
(2014) 04 KL CK 0062
In the High Court Of Kerala
Case No : OP (CAT). No. 45 of 2014 (Z)

N. Gopalakrishnan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Citation : (2014) 04 KL CK 0062

Hon'ble Judges : T.B. Radhakrishnan, J;A. Muhamed Mustaque, J

Bench : Division Bench

Advocate : Martin G. Thottan, Advocate for the Appellant; C.S. Dias, SC, Railways, Advocate for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Heard the learned counsel for the petitioner and the learned standing counsel for the Railways.

2. Petitioner, who works as a Gate Keeper, challenges the decision of the Tribunal whereby his claim for employment of his son under the Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff Scheme (hereinafter referred to as, the "Scheme") stands rejected.

3. The Scheme provides, inter-alia, that the existing employees among safety staff would be permitted to go out on retirement on completion of 57 years of age and one of the wards of that employee would be taken into the Railway establishment.

4. The gist of the controversy in the case in hand is that the Scheme came into effect on 11.09.2010 and the cut off date for reckoning the eligibility of employees for seeking retirement under that Scheme will be 30th June of the respective year, however that, the petitioner applied in the prescribed proforma only on 1.6.2011 after he completed 57 years of age on 19.5.2011. Reverting to paragraph 3 of Ext.P2 counter statement filed by the establishment before the Tribunal, it can be seen that the Railway Board's letter, which brought forth the aforesaid Scheme dated 11.9.2010 was circulated in the Thiruvananthapuram

Division under which the petitioner works, only on 19.4.2011. That was received in the Office of the Superior Officer only on 22.4.2011. The establishment had, therefore, given instructions for the information of all staff and gang working in that Section in that regard, only on 23.4.2011. Therefore, an application filed by the applicant/petitioner on 1.6.2011, ought to have been entertained. We say this because, even if he had made an earlier application dated 6.11.2010, as rightly contended by the Railways, that application was of no consequence. We think that the object sought to be achieved by the Railway establishment in bringing out the policy contained in the Scheme needs to be understood in that context and the petitioner's case has to be treated as an exceptional one on facts requiring a differential treatment as regards the date of application. Under such circumstances, we are of the view that the petitioner is entitled to succeed in terms of justice in accordance with law. For a moment, we have cautioned ourselves that the petitioner, by now would have worked for a longer period than his due retirement age of 57 years in terms of the Scheme. Had he demitted office then, his son would have immediately got employment. Either way, one of them would have got home bread and butter for their family in the marginalized sector to which they belong. In the economic and social security conspectus, we think that the scales of justice in terms of constitutional doctrines ought to swing in favour of the petitioner being granted relief as an isolated case, without treating anything stated herein as laying down any principle of law to be applied by the Railways in any other case.

For the aforesaid reasons, the impugned order of the Tribunal is set aside and O.A.No.15 of 2012 on the file of the Central Administrative Tribunal, Ernakulam Bench will stand allowed directing that the application of the petitioner shall be considered in terms of the Scheme in accordance with what is stated above, and consequential orders shall be issued by the establishment as regards the retirement of the petitioner and the admission of his son to duty within a period of one month from the date of receipt of a copy of this judgment. The original petition is ordered accordingly.