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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application Nos. 508/93 & 540/93

Date of Decision: August, 5, 1994

IN O.A. 508/93

Mohammed Khan

Applicant (s)

Versus

Union of India & Others

Respondent (s)

IN O.A. 540/94

S. Trinath Rao

Applicant (s)

Versus

Union of India & Others

Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *No.*

[Signature]
MEMBER (ADMINISTRATIVE)

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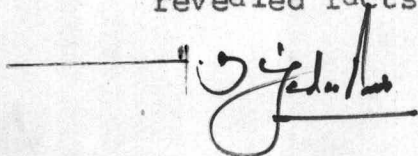
IN O.A.508/93	Mohammed Khan	Applicant
	Versus	
	Union of India & Others	Respondents
IN O.A.540/93	S.Trinath Rao	Applicant
	Versus	
	Union of India & Others	Respondents
IN O.A.508/93	For the applicant	M/s.M.R.Mohanty-2 B.K.Nayak S.C.Mohanty Advocates
IN O.A.540/93	For the applicant	M/s.P.V.Ramdas, P.V.Balakrishna Rao, Advocates
IN BOTH THE OAs	For the respondents	M/s.B.Pal, S.Moharana N.R.Purohit A.K.Misra, Advocates

C O R A M:

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

MR.H.RAJENDRA PRASAD, MEMBER (ADMN): These two cases were heard separately on 13.7.1994 and 15.7.1994, respectively. The facts in contention are similar in both cases. The claims and prayers of the applicants are likewise identical and the contents of the counter-affidavits filed by the (very same) respondents are also akin to one another with only minor variations. A common order is, therefore, delivered on the basis of the revealed facts in both cases, and the minor variations,

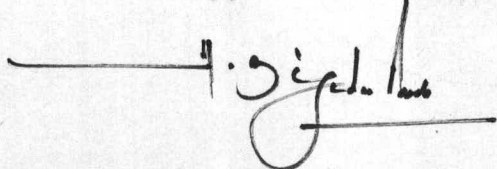


are dealt with at appropriate places in the judgment.

2. (i) In O.A. 508/93 the applicant, Shri Mohammed Khan, an Engine Driver under the South Eastern Railway, was medically de-categorised in June, 1991, was offered an alternate job of Control Clerk in July, 1991, declined the offer and opted instead to retire voluntarily from service in September, 1991, was permitted to so retire, and soon thereafter applied, in December, 1991, for a suitable appointment to his son on compassionate grounds. In September, 1992, the Senior Divisional Personnel Officer of South Eastern Railway conveyed the regret and inability of the authorities to offer any appointment to the applicant's son in a brief communication.

(ii) In O.A. 540/93, the applicant, Shri S. T. Rao, an Engine Driver under the same Railway, was medically down graded on 7.8.1990, was offered an appointment as Stores Issue Clerk, - which incidentally carried lower emoluments, - declined the offer and chose instead to retire voluntarily from 24.1.1994, and was duly permitted to retire. Soon after retirement he applied for a job to his son in terms of Railway Board's order governing appointments on compassionate grounds, and was informed by the same Senior Divisional Personnel Officer, again through a terse communication, that his request was not found acceptable.

3. Both these applications have been filed



under Section 19 of the Administrative Tribunals Act, 1985, seeking directions to the respondents to appoint Shri Mohammed Shoukat Ali, son of the applicant Shri Mohammed Khan (O.A.508/93) and Shri S. Chakradharudu, son of applicant Shri S. T. Rao (O.A.540/93), in suitable vacancies under the provisions of Railway Board Letter No.E(NG)/III/78/RC 1/1 dated 3.9.1983.

4. The respondents admit the essential facts contained in the two applications. The only minor difference made out is that while Mohammed Khan was offered an alternate job carrying the same emoluments which he was drawing as Engine Driver before being medically decategorised, Shri S.T. Rao was offered the appointment of Stores Issue Clerk which carried a lower pay compared to what was earlier drawn by him.

5. In their counter filed in O.A.508/93, the respondents assert that if an employee had more than three years of service left to superannuate normally, at the point of his retirement on medical invalidation, he forfeits the right to press his claim for an appointment in favour of any of his dependents or wards on compassionate grounds (Page 4, Para - 3-C of the counter)

6. In both cases the respondents insist that the appointments under this scheme are offered entirely at the discretion of the competent authority. In reply to O.A.508/93 they state that no scope exists for such appointment once an alternate post carrying the same emoluments is offered to the medically-decategorised

— T. S. G. —

employee and declined by him. This argument is repeated in O.A.540/93 as well, except that the expression 'same emoluments' does not figure in it. In both situations, the Respondents are of the view that once an offer of an alternate job has been declined by the applicant - no matter with, or without, comparable pay - all claims for subsequent appointments to their dependents or wards cease finally and automatically.

