
(2003) 08 AP CK 0077

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14360 of 2003

Uppala Venkat

APPELLANT

Vs

Divisional Railway Manager (P) South Central Railway and
Others

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Constitution of India, 1950 — Article 16
Industrial Disputes Act, 1947 — Section 18
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full
Participation) Act, 1995 — Section 47

Citation : (2003) 5 ALD 263 : (2003) 6 ALT 829 : (2003) 3 LLJ 1092

Hon'ble Judges : Gopalakrishna Tamada, J;G. Bikshapathy, J

Bench : Division Bench

Advocate : J.M. Naidu, for the Appellant; R.S. Murthy, SC, for the Respondent

Final Decision : Allowed

Judgement

G. Bikshapathy, J.—This is a pathetic case coupled with unbearable physical condition of an employee working in the South Central Railway, who was denied the benefit of Compassionate appointment scheme purporting to be on the basis of the Full Bench judgment of this Court reported in Government of Andhra Pradesh and Others Vs. D. Gopaiah, .

2. Before dealing with the principle laid down by the Full Bench, it is necessary to trace out the facts of the present case on hand.

Petitioner is working as Senior Trolley Man in the South Central Railway. Unfortunately as ill luck would have it, he met with a ghastly accident while on duty on 5-3-1999 when he fell down from the Train No. 7201-U.P. express. He was run over by the train on account of which his entire right leg and right hand were severed on the spot. Unfortunately God has saved him by not allowing the wheels to go by an inch over the body. That saved his life, but yet, he is only living in vegetable form for all practical purposes. In such a case, the question

that arises for consideration is whether the law can protect such victims or law should strict to the legal principles.

3. After the accident, he was subjected to medical test and he was declared unfit for all classes of employment in the Railways and loss of earning capacity was assessed at 100%. Even from the photo produced before this Court, it is seen that except left leg and left hand with the body, the petitioner is only living today with unbearable imbalance and humiliation. Words cannot express his physical condition. In such pathetic circumstances, he made an application to the authorities to provide job to his wife on compassionate grounds. However, the authorities insisted that he should opt for voluntary retirement in which event, the administration will consider providing job to his wife Smt. Laxmi. On the said direction the petitioner filed OA No. 1710 of 2001 before the Central Administrative Tribunal, Hyderabad. The learned Tribunal, basing on the decision of the Full Bench of this Court in Gopaiah 's case (supra), held that the appointment on compassionate grounds of decategorised staff was not permissible. Therefore, dismissed the application, against which the present writ petition has been filed.

4. The learned Counsel for the petitioner would however, contend that the facts in the instant case are quite different and that the compassionate appointment is not being claimed on the principle of descent, but it is a case where the compassionate appointment is necessary in the interest of justice. In fact, the learned Counsel would submit that the Railway was willing to consider the case of the petitioner for grant of compassionate appointment on condition that the petitioner opt for retirement but their consideration would be going contrary to the principle laid down by the Full Bench decision referred to above. Therefore, though the Railway was willing to consider the case, but, yet, in view of the obstacle created by the decision of the Full Bench of this Court, they became helpless to consider the case of the petitioner, even though it is a case requiring sympathetic consideration.

5. The learned Standing Counsel for the Railways submit that it is really an unfortunate and pathetic case and he agrees that the petitioner is unfit for all the jobs in the Railways, but, yet, he submits that even in case of his retirement on medical invalidation, the judgment of the Full Bench would not permit grant of such a relief.

6. We have considered the matter is depth.

7. The Full Bench referred to above had an occasion to deal with the matters relating to compassionate appointment, with reference to the policy decision taken by the Government. Government of Andhra Pradesh issued Orders permitting the employees to retire on medical invalidation and allowing compassionate appointment of son, daughters, spouse of such Government employee, provided they have a service of 5 years or more before attaining the age of superannuation irrespective of the age of superannuation fixed for the

posts and for the services. Referring to the policy of the Government with reference to Article 14 and 16 of Constitution of India, the Full Bench held that the appointment on compassionate grounds on medical invalidation does not satisfy the requirement of Article 16 of Constitution of India and any policy decision taken by the State is unconstitutional, but however, the facts of this case stands on a different footing. In *Yogender Pal Singh and others Vs. Union of India* others, , the Supreme Court did not rule out the compassionate appointment in respect of a Police Officer, who died in service or who is incapacitated while rendering service in the Police Department, but held that a provision which confers a preferential right to appointment on the children or wards or other relatives of the police officers either in service or retired merely because they happen to be the children or wards of other relatives of such police officers would be contrary to Article 16 of the Constitution. The Supreme Court stated thus:

"While it may be permissible to appoint a person who is the son of a police officer who dies in service or who is incapacitated while rendering service the police department, a provision which confers a preferential right to appointment on the children or wards or other relatives of the police officers either in service or retired merely because they happen to be the children or wards or other relatives of such police officers would be contrary to Article 16 of the Constitution."

