

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 589/2001

New Delhi this the 14th day of September, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

S.S. Rawat,
Hd. Typist Bridge Branch,
Northern Railway,
Baroda House,
New Delhi.

-Applicant

(By Advocate Shri B.S. Mainee)

-Versus-

Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.

-Respondents

(By Advocate Shri Rajinder Khattar)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant has assailed an order dated 13.3.2000, whereby he was found not eligible for out of turn allotment of accommodation because has not been conforming to the definition of orthopaedically handicapped as per the DOPT revised instructions detailed in memo dated 4.5.90 and is not 40% disabled.

2. Briefly stated the applicant who had been appointed as a Typist against the handicap quota got his name registered on 10.1.79 for allotment of Railway quarter against handicap quota. The applicant from time to time has been intimated that his name stood in the priority list and is in the waiting for allotment of Railway quarter on his turn. Subsequently, it has been informed to him that he has not been found eligible for out of turn allotment as per the modified rules of 1993 and as there has been a requirement as per DOPT instructions as to 40% disability and the applicant having not conforming to the same is not

9

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eligible for the out of turn allotment. On representation the request was also rejected.

3. The learned counsel of the applicant stated that in pursuance of the Railway Board's letter dated 12.10.66 the criteria for out of turn allotment to a handicap employee was to entertain their registration for out of turn on the merits of each case with due regard to the degree of their disability and further placing reliance on the OM of 13.1.77 it is stated that the orthopaedically handicapped are defined as severe physical defects or deformity, which causes undue interference with the normal functioning of the bones, muscles and joints and as a result of which find it very difficult to move freely. The contention of the learned counsel of the applicant is that having registered the request of the applicant and as per their circulars of 1966 and 1967 and having informed from time to time to the applicant that his names stands on the waiting list in the priority to be allotted a Railway quarter in its turn in handicap quota, subsequent action of the respondents to apply an administrative instruction by way of an OM where the criteria has been changed retrospectively when the applicant's name has been entered in the list for out of turn allotment on handicap quota is not legally tenable and for this the applicant has placed reliance on a decision in M.C. Mishra v. Lt. Governor, N.C.T. Delhi & Others, SLJ 1997 (1) 442 to contend that vested right cannot be withdrawn by a retrospective administrative order. It is also stated that by a letter dated 17.2.93 the respondents even after the DOPT instructions have decided that no percentage of disability has been fixed by the Railway Board. In this view of the

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matter it is stated that cancellation of a favourable order without according an opportunity to the applicant vitiates the order and places reliance on the decision of P.V. Pavithran v. State of A.P. represented by Chief Secretary to the Govt., General Admn. Department Sectt. Hyderabad, 1988 (1) ATR CAT 26 as well as M. Venkiah v. Union of India, 1989 (2) ATR 23. The learned counsel of the applicant has further placed reliance on Hari Ram Gupta (D) through LR Kasturi Devi v. State of U.P., SLJ 1999 (1) SC 162 and Chairman Railway Board & Ors. v. C.L. Rangadhamaiyah & Ors., SLJ 1998 (3) SC 76. The learned counsel of the applicant had further stated that once the request of the applicant has been accepted 20 years back for allotment of quarter against handicap quota the same cannot be divested away from him after a lapse of 20 years and the respondents are bound by the doctrine of promissory estoppel. The applicant further stated that the applicant was appointed against the handicap quota without having percentage of disability and fixation of percentage of disability to 40% above will not apply to the case of the applicant and furthermore, once the request is registered it would be considered on the basis of instructions prevalent at the time of registration and subsequent amendment and change would not take retrospective effect.

4. On the other hand, strongly rebutting the contentions of the applicant the learned counsel of the respondents stated that even in accordance with the letter dated 12.10.66 of the Railways and OM dated 13.1.77 the allotment is to be made to only those orthopaedically handicapped who are not able to move freely as the applicant is moving freely he is not considered as such.