7. In O.A. 508/93, they raise a pertinent question as to whether the applicant possesses an "enforceable right" to compel the Railways to grant an employment to his son on compassionate grounds.

8. Thus, the main issues which resolve themselves into specific questions and demand clear answers in these two cases are :

- 1) Are the claims of these applicants covered by the orders of the Railway Board regarding appointments on compassionate grounds ?

And

are the sons of retired employees in these cases eligible or entitled for a favourable consideration under the same scheme ?

- 2) Does a retired employee relinquish all claim for the appointment of his son because the said employee had more than three years left for normal superannuation on the date of his voluntary retirement ?
- 3) Are appointments under the scheme to be made entirely or solely at the discretion of the competent authority; and, alternately,

- 4) Does any right vest ^{at} all in the concerned

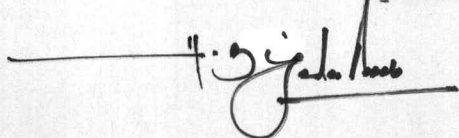


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employee(s), to enforce a claim based on such right derived from the rules on the subject and the instructions and guidelines issued by the Board in this regard ?

9. The most logical approach to the two cases on hand is to find straight answers to these questions on the basis of the record, the arguments advanced by the learned counsels, and on the authoritative views and observations of the Supreme Court on some pertinent issues or aspects which cover the facts of these cases.

10. (a) Appointments on compassionate grounds in the Railways are governed by the instructions contained in Railway Board Letters No.E (NG) III/78/RCI/1 dated 30th April, 1979, 7th April, 1983 and 27th September, 83. These have been annexed to the counter-affidavit in O.A.No.508/93. The relevant provisions, applicable to the present cases, are :

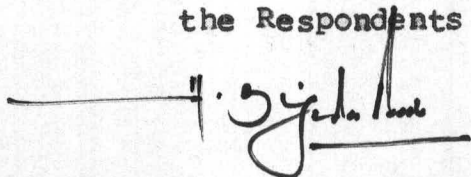
- i) Appointment on compassionate grounds can be made of dependents of employees who are medically incapacitated and found unfit to discharge their normal duties;
- ii) A compassionate appointment may be made when an employee is medically decategorised and found incapable of discharging the duties demanded by his job and when no alternate job carrying the same emoluments can be offered to him;
- iii) Sons of medically-downgraded, voluntarily-retired employees are eligible for compassionate appointment;
- iv) Normally all appointments shall be made within a period of 5 years from the date of voluntary retirement of an employee on medical grounds;
- v) Dependents of medically incapacitated employees should be offered an appointment, if selected, and absorbed under the third category of priorities specified under the rules;



vi) A time-limit of one month is expected to be adhered to within which appointments should be given against priority category mentioned above, subject to availability of vacancies.

(b) The Railway Board in their letter dated 3.9.1983 decided that even where the employee has been offered an alternate employment on comparable emoluments but declines it, preferring to retire instead, a compassionate appointment could well be considered in favour of an eligible son, dependent or ward of such employee at the discretion of the competent authority.

11. In the cases under discussion, the applicants were found medically unfit to be retained as Engine Drivers. One was offered an appointment carrying the same emoluments as he was drawing earlier. The other was offered a job carrying lower emoluments. Both declined the offers made to them. The officials, regardless of whether or not they were offered jobs carrying the same or lower emoluments, had the liberty to decline the offer, and to opt for voluntary retirement. They chose to do so. And they were duly permitted to retire voluntarily on medical grounds. According to the Rules, the officials were at liberty also to apply for suitable jobs to their sons. The applications made under such circumstances are required to be considered, as per the same rules. The applications are seen thus to fulfil all conditions stipulated in this regard. Even the Respondents have not really refuted or questioned



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the basic eligibility of the sons of these applicants for being so considered. Accordingly, there does not seem to be any ostensible reason why their cases should not have received a favourable consideration for appointment under priority category No.III, subject to availability of vacancies, since they were fully in a legitimate field of consideration on the basis of the terms and regulations evolved by the Railways. This, in short, is the position with regard to question (1) para 8 above.

12. Coming to question No.2 (Page 4, para 8(2)) the Respondents have argued in both these cases that where an employee has ^{not} attained the age of 55 years at the time of his voluntary retirement, he forfeits the privilege of applying for a job to his son/ward on compassionate grounds. I find this argument incomprehensible. The following is the relevant instructions from the Railway Board :

" After careful consideration of the matter it has been decided that in cases where a railway employee is offered alternative employment on the same emoluments but it is not accepted by the employee and he chooses to retire from service, compassionate appointment of an eligible ward of the employee, if so requested by him, could be considered at the discretion of the competent authority provided that if the employee has less than 3 years of service before superannuation (i.e. he has passed the age of 55 years) at the time the decision is taken, personal approval of the General Manager has to be obtained before the order of appointment on compassionate ground is made."