8. Yet, in another case, Supreme Court in *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, , observed as follows:

"We are of opinion that the claim made by the appellants for the relaxation of the Rules in their cases only because they happen to be the wards of children or relatives of the police officer has got to be negated since their claim is based on descent" only, and others will thereby be discriminated against as they do not happened to be the sons of police officers. Any preference shown in the matter of public employment on the grounds of descent only has to be declared as unconstitutional."

9. In *Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another*, , the Supreme Court observed that appointment on compassionate ground has to be made in accordance with law, relevant rules and regulations that have been framed by the authority in that regard and the Court cannot direct appointments to be made contrary to statutory instructions.

10. In the instant case, there is no dispute that the person is totally incapacitated to discharge any of the functions. The photograph annexed in the material paper would clearly indicate that he is a mere living dead body. Though, the compassionate appointment is an exception under Article 16, but it has to be considered on the basis of facts and circumstances of each case. It is a case of compassionate appointment for a person, who on account of the total disability that was acquired consequent on accident during the course of employment. But seeking compassionate appointment for partial disablement which would not be

unfit for other employment stands on a different footing. Of course, in case of total disability, which renders him unfit for any employment in the establishment, he has the protection of the provisions of Disabilities (Equal Opportunities, Principles, Protection of Rights and Full Participation) Act, 1995. Under the said provisions, if he is completely disabled, he should be provided with alternative employment and if alternative employment is not possible, he should be kept in supernumerary post till he attained the age of retirement. A similar case came to be considered before the Supreme Court in *Kunal Singh v. Union of India* 2003 L.I.C 1133, where a Constable in the Special Service Bureau suffered an injury to his left leg while he was on duty. Ultimately, his left leg was amputated, he was invalidated from service on the basis of the report of the medical officer. On a challenge made by him for such invalidation, the High Court held that the employee had been permanently invalidated on the basis of the medical report and there is no scope for him to continue in the service. However, no argument was advanced u/s 47 of the said Act. The Supreme Court dealing with that case held as follows:

"Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or sufferer disability by choice. An employee, who acquires disability during his service, is sought to be protected u/s 47 of the Act specifically. Such employee, acquiring disability if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during this service." The Section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from Sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provisions of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and services its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain

and certain casting statutory obligation on the employer to protect an employees acquiring disability during service."

11. But, in the instant case, the petitioner could be continued on a supernumerary post, but his condition is so precarious that he will not be able to do any service to the Railways. On the other hand, the Railway has to do service to him and he has to be assisted by other Railway servants. In such an event, no useful purpose will be served keeping him in supernumerary post, even invoking Section 47 of the Act. It is a case, where the petitioner while discharging duties met with an accident on account of which he lost his right hand and right leg completely, even without there being any stump on both the limbs. Therefore, the case stands on worst footing than the death itself. - Unfortunately, Almighty has saved him only to further humiliate and excruciate him for the balance life.

12. Be that as it may, the matter is also required to be viewed yet from another angle. The respondents in their counter have clearly stated that the applicant was examined by the Senior Medical Superintendent and he was advised to attend the screening on 29-1-2001 in terms of Chapter XIII of Indian Railway Establishment Manual Vol.1 constituted by the Divisional Personnel Officer, Divisional Engineer, Divisional Operating Manager and Senior Medical Superintendent, Secunderabad. The petitioner was once again advised to attend subsequent screening on 23-1-2002, but he did not attend and remained absent in the subsequent dates also. They have further stated that in terms of Serial Circular No. 21 of 2001 it is permissible to provide job to a ward of a totally incapacitated employee, if he opts for retirement. The applicant has not opted for retirement and claiming compassionate appointment for his wards and therefore, the respondents are not in a position to grant the relief claimed by the applicant.

13. The learned Counsel for the petitioner however submits that his client has no objection if his client is retired on medical grounds on condition that his wife is granted compassionate appointment.

