

(u)

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

Registration O.A. No. 639 of 1992

Nirmala Applicant.

Versus

The Union of India
and others Respondents.

...

(By Hon. Mr. S. Das Gupta, Member (A))

In this Original Application No.639 of 1992 filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed that the respondents be directed to show a due consideration for her appointment to a Class-III post ^{in spite of} ~~inspite of~~ Class-IV post which has been offered on compassionate ground.

2. The brief facts of the case are that the applicant's husband, ~~was~~ a class-IV employee in the service of the Railways, was killed in service by some miscreants on 13.1.1988. The applicant who is a matriculate, approached the D.R.M. Northern Railway, Allahabad for appointment on compassionate ground to a Class-III post. She appeared in written test for Class-III post twice, the second time being on 27.4.1991, thereafter she received the impugned letter dated 1.4.1992 (Annexure- A 1) by which she was called for selection to a class-IV post. It was also mentioned therein that she was not found suitable for Class-III posts.

3. The petitioner's case is that being matriculate ^{with} 58.6% marks, she is ~~still~~ qualified for Class-III posts. She did not have English as

5

one of the subject of matriculation examination but she obtained 60% marks in Hindi and as such, she should have been found suitable for some class-III jobs requiring knowledge of Hindi like those in Hindi Section. She has alleged that ^athe number of other persons having similar qualifications ~~should~~ have been given Class-III appointments on compassionate ground and thus she is being discriminated against. The petitioner has also mentioned that under the extant rules of the Railway Board, the candidates applying for appointment on compassionate ground should be subjected to suitability test by a committee of three senior scale officers one of whom should be a personnel officer. The suitability of those proposed to be appointed on compassionate ground should be properly assessed by a appropriate test. In case, the candidate has ~~a~~ necessary minimum qualification for employment in Group-C posts, his suitability for all types of group-C posts in the order of suitability should be judged and recorded by the screening committee which should also clearly indicate ^{the} categories for which the candidate has not been considered suitable. The relevant instructions are said to be contained in Railway Board letter dated 2.11.1980 as amended by the letter dated 16.5.1991. The petitioner's contention is that prior to the amendment letter dated 16.5.1991, the test was to be a rigid one. This was relaxed by the amendment letter dated 16.5.1991 and the word 'rigid' was substituted by

Wf.

- 3 -

the word 'appropriate'. The petitioner further contends that in the letter dated 1.4.1992 (Annexure-A 1) the respondents did not specify the class-III posts for which the applicant has been found unfit / unsuitable.

4. In their counter affidavit, the respondents have admitted that by the amendment letter dated 16.5.1991, the word 'rigid' appearing in the instructions contained in the letter dated 2.11.1989 was substituted by the word 'appropriate'. They, however, contend that the applicant was given ~~two~~ chances to qualify but she failed to do so and as such, she was considered for Class-IV posts.

5. I have heard the arguments of counsel for both the parties and gone through the records carefully. It must be remembered at the outset that the compassionate appointment cannot be claimed as a matter of right and that whether compassionate appointment should be given in a particular case would depend on facts and circumstances of the case and it is for the department to decide whether the applicant in a particular case deserves to be appointed on compassionate ground keeping in view various factors like economic condition of the family of the deceased, the number of family members, the quantum of terminal benefits etc. In the instant case, there is no dispute that the applicant was considered by the department as a deserving candidate for appointment on compassionate ground, the only

W.S.

2

- 4 -

question which is before this Tribunal is whether she has a right to be appointed to a class-III posts.

6. It is not in dispute that the applicant was allowed to appear twice in test to adjudge her suitability for class-III posts. It is also not in dispute that such test was carried out by a committee as prescribed in the relevant instructions contained in the letter dated 2.11.1989. Only dispute is regarding the nature of test to which she was subjected and whether she was found unsuitable for all class-III posts or only some of them.

7. Admittedly, last time she appeared in written test ^{was} on 27.4.1991. The amendment which substituted the word 'rigid' by the word 'appropriate' was issued by the letter dated 16.5.1991 which was subsequent to the date of the written test taken for the second time. The applicant cannot normally, therefore, claim benefit of the amendment contained in the letter dated 16.5.1991 since the same has not been given retrospective effect. However, it is not very clear from the facts on the record as to whether she was tested for all Group-III posts and found ~~not~~ unsuitable in all of them. The relevant para in the counter affidavit in this regard is not revealing. What has been mentioned in para 9 of the counter affidavit in this regard is that "the applicant has been found unsuitable for any of the ~~post~~ ^{popular} under non-technical failure categories Class-III posts." Thus it does

not make it clear whether her suitability was adjudged for all ^{types} ~~counts~~ of class-III posts including those which would require a good knowledge of Hindi.

8. I am unable to accept the petitioner's contention that she should be appointed to a class-III posts ^{because} ~~merely~~ she is matriculate with 58.6% marks. Mere possession of the requisite educational qualification does not confer a right on her to be appointed to a class-III posts. I am also unable to accept her contention that she is being discriminated against in the absence of any fact to prove that the others having similar qualifications which were to class-III posts had the same aptitude/competence or lack of it as the applicant. The question of discrimination ^{what} ~~was~~ arise only if persons similarly situated are treated differently without any reasonable basis for such differentiation.

9. I however, agree with the contention of the applicant that she has right to be considered for Class-III posts according to the provisions contained in Railway Board letter dated 2.11.1989. In case, the petitioner's suitability has been adjudged for all types of group-C posts and she has been found unsuitable in all these posts, the respondents need take no further action in this regard except communicating this fact clearly to the applicant. Thereupon, it will be upto the applicant to accept a class-IV or reject the same and in case of her rejection, the respondents shall have no further liability in this

(a)

- 6 -

regard. However, in case the respondents have not adjudged the suitability of the applicant for all types of Group-C posts, they are directed to put the applicant to a test for adjudging the suitability or otherwise for those types of Group-C posts for which her suitability or otherwise was not earlier determined. In taking such test, the respondents should also abide by the instructions contained in the Railway Board letter dated 16.5.1991 regarding the nature of test to be taken.

10. The petition is disposed of with the above directions. Parties to bear their own costs.

Int.
Member(A)

Dated: ^{January} 5 December, 1991
(n.s.)