(Railway Board Circular No.E (NG) III/78/
RCI/1 dated 3.9.1983)

A close reading of this instruction would

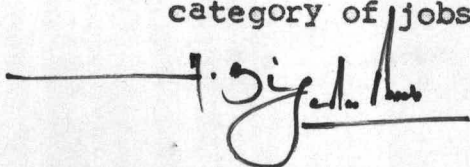
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show that it was really the intention of the Railway Board to alert the zonal and divisional authorities against situations where this wholly rehabilitative measure of compassionate appointments could be unscrupulously misused. The Board was evidently conveying that, where an employee proceeds on medical decategorisation (and voluntary retirement) after quite fully attaining the age of 55 years, he is probably attempting to extract an unfair advantage, to bend the provisions to serve his narrow personal interests, by agreeing to forego but a negligible portion of his remaining service, secure in the knowledge that this would also get him the parallel or attendant benefit of securing a job for someone in the household. If not discouraged, this would perhaps lead to some employees opting for voluntary retirement within one, two, or three years of their schedule retirement on normal superannuation, thus garnering to themselves the benefit of maximum service, as also the advantage of securing an appointment to their wards/dependents. Since such a contingency is completely undesirable, the Board obviously desired that the authorities would be extra cautious in dealing with such applications. And to this end, the instructions prescribe the personal approval of none below the General Manager before any appointments are offered or made in all cases where an employee was 55 or above at the time

of retirement. While this is the only import of the Board's letter, the respondents seem to misconstrue the instruction and ^{to} give it a wholly unacceptable construction that no one below the age of 55 years could apply for a job to his dependent/ward. I do not find it possible to agree with this interpretation.

13. The next question which needs an answer is whether appointment on compassionate grounds can be said to depend entirely on the discretion of the competent authority. It is in this context that the other question raised by the respondents, - viz., whether the applicants possess an enforceable right for compelling the Railways to grant employment - has to be scrutinised. The obvious position is that no enforceable right exists in such matters. The scheme is based largely on compassion and devised solely as an ameliorative measure with a view to relieving the financial distress of families of employees in situations of the death of the bread-winner or his premature retirement. The question of invoking or enforcing any right cannot arise under such circumstances.

14. Having said this, it needs to be stressed too that, at the same time, the entire scheme is governed by clearly-stated terms and conditions, regulations, clear-cut procedures to be observed and considerations to be extended to such cases, besides laying down other essential details such as eligibility, qualifications, category of jobs and the time-frame to be observed.

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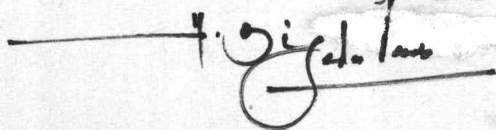
Nothing is left vague and very little is left to singular or complex interpretations.

When such clear, unambiguous guidelines exist, normally no application which fulfils all conditions under the Rules can be rejected, - unless the applicant is found in any manner to be basically ineligible, unqualified or particularly unsuitable for appointment, or if his appointment is against public interest.

15. When one talks of discretion what is referred to is a fair and judicious discernment of facts and not an unqualified power to reject. Discretion would in reality signify a duty and an obligation ^{which is} cast up on a person or authority in whom it is vested to act fairly, in good faith, without bias and in a judicial temper - elements, incidentally, which also constitute natural justice. Rejecting a case out of reckoning without sufficient justification would not denote discretion but might actually amount to an indiscretion.

16. It will be instructive to quote briefly the observations of the Hon'ble Supreme Court on the subject of discretion. In Supreme Court Advocates-on-Record Association v. Union of India (AIR 1994 SC 268) Their Lordships of the Hon'ble Supreme Court observed as under :

" The rule of law envisages the area of discretion to be minimum, requiring only the application of known principles or guidelines to ensure non-arbitrariness, but to that limited extent, discretion is a pragmatic need. Conferring discretion upon high functionaries and whenever feasible, introducing the element of plurality by requiring a collective decision, are further checks against arbitrariness. This is how idealism



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and pragmatism are reconciled and integrated, to make the system workable in a satisfactory manner"

17. Now, it is noticed that in the scheme formulated by the Board, a three-man committee of senior officers is indeed envisaged under the Rules to examine and decide cases of appointments on compassionate grounds. Thus, the element of plurality referred to by Their Lordships is built into the rules themselves and is, therefore, fully required to be fulfilled. But it is not clear from the counter whether the cases of these two candidates went before a three-man committee and decided on merits by them. If this has not been done, it has to be inferred that the decision arrived at by the concerned authority was not based on the collective and objective discernment of merits by a three-man body of senior officers, as envisaged by the rules, but may have been the result of the exercise of individual judgment based on the subjective perceptions of one officer.