11

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Apart from this, the degree of disability was the criteria in 1966. Further placing reliance on the Full Bench decision of the Tribunal in the case of Pitambar Singh v. Union of India, it is stated that allotment of Railway accommodation is not a condition of service, as such the same cannot be adjudicated upon by this Tribunal. It is further stated that the request of the applicant was registered as the DOPT OM prescribed 40% physical defect or deformity the applicant was sent for medical examination and on this the applicant along with 15 others employees who were on the waiting list and had failed to achieve the requisite criteria of minimum 40% disability, their names have been removed from the waiting list. The learned counsel of the respondents has also produced the register to prove this before me. It is also stated that the request of physically handicapped for out of turn allotment is to be considered with reference to their degree of disability as per the General Manager's letter dated 17.2.93. As no percentage was fixed but the same is to be considered on the basis of Railway Board's letter dated 5.6.86 and has been prescribed as 40%. But this letter was superseded and now in view of the letter dated 24.3.93 the criteria has been changed. By an order dated 13.3.2000 the applicant was informed that he is not eligible in the year 1993 as the rules existing on that date were made applicable in his case. The claim of the applicant has been rightly rejected on the basis of the instructions in vogue. As per the latest guidelines dated 2.8.2000 and para-7 thereof provides that persons recruited against the handicap quota will not be automatically eligible for out of turn allotment and their cases are to be decided on merits.

5. I have carefully considered the rival contentions of the parties and perused the material on record. The claim of the applicant made in this OA is legally tenable. Having appointed the applicant in the handicap quota and registering his request for out of turn accommodation and acknowledging the same by communicating him from time to time that his name stands in the waiting list. Later on the basis of instructions issued in 1993 where the criteria for handicap has been upto 40% physically handicap is laid down, that too for benefit of reservation in the matter of promotion and appointment could not be applied retrospectively to the detriment of the applicant. The DOPT instructions and further instructions of the Railways issued in the year 1993 as well as the instructions of 2000 would not have any application retrospectively being administrative instructions. Apart from it, I find that there is nothing in the instructions regarding its applicability retrospectively. The applicant having registered with the respondents for out of turn allotment in the handicap quota 20 years back as a vested right to be considered irrespective of the fact that the allotment is not a service condition and the said right cannot be withdrawn by an administrative order retrospectively. This view is fortified by the decision of this court in M.C. Mishra's case (supra). Furthermore, cancellation of any favourable order in the present case the applicant being acknowledged that his name stood in the waiting list for accord of out of turn allotment in the handicap category has been admittedly withdrawn and cancelled by the respondents without according an opportunity to the applicant, which

13

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has caused civil consequences upon him and by not following the minimum requirement of the principles of natural justice the action of the respondents is bad in law. The resort of the respondents to 40% disability criteria would not be retrospective as once the applicant has been treated as handicap and appointed to the post later on, on the basis of 40% disability he cannot be deprived of the benefits just because an administrative instruction has been passed which has no effect retrospectively. The instructions of 1993 and subsequent medical examination of the applicant would also not deprive of his right accrued to him when his name was registered in 1979, as the instructions are prospective and would be applicable for registration of the request made after 1993. It is also found that by the letter dated 17.2.93 it has been admitted that there is no percentage of disability fixed by the Railway Board, but yet imposing a percentage of 40% amounts to changing this criteria retrospectively which is not legally tenable.

6. The resort of the respondents to show that in all such cases they have deleted the name would also be of no avail to them as the illegality would not be perpetuated if it is adopted in several other cases also. The further contention that in view of the letter dated 2.8.2000 the matter is to be decided on merits. It is observed that once they have taken a decision under the instructions in vogue at the time the applicant's claim on merit also was found justified as per the rules as such the respondents themselves kept on acknowledging his name in the waiting

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list at priority for accord of out of turn allotment. The respondents now, at this stage, are estopped from taking a contrary view to the detriment of the applicant.

7. In this view of the matter and having regard to the reasons recorded the action of the respondents is not legally justifiable. In the result, the impugned orders are quashed and set aside. The case of the applicant be incorporated in the waiting list under the handicap quota for out of turn allotment and be allotted accommodation as per the seniority and merits of the case. The O.A. is allowed in the above terms. No costs.

S. Raju
(Shanker Raju)
Member (J)

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