

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 236 of 1996

& with
Original Application No. 310 of 1996

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Original Application No. 313 of 1996

Allahabad this the 23rd day of May, 1996

Hon'ble Dr. R.K. Saxena, Member { Jud. }
Hon'ble Mr. D.S. Baweja, Member { Admn. }

O.A. NO. 236 of 1996

Virendra Kumar, S/o Gaya Prasad R/o House No. 13/19,
Kachhiyana, Pulia No. 9, Near Police Chauki, Jhansi.

APPLICANT.

By Advocate Sri Rakesh Verma

Versus

1. Union of India through General Manager, Central Railway, Bombay V.T.
2. Divisional Railway Manager, Central Railway, Jhansi.

RESPONDENTS.

O.A. No. 310 of 1996

Jitendra Kumar, S/o Sri Ram Charan R/o House No.165,
Lal Kurti Baz-ar, Jhansi.

APPLICANT

By Advocate Sri Rakesh Verma

Versus

1. Union of India through General Manager, Central Railway, Bombay V.T.
2. Divisional Railway Manager, Central Railway, Jhansi.

RESPONDENTS.

O.A. No. 313 of 1996

Mohd. Aslam, S/o Sheikh Habib Mohd. R/o House No.21,
Purabiya Tota, Prem Nagar, Jhansi.

APPLICANT

By Advocate Sri Rakesh Verma

Versus

1. Union of India through General Manager, Central Railway, Bombay V.T.
- 2 . Divisional Railway Manager, Central Railway, Jhansi.

RESPONDENTS

JUDGMENT

By Hon'ble Dr. R.K. Saxena, Member Judicial

These applications have been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking quashment of the orders of rejection of representations, and directions to the respondents ~~be~~ about their appointment on any suitable post as against loyal quota. All these cases are at the stage of admission. Since the common question of facts and law is involved in all the cases, they are being decided by one judgment.

2 The facts of the cases are that the fathers of the applicants were working under the respondents in the years 1970-75 where there had been agitations. The call for strike was given and the work was struck on 8.5.1974. The then Minister for Railways made an appeal to the employees not to strike the work. He is stated to have announced certain benefits and concessions to such employees who did not go on strike and

remained loyal to the railway administration. The Railway Board issued a circular dated 13.2.1974 to all the General Managers to emphasise that the services of the loyal staff should not go unrecognised. It was further mentioned that the system of appointment on compassionate ground could be extended in the cases of such employees who had rendered exemplary service in the above context (during the period of agitation and strike). For the purpose, 20% of vacancies in class III service in initial recruitment grades were separated. They were required to be filled by General Managers through their own administrative arrangements. Similar provision was made to the sons, daughters and dependents of class IV employees. This kind of segregation of posts for the dependents of loyal employees of railways, has been nicknamed as loyal quota.

3. The contention of the applicants is that in the year 1974, they were minors and became major only in 1991 or 1993. They then made representations to the respondents on 28.5.94 but their representations were rejected on 6.9.95. The date of making representations and their disposal in all the cases is same. The reason appears that earlier to these O.A.s, they had also filed O.A. before the Tribunal which had directed to make representations. Anyway, since the representations have been rejected and the applicants could not get the benefits of the loyal services of their fathers, these O.A.s, have been filed with the relief mentioned above.

4. At the stage of admission, the question was put to the learned counsel for the applicants whether the applicants acquired any legal right, and whether the O.A.s were maintainable, his answer, of-course, was ~~is~~ positive. We have to examine this aspect.

5. For this scrutiny, the relevant Arts. are 14 and 16 of the Constitution. Art.14 embodies the fundamental right of equality before the law or the equal protection of the laws within the territory of India. Art,15 prohibits discrimination on the grounds of religion, nation on the grounds of religion, race, caste, sex, place of birth or any of them. Clause (1) of Art. 16 guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the ~~state~~ State. Clause (2) of Art. 16 prohibits discrimination on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them. Clause (3) of this Art. empowers the Parliament to make law in regard to a class or classes of employment or appointment to an office, any requirement as to residence, while clause (4) empower State for making any provision for reservation in favour of any backward class of citizens which is not adequately represented in the services under the State, Clause (5) is not connected with general service matters.

6. It would thus appear that Art.14 guarantees the general right of equality while Art.s 15 and 16

are instances of the same right in favour of citizens in some special circumstances. Art. 16 is related to the matters of employment or appointment to any office under the State. 'Descent' is one of the prohibited grounds of discrimination. Clearly the ambit of Art. 16 cannot be cut down in an arbitrary manner.

7. Art. 14 embodies a guarantee against arbitrariness. It mandates equality before the law and the equal protection of the laws. The equality before the law means, broadly speaking, that except in a very limited class of cases, a Court administering justice is not concerned with the status or position of the parties appearing before it. Equal protection of the laws must mean the protection of equal laws for all persons similarly situated. This equality has been extended to the opportunities in public employment. In order to secure the equality of opportunity in public employment, certain prohibitions of discrimination have been imposed by Art. 16(2). "Descent" is one of the forbidden grounds and any discrimination on this ground is violative of the principle of equality.

8. Their Lordships while considering the validity of section 6(1) of Madras Hereditary Village Offices Act, 1895 which provided that in choosing persons to fill new offices, the collector should select the persons whom he considered the best qualified from among the last holders of the offices which had been abolished, held void as contravening

Art.16(2) in the case Gazula Dasaratha Rama Rao Vs. State of Andhra Pradesh A.I.R. 1961 S.C.564. Similarly, Rule 12.14(3) of the Punjab Police Rules, 1934 which authorised the granting of preference in favour of sons, and near relatives of persons serving in the police service, was found unconstitutional in the case Yogendra Pal Singh and others Vs. Union of India and Others A.I.R. 1987 S.C. 1015.

9. In view of this legal position, any provision either in any rule, or circular or order or assurance, made, issued, passed or given which authorises appointment on forbidden ground of 'descent' is violative of Arts.14 and 16(2). Thus no legal right can be acquired thereby. Consequently, the O.As filed by the applicants are not maintainable.

10. Even if we ignore this aspect and consider the O.As from limitation point of view, it appears that the cause of action had arisen in the year 1974 while the remedy is being sought in 1996. If earlier O.A. is taken into consideration then the remedy is sought in 1994. The inter-vening period is of twenty years. In the case of Bhoop Singh Vs. Union of India A.I.R. 1992 S.C. 1414, their Lordships of Supreme Court had taken such a long delay seriously and no relief was granted.

11. The circular of Board dated 13.2.1974 annexure-II, equates the posting to the sons, daughters and dependents of the loyal railway employees with the appointments on compassionate ground. This aspect of

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the matter was considered by their Lordships of Supreme Court in the case Jagdish Prasad Vs. State of Bihar and another 1996(1) SLR 7 and held that the object of appointment of dependent on compassionate ground was to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. If the dependent son was of four years of age at the time of death of the employee and appointment on compassionate ground was sought on attaining the majority, the appointment could not be made. ~~From~~ From this angle also, the applicants cannot seek any appointment because of the absence of the legal right.

12. Considering the entirety of factual and legal position, we come to the conclusion that the O.As are not maintainable and they are, therefore, dismissed..

(D.S. Baweja)
Administrative Member

(Dr. R.K. Saxena)
Judicial Member

/M.M./

ped and compared.