18. This question of discretion needs to be addressed in greater detail for the reason that the respondents seem to base an important part of their argument on this. They are clearly of the view that inasmuch as appointments on compassionate grounds are given at the discretion of the authorities, the question as to whether or not an applicant should be appointed under the scheme is left entirely for them to decide.

(a) The expression, 'discretion', occurs



in para-3 of Board's letter No.E.NG.III/78/RC. I/1 dated 3.9.1983. The context is as under:

"... After careful consideration of the matter it has been decided that in cases where a Railway Employee is offered alternative employment on the same emoluments but it is not accepted by the employees and he chooses to retire from service, compassionate appointment of an eligible ward of the employee, if so requested by him, can be considered at the discretion of the competent authority."

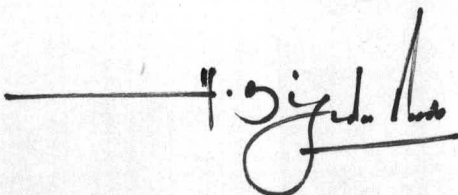
19. Thus the discretion, available in the limited context of a specific situation - offer of an alternate job carrying the same emoluments - would not appear by itself to confer unlimited freedom of action on any one; the solitary context in which the expression 'discretion' occurs merely confirms that the wards of dependent of a medically-decategorised, voluntarily-retired employee can also be considered for appointment at the discretion of the competent authority. But contrary to this position, the respondents place a heavy reliance on what in their view is an absolute, unfettered discretion, as can be seen from the following:

- " He sought for an employment assistance in favour of his son on compassionate ground which was not accepted under the discretionary power of the competent authority..."

(Page-3, of counter in O.A.508/93)

- " Whether the employee had less than three years of service i.e., above 55 years of age, appointment on compassionate grounds to an eligible ward may be given/granted under the discretionary powers of the General Manager..."

(Page - 4, Ibid)



- " It is also stated that such consideration of appointment on compassionate grounds is not on the basis of any right but purely on the discretionary power vested with the competent authority ..."

(Page - 5, Ibid)

- " Employment assistance in favour of his son on compassionate grounds was not accepted under the discretionary power of the competent authority ..."

(Page No.2 of Counter in O.A. 540/93)

- " Whether cases coming under para 'A' and where an ex-employee had less than three years of service i.e., to say he is 55 years of age, compassionate appointment to an eligible ward may be granted under the discretionary power of the competent authority ..."

(Page - 3, Ibid)

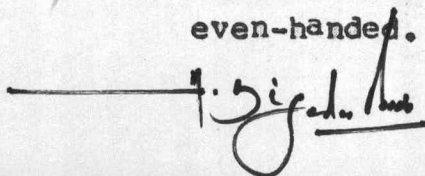
- " Consideration of employment assistance to his ward on compassionate grounds comes under the discretionary power of the competent authority ..."

- " Discretionary power of the competent authority was being exercised under -Annexure-2 after due consideration fairly and it was done in a fair manner..."

(Page-4, Ibid)

From each of the above observations, it is apparent that a certain measure of discretion was invoked, appropriated and exercised even if the rules grant discretion only in a particular situation referred to para 17(a) above.

20. Even assuming that a measure of discretion exists - and it can not be denied that some latitude and discretion is undoubtedly available to the authorities - it is doubtful if it can be invoked or exercised in a manner which is not at once open, equitable, and even-handed. The discretion exercised has to be



has been discussed at great length and elaborated by the Hon'ble Supreme Court in Union of India v. Hindustan Development Corporation (AIR 1994 SC 988). It would be edifying to note the views and observations of Their Lordships in the case stated, and to see if these may be related to the facts of these ^{two} cases.

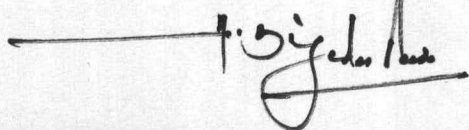
23. Answering the questions as to what constitutes an expectation and what is its nature, Their Lordships observe as under :

" For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope, nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire, or a hope may be, and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences ". (Para - 28)

To this extent, the hopes or desires which may have been entertained by the applicants in these two cases do not amount to an assertable expectation or a legal right. At the initial stage, they are no more than expectations, neither more, nor less. However, Their Lordships also go on to observe -

".. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in [a] regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense." (Ibid)

Applied to the facts of the present cases, the expectation that may have been entertained by the



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applicants therefore did 'not amount to a right in the conventional sense'.

