted to some other post with same pay - scale and service benefits and if it was not possible to adjust him against post he could have been occupied on a supernumerary post until a suitable post was available. He further submitted that rejection of their prayer for appointment on compassionate ground on the basis of Railway Board's Circular dated 14-6-2006 was not correct as they were compelled to seek voluntary retirement in the year 1999-2000.

8. Opposing the petition, learned counsel for respondents No. 1 to 4 urged that the petitioners' case was not covered under the policy as they have themselves opted for voluntary retirement and were not retired by the respondents/Railways and that on the date of such retirement also, they had less than five years of service left which made their case outside the purview of the extant policy.

9. Annexure P-2 filed with the writ petition contains Railway Board's instructions issued from time to time. The first circular dated 29-4-1999 was issued directing that in cases where an employee has been medically invalidated/ decategorised, he may be kept on a supernumerary post in which he was working on regular basis, till such time he is absorbed in a suitable post or till his retirement, whichever is earlier. Vide Railway Board's instruction dated 10-11-2000, it was communicated that in cases where an employee has been declared as medically decategorised before the issuance of Railway Board's Circular dated 29-4-1999 and such employee seeks voluntary retirement, and he has not been given alternative appointment nor he has been adjusted against a supernumerary post, the facility of appointment on compassionate ground may be extended to one ward. By instruction dated 18-1-2000, the Railway Board decide that in cases where an employee is totally incapacitated and is not in a position to continue on any post because of his medical condition, he may be allowed to opt for retirement and in such cases, request for appointment on compassionate ground to an eligible ward may be considered.

10. The Railway Board issued another instruction on 6-3-2002. Paragraph 2 of the said instruction says that the matter has been further reviewed pursuant to a demand raised by the staff side in the DC/JCM and it has been decided that compassionate appointment may also be considered in favour of wife/eligible wards of such of the employees as were medically decategorised between 29-4-1999 and 18-1-2000 and declared unfit to continue in the posts they were holding but fit to hold posts with lower medical classification, subject to the conditions that the employee concerned has retired voluntarily between 29-4-1999 and 18-1-2000 on medical decategorisation during this period and such cases are personally considered and decided by the General Manager on individual merit of each case. By another instruction dated 4-3-2002, the Railway Board directed that absorption of medically decategorised staff in grades lower than the grades held by them on regular basis at the time of their medical decategorisation is in contravention of the provisions of the Act, 1995. However, in cases where for want of posts in the same /equivalent grade such employees are engaged in productive work by deploying them in posts not carrying the same or equivalent scale of pay, While they may work against such posts they should continue to be kept on supernumerary posts in the grades in which they were working on regular basis at the time of their medical decategorisation, till such time they are adjusted in the post carrying the same or equivalent scales of pay.

11. From the order rejecting the representation of petitioner No. 1 Amarkant Rao

dated 9-5-2007 (Annexure P-5), it would appear that petitioner No. 1 was medically decategorised on 5-11-1999. Petitioner no 1 was subsequently retired compulsorily by a communication dated 27-7-2000 with effect from 7-7-2000 (Annexure P-1). Thus, on the date when petitioner No. 1 was medically decategorised (5-11-1999) and was voluntarily retired (7-7-2000), the Railway Board's instructions dated 14-6-2006 were not in force, whereas what was applicable was the Railway Board's instruction dated 29-4-1999, which was subsequently clarified on 18-1-2000, 10-11-2000, 4-3-2002, 6-3-2002, and 26-6-2002.

12. Petitioner no. 2 Abdul Rahim was declared medically decategorised on 6-8-2001 and was voluntarily retired by a communication dated 9-1-2002 with effect from 30-8-2001.

13. The issue which falls for consideration is whether the circular/policy dated 14-6-2006 on the basis of which the petitioner's representations for appointment on compassionate ground in favour of their wards have been rejected would be applicable or the earlier instruction issued by the Railway Board on 29-4-1999 and clarified from time to time as mentioned in the earlier paragraph would govern the case of the petitioners. It is also to be considered as to what would be the effect of the offer made to the petitioners for their posting on a lower grade vis - a - vis the provisions of the Act, 1995, though the same was refused by the petitioners.

14. The Railway Board issued yet another communication on the subject on 6-3-2002, which needs to be referred as reads thus:

No. E(NG) -II /2000/RC-1/Genl.17 dated: 06.03.2002

Absorption of medically decategorised staff in alternative employment - hardship caused consequent upon implementation of Railway Board's orders dated 29.04.1999.