14. The Railway Board's letter No. E.NG.II95.RC-I/94, dated 18-1-2000, SC.No. 39 to MC.No. 16, reads thus:

"Kindly refer to the instructions contained in Board's letter N.E (NG) III.78 RC-1/1, dated 7-4-1983, 3-9-1983 as well as Board's letter of even No. dated 22-9-1995 on the above mentioned subject.

2. Pursuant to the notification of the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act, 1995" instructions were issued vide Bd.'s letter No. E.NG. I.96-RE.-3/9(2) dated 29-4-1999, laying down inter-alia that, incases where an employee has been medically invalidated/ decategorised and where the Administration cannot find a suitable alternative post 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 a suitable post can be identified or till his retirement, whichever is earlier. As these instructions provided for continuation in service of a medically invalidated decategorised

employee, there would be no occasion for an employee to be retired from service on medical grounds. Therefore, according to these instructions, in such cases, the occasion to consider a request for appointment on compassionate ground of an eligible ward would not arise.

3. The matter has been reviewed pursuant to a demand raised by the staff side in the DC./JCM and it has now been decided that in cases where an employee is totally incapacitated and is not in a position to continue in any post because of his medical condition, he may be allowed to opt for retirement. In such cases request for appointment on compassionate ground to an eligible ward may be considered.

4. In the cases of medical decategorisation i.e., those cases, in which an employee becomes medically unfit for the post held at present but is fit to perform the duties of an alternative suitable post in lower medical category, the request for appointment on compassionate ground to an eligible ward will not be admissible, even if the employee chooses to retire voluntarily on his being declared medically decategorised. Such an employee may then either be continued in a supernumerary post or allowed to retire voluntarily if he so desired but without extending the benefit of appointment on compassionate grounds to a ward".

From the aforesaid circular with reference to para No. 2 it has to be noted that a demand was raised by the Union and it was agreed to the effect that where an employee is totally incapacitated he may be allowed opting for retirement and his request for appointment on compassionate appointment may be considered. The decision taken under joint consultation machinery procedure has a binding force under the provisions of the Industrial Disputes Act. u/s 18 of the Act Agreement entered between the Union and the management is binding on the Railways and it has a statutory force u/s 18 of the Industrial Disputes Act. Therefore, the decision taken in pursuance of an agreement reached between the management and Union with regard to the total incapacity of the employee and the consideration for compassionate appointment has to be necessarily be enforced. Therefore, viewed from this angle also, it cannot be said that the decision of the Full Bench blocks the way of the petitioner in considering the case of his wife for compassionate appointment.

15. Under these circumstances, we are of the considered view that compassionate appointment being exception under Article 16 of the Constitution of India, the death or total disablement coupled with the commitment made by the Railways which has a binding force u/s 18 of the Industrial Disputes Act, has to be viewed with different considerations. When a beneficial provisions like providing succor and sustenance to the unfortunate and ill-fated employees is conceived and made in the interest of working class, Courts are bound to interpret the said provision to sustain it. Law cannot be said to be dormant in such circumstances. It is an instrument of social engineering. It has a wide vision and long arms to enter and extricate injustice and paves the way for social

justice. The Full Bench did not hold that total permanent disablement of an employee acquired is an accident which arose out of and in the course of employee would not fall in the exception to Article 16. Hence, we find that the Full Bench decision does not eclipse the case on hand.

16. The petitioner became totally incapacitated and he is not in a position to discharge any kind of service in view of his disablement. Therefore, the question of creating any supernumerary post also would not arise and it is not in the interest of the administration nor the petitioner. In fact the learned Counsel for the petitioner submits that the petitioner is willing for retirement on medical grounds with all the benefits in accordance with rules.

17. Further, the Railways have also categorically stated that they are prepared to consider the cases of the petitioner for compassionate appointment of his wife in a suitable post, provided the petitioner opt for retirement.

18. Under the circumstances, the impugned orders of the Central Administrative Tribunal are set aside and the writ petition is disposed of with the following directions:

(a) That the respondents shall pass appropriate Orders in accordance with rules retiring the petitioner from service on the ground of medical unfitness and consequently he is entitled for all the benefits including pension, Gratuity etc. in accordance with rules.

(b) The respondents shall grant compassionate appointment to the wife of the petitioner consequent on the retirement of the petitioner on medical invalidation retirement. If any relaxation is necessary with regard to the educational qualifications or age etc. the respondents shall grant such relaxation in accordance with rules.

(c) The entire exercise shall be done within a period of six weeks from the date of receipt of a copy of this Order.

19. The writ petition is allowed with the above directions.

20. No costs.