24. This partly answers the question raised by the respondents as to whether any right vests in the applicants to compel them to provide a job for their sons. It is abundantly clear that no such right exists absolutely. Nevertheless, it would be prudent, at this stage, to take note of the portion relating to 'sanction of law or custom or an established procedure, followed in regular and natural sequence' mentioned in the said para.

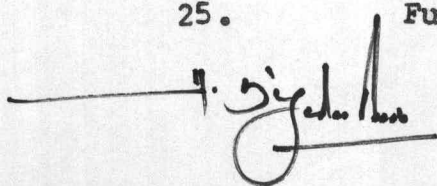
Quoting with approval the views of H.W.R. Wade in Administrative Law, 6th Edition, Their Lordships chose to reproduce an extract from the book :

"... the Courts now expect government departments to honour their published statements or else to treat the citizen with the fullest personal consideration. Unfairness in the form of unreasonableness comes close to unfairness in the form of violation of natural justice and the doctrine of legitimate expectation can operate in both contexts."

(Para- 29)

The above view can be construed to mean that, firstly, the officers and functionaries of the Government shall be required to stand by their own stated policy and also to accord to a citizen the fullest personal consideration in consonance with, and within the ambit and provisions of, the same policy. Secondly, it also means that an administrative decision which is prima-facie unreasonable is liable to be scrutinised in the light of the principles of natural justice.

25. Further on in course of the same judgment,

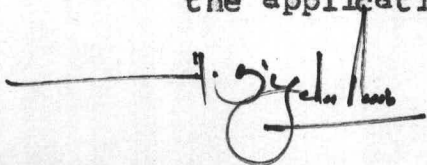


Their Lordships quote approvingly the views of Lord Denning in Breen vrs. Amalgamated Engineering Union (1971) 2 Queens Bench Division 175 :

" If a man seeks a privilege to which he has no particular claim - such as an appointment to some post or other - then he can be turned away without a word. He need not be heard. No explanation need be given ... But if he is a man ... who is being deprived of his livelihood, then reasons should be given why he is being turned down ... I go further. If he is a man who has some right or interest, or some legitimate expectation, of which it cannot be fair to deprive him without a hearing or reasons given, this should be afforded him."

(Para 31)

26. The obvious implication of the above observations, in their applicability to the present cases, is that, if the applicants or their dependents had been seeking a privilege to which they had no claim, the authorities were perfectly justified to turn down their requests without even an explanation. But if they had some right or interest or legitimate expectation in pressing their claim, then it was not correct on the part of the authorities to reject their case without either giving them a hearing or explaining the reasons for the rejection. True, the Rules do not envisage a personal hearing in such matters. That is precisely why a speaking order, giving reasons for the rejection, was all the more necessary in these cases. But it is noticed from Annexure-7 to O.A.508 of 1993 and Annexure - to O.A. 540 of 1993 that the communications turning down the applications for compassionate appointment were



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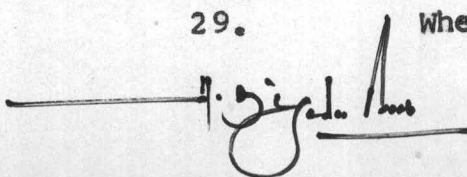
terse and cryptic without any indication whatsoever of the reasons which prompted the authorities to reject them. Such summary and unexplained rejection falls short of the requirements.

27. There is undoubtedly one situation which would justify a rejection of requests of this kind, viz., public interest. It is entirely possible that an appointment in public service could well go against public interest. This is unquestionably a valid ground for rejection as may be seen from the following observations of Hon'ble Supreme Court in the judgment (supra).

".. The protection of such legitimate expectation does not require fulfilment of expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then the decision-maker should justify the denial of such expectation by showing some overriding public interest."

28. Applying the above observation to the present cases, it was open to the authorities to have rejected the cases on the grounds of overriding public interest. But no such ground has been adduced - nor can it be seriously imagined that a simple appointment on compassionate grounds on the basis of well-defined Rules governing such appointments would in any way militate or work against public interest. Thus, even this exception to the general rule cannot be invoked in the present cases.

29. When exactly would a legitimate expectation



arise ? To find an answer to this, it would be necessary to revert to the 'Custom or established procedure' referred to in para 19 above. The following observations of Apex Court in the judgment (supra) are specially relevant in this context :

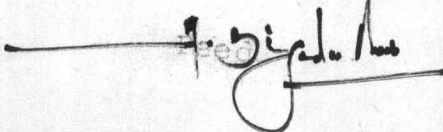
".. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact..."

30. These remarks, when applied to the circumstances of the present cases, would translate thus: an 'established procedure' was indeed in existence in the Railways in the form of the very rules which govern and regulate compassionate appointments; the appointments made in the past under these rules, - and which were very likely to be within the knowledge of the applicants, - were enough to reinforce the expectations entertained by them; and these were expectations which were within the powers of the respondents to fulfil by virtue of the authority placed in them by the same rules. Such

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being the case, it would not be incorrect to hold conclusively that : the applicants had a clear locus standi to stake a claim under the rules; there was a distinct basis and foundation to their expectations; but these expectations were not fulfilled although it was within the powers of the respondents to fulfil them; quite conceivably, similar expectations entertained by at least some of other applicants before them had been fulfilled by the respondents in the past lending additional strength and edge to their initial expectations. So, inasmuch as no explanation has been given nor any plausible grounds adduced for such non-fulfilment, it has to be concluded that the respondents have acted less than fairly in the instant cases, because the doctrine of legitimate expectation essentially imposes an obligation to act fairly and openly. The rejection in these cases amounts thus to arbitrariness.

31. In the sphere of state action, the paramount need for transparency and non-arbitrariness has long been recognised in a series of far-reaching judgments by the Supreme Court. Of late, the need and the notion of non-arbitrariness has moved inevitably closer to concepts such as the Rule of Law, Natural Justice and Legitimate Expectation. Just how closely these concepts interact and derive mutual reinforcement may be seen from the observations of Hon'ble Supreme Court in Food Corporation of India vs. Kamadhenu Cattle



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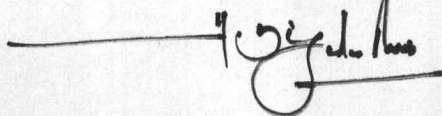
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Feed Industries (1993 AIR SCW 1509), quoted by Their Lordships in the judgment already cited, viz. Union of India vs. Hindusthan Development Corporation (AIR 1994 SC 988):

(Paras 7 and 8 of AIR)

"... In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law. A public authority possess powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fair play in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

The mere reasonable or legitimate expectation of citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in a larger public interest where in other more important considerations



may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and with-stand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

32. In view of the circumstances attendant on these cases, and in the light of the views and observations of the Hon. Supreme Court cited, it may be taken as established that the legitimate expectations which came to be entertained by the applicants in these cases got effectively frustrated without adequately-stated reasons or justification. The question which arises next is whether a judicial review can be sought or is admissible in every case where someone's legitimate expectations are belied. In other words, can a Court or Tribunal interfere merely on the ground that a person's legitimate expectations have not been fulfilled? The answer to this is again provided by the judgment of the Hon. Supreme Court (Supra):

" To qualify as a subject for judicial review, the decision must have consequences which effect some persons other than the decision-makers..." (Para 32)

And again:

" A legitimate expectation can provide sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the Court to apply for judicial review."

And -

" If it is a question of policy, even by way of change of old policy, the Courts cannot interfere with the decision."

— 7. Singh

33. The above observations clearly lay down the limits of interference by the Courts and Tribunals, but also provide pointers as to the circumstances which would justify a judicial review in such matters.

To apply the above observations to the cases on hand, it would not have been open to this Tribunal to interfere with the decision of the authorities if it was based on a policy, or even on a change of an existing policy. But the rejection of the applicants' claims are not based on any earlier or new policy. The policy is itself spelt out in the Rules and these continue to hold the field - which means that there is no change of policy in the matter. A judicial review of the present cases is therefore possible and admissible. A judicial review is justified also because the decisions of the authorities in these cases have consequences which effect persons other than themselves.

Even so, does the Doctrine of Legitimate Expectation, or its negation, warrant direct interference by straightway granting or ordering relief? The answer is a clear and unambiguous 'no'. This is what the Hon. Supreme Court has to say on this aspect :

".. The Doctrine [of Legitimate Expectation] does not give scope to claim relief straightway from the administrative authorities as no crystallised right as such is involved" ..

and

".. Legitimate Expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief as very much limited.."

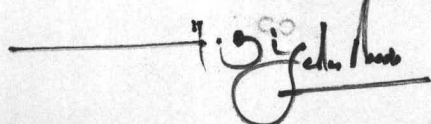


34. The observations of the Hon. Supreme Court, taken together with what has been stated in para 22 *et al.*, provide a comprehensive answer to the question raised by the respondents which is referred ^{to} in para 7 above. The resultant position can be summed-up thus :

- 1) The applicants have no vested right to invoke or enforce in support of their claim. This inference is, however, qualified by the fact that their legitimate expectations, based on the respondents' stated policy and past practices, have been belied on unstated grounds.
- 2) The decision of the respondents is marred by the fact that no clear or overriding reasons have been given to justify a departure from the stated policy in these two cases.
- 3) The applicants have earned a right to seek a judicial review of the respondent's decisions.

35. Having arrived at the above conclusions, it is to be stated next that this Tribunal has no power to substitute its own discretion for that of a competent authority. It is not open to it to order selections or appointments to any post which is exclusively and entirely in the administrative competence of the concerned authorities. In this connection the following observations of the Hon. Supreme Court in the case of *State Bank of India vs. Samarendra Kishore Endow* (1994 (1) SIR 516) are relevant :

"... the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It "is not an appeal from a decision, but a review of the manner in which the decision was made." In other words, the power of judicial review is meant "to ensure that the individual receives fair treatment and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is



correct in the eyes of the Court."

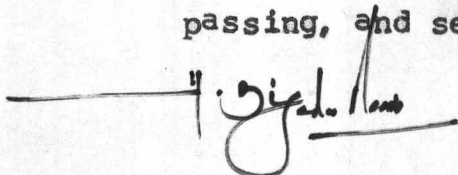
36. The views and observations cited from Para 22 onwards may well be broken into various components as under :

- A. Mere existence or entertaining of a legitimate expectation does not amount to an assertable expectation. It is not a right in the conventional sense.
- B. The decisions of public functionaries are expected to :
 - i) be in keeping with the stated policies, or - where a departure from declared policy is contemplated- on overriding public interest, or, on a new or changed policy;
 - ii) be rooted in (a) natural justice, i.e., be fair, open, equitable and justifiable and (b) the rule of law, depending very little on discretion;
 - iii) be judicious and prudent where discretion is exercised; and
 - iv) be in consonance with past practices.
- C. Mere frustration of ^a legitimate expectation does not by itself constitute a valid or total ground for seeking a reversal of an administrative or executive decision; ^a best it opens up an avenue for invoking judicial review.
- D. A judicial review cannot be sought to earn a specific relief straightaway.

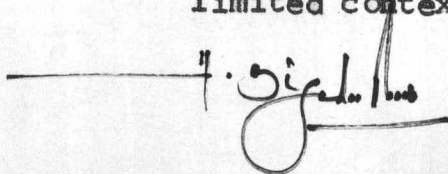
37. Another important aspect of one of these cases remains still to be discussed. In para 3(c) of their counter in OA 508/93, the following is found:

" The applicant had participated in the illegal strike of August, 1981 but punishment was imposed on him thrice, apart from the illegal strike."

This is a revealing statement although made in passing, and seemingly quite casually. It reveals that



one of the reasons, perhaps an important reason, for rejecting the application of Shri Mohammed Khan was the fact that he had an unsatisfactory service-record, besides participating in an illegal strike by Railwaymen some years ago. If these indeed were the reasons - even if one of the many reasons - which led to the rejection, it has to be inferred that the reply contained in DRM(P) Khurda Road letter No.P/R/EA/Opt/Md.Khan dated 4.8.1992, turning down Mohammed Khan's representation, was not a rejection simpliciter but was actuated by certain acts and perceived deficiencies during the applicant's past service. It is stated that he had participated in an illegal strike. It is also mentioned that he had had a bad service-record. If he had been a participant in an illegal strike, he may also have inevitably suffered the same disabilities or subjected to same penalties which visited all strikers. The fact of his participation in a strike long past cannot be exhumed in isolation and evoked in the totally unrelated context of the present case. Likewise, if his record of service was even otherwise unsatisfactory, it may safely be presumed with a degree of certainty that his deficiencies and lapses might have been adequately noticed with a view to initiating corrective, reformative or punitive action at some appropriate stage(s) of his career. Even here, it would be wholly incorrect to connect the deficiencies in his previous service-record to the specific and limited context of the present case. Participation in



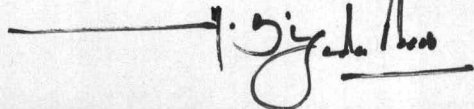
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strikes, shortcomings in the performance of duties and compassionate appointments are not issues which are necessarily interlinked or dependent on one another. It needs scarcely be added that such linkages would eventually prejudice the applicant beyond relief or repair, and are on that very count unfair and impermissible as sound criteria for appointments granted under a rehabilitative scheme.

38. A parallel exists between what has been stated in the preceding para and some pronouncements by the Hon. Supreme Court. In the case of State of Bihar and others vs. Shiva Bhikshuk Mishra reported (1971) 2 SCR 1991) Their Lordships observed as under:

"... The form of the order is not conclusive of its true nature and it might merely be a misconduct. It may be that an order which is innocuous on the face and does not contain any imputation of misconduct is a circumstance or a piece of evidence for finding whether it was made by way of punishment or administrative routine. But the entirety of circumstances preceding or attendant on the impugned order must be examined and the overriding test will always be whether the misconduct is a mere motive or is the very foundation of the order."

In the case of Anoop Jaiswal v. Union of India and another (reported in 1984(2) SCR 369) the learned Judges observed as under :

"... Whether the form of the order is merely a camouflage for an order of dismissal for misconduct, it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is in reality a cloak for an order of punishment the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon employees."



In yet another case of Jarnail Singh and others vs. State of Punjab and others reported in (AIR 1986 (2) SC 1626) Their Lordships observed as under:

".. It is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court, in such case, will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency or not."

The cases referred to above dealt, of course, with the termination of services of probationers. They did not relate to appointments on compassionate grounds. The law laid down by the Apex Court is, however, applicable in its essentials to this case (O.A.508/93) as well, because the principle underlying it is the same.

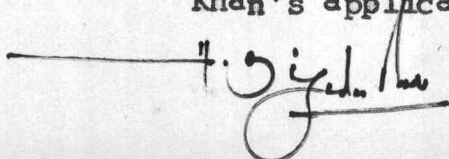
39. The upshot of the above observations is that if the attendant circumstances and revealed factors leading to the issue of an order yield-up a reasonable suspicion that it was based on grounds of past misconduct and unsatisfactory performance of an employee, the Court has no choice except to lift the veil and peer behind it to locate the real grounds for the issue of such an order, even if the order itself is couched on innocuous terms. And if it has reasonable grounds to conclude that a recollection of the past misconduct constitutes the very foundation of the eventual order, then the right conferred by the Rules on the applicants has to be ordered to be restored to them.

40. The tell-tale revelation in the counter-affidavit concerning Mohammed Khan's participatio

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in a strike and his past deficiencies cannot have been confined to this official alone. In a large organisation such as the Railways not every employee can be equally or consistently brilliant and it is easy to guess that there would be other officials who had displayed some of the same or other deficiencies in the performance of their duties. It is possible that their deficiencies, like those of the applicant, may well have been noticed suitably in some form. In the instant case, however, the deficiencies have ^{specially also} been viewed as an impediment to the appointment of his son, ^{and} been cited as a reason by the respondents. Exactly similar is the position with regard to his participation in a strike. When these are specifically mentioned as reasons for the eventual decision, the rejection cannot be accepted as a routine administrative decision; the outlines and contours of a punitive nature begin to emerge clearly around it. These no longer remain in the realm of mere motivation but acquire a distinct shape of foundation upon which the decision rests. It becomes inescapable, therefore, to lift the veil from this innocuous and seemingly routine order. What is revealed behind this veil does not stand up to scrutiny against the established norms of fairness. The impugned order merely cloaks the underlying unfairness.

41. Considered in the light of this aspect as well, the revelation by the respondents casts an adverse light on the manner and the reasons why Mohammed Khan's application for compassionate appointment of his

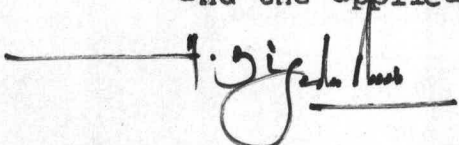


son was rejected.

42. To summarise the entire preceding discussion, the conclusions and findings in these two cases are as under:

- 1) the applicants, S/Shri Mohammed Khan and S. T. Rao, are quite within their entitlement to apply for compassionate appointments to their sons. Their cases are fully covered by the provisions governing compassionate appointments issued by the Railway Board.
- 2) S/Shri Mohammed Shoukat Ali and S.Chakradharudu (sons of the applicants in O.A.508 and 540 of 1993, respectively) are quite eligible to be considered for appointment on compassionate grounds.
- 3) The discretionary powers available to the authorities have been used in a manner which is impermissible.
- 4) The representations of the applicant's son have been rejected without speaking orders and without assigning any reasons.
- 5) The application made by Shri Mohammed Khan (O.A.508/93) has been turned down on extraneous and untenable considerations.

43. Against the backdrop of the aforesaid elaborate discussions, it is directed that the representations filed by S/Shri Mohammed Khan and S. T. Rao for the employment of their sons be considered afresh in the light of these observations. It is fervently expected that, while re-examining the applications, the provisions of Section IV of the Railway Board letter dated 7.4.1983, specially those referring to compassion being the key-note and watch-word, shall be kept in view. This may be done within a period of 90 days from this day and the applicants be suitably apprised of the

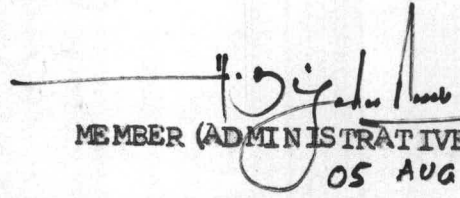


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outcome within that period.

44. Thus both O.A. Nos. 508/93 and 540/93 are disposed of. No