Pursuant to the notification of "The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995", instructions were issued vide this Ministry's letter no. (I(NG) I/96/RE-3/9(2) dated 29.4.99, laying down inter- alia that, in cases where an employee has been medically invalidated/decategorised he may be kept on a supernumerary post in the grade in which he was working on regular basis, till such time he is absorbed in a suitable post or till his retirement, whichever is earlier. As these instructions provided for continuation in service of medically invalidated/decategorised employee, there would be no occasion for an employee to be retired from service on medical ground after 29.4.99. Therefore, in such cases, the occasion to consider a request for appointment on compassionate ground of an eligible ward would not arise.

1.1 However, on review of the matter instructions were issued vide this Ministry's letter No. E(NG) II/95/RC-1/94 dated 18.01.2000 that in cases where

an employee has been declared totally incapacitated for further service and he opts for retirement, request for appointment on compassionate ground of an eligible ward may be considered.

1.2 It was subsequently clarified vide this Ministry's letter of same number dated 10.11.2000 that in cases where a medically decategorised employee before issue of this Ministry's letter dated 29.4.99 had taken Voluntary retirement and he had neither been absorbed in an alternative employment nor adjusted against a supernumerary post after the issue of this Ministry's letter dated 29.4.99, the facility of allowing appointment on compassionate ground of one ward may be extended.

1.3 Later vide this Ministry's letter of same no. 11.4.2001 the facility of appointment on compassionate ground was also extended to an eligible spouse/ward of totally incapacitated employees who were declared so after the issue of this Ministry's letter dated 29.4.99 and prior to issue of their letter dated 18.1.2000 and were also allowed to retire.

2. The matter has been further reviewed pursuant to a demand raised by the staff side in the DC /JCM and it has now been decided that compassionate ground appointment may also be considered in favour of wife/eligible wards of such of the employees as were medically decategorised between 29.4.99 and 18.1.2000 (both days inclusive) and declared unfit to continue in the posts they were holding but fit to hold posts with lower medical classification, subject to the conditions that -

(i) the employees concerned have retired voluntarily between 29.4.99 and 18.1.2000 (both days inclusive) on medically decategorised during this period; and

(ii) such cases are personally considered and decided by the General Manager on individual merit of each case.

15. From the documents submitted along with the writ petition, it would appear that the petitioner no. 2 Abdul Rahim moved an application for appointment of his son on compassionate ground as early as on 28-1-2002. Similarly, Annexure P-3 is the application moved by petitioner No. 1 Amarkant Rao on 8-2-2005 - mentioning therein that this application is reminder of his old application. The respondents/ Railways have not placed on record the exact date when petitioner no. 1 moved his earlier applications, however, in any case, the applications moved by both the petitioners were prior to 14-6-2006 when the Railway Board's instructions were issued on the basis of which their applications for appointment on compassionate ground have been rejected by the respondents/Railways on 9-5-2007.

16. In State Bank of India and Others Vs. Jaspal Kaur, , the Hon''ble Supreme Court has held in paragraph 26 of the report thus:

26. Finally in the fact situation of this case, Shri Sukhbir Inder Singh (late),

Record Assistant (Cash & Accounts) on 1-8-1999, in the Dhab Wasti Ram, Amritsar Branch, passed away. The respondent, widow of Shri Sukhbir Inder Singh applied for compassionate appointment in the appellant Bank on 5-2-2000 under the scheme which was formulated in 2005. The High Court also erred in deciding the matter in favour of the respondent applying the scheme formulated on 4-8-2005, when her application was made in 2000. A dispute arising in 2000 cannot be decided on the basis of a scheme that came into place much after the dispute arose, in the present matter in 2006. (emphasis supplied by us). Therefore, the claim of the respondent that the income of the family of the deceased is Rs. 5855 only which is less than 40% of the salary last drawn by late Shri Sukhbir Inder Singh, in contradiction to the 2005 scheme does not hold water.

Thus, the Hon''ble Supreme Court, in *State Bank of India and others vs. Jaspal Kaur* (supra), has held that the relevant date for consideration of an application and the applicability of the scheme is the date on which the application for grant of appointment on compassionate ground is moved and not the date on which the application was decided.

17. In view of the law laid down by the Hon''ble Supreme Court in *State Bank of India and others vs. Jaspal Kaur* (supra), this Court is of the opinion that the case of the petitioner have not been considered properly by the respondents/Railways under the scheme/policy, which was in vogue when they moved their respective applications. The order deciding their representations as well as the order passed by the Tribunal thus need to be interfered with, the same deserve to be and are hereby quashed. The respondents/Railways shall now consider the applications moved by each of the petitioners for grant of appointment on compassionate ground to their wards on the basis of scheme/policy applicable on the date when the applications were moved for the first time also keeping in view the provisions of the Act, 1995 and the judgment of the Hon''ble Supreme Court in *Kunal Singh vs. Union of India* and another (supra), which weighed with the Railway Board for issuance of instructions on 29-4-1999, 18-1-2000, 10-11-2000, 6-3-2002 and 26-6-2002.

18. The writ petition stands allowed. There shall be no order as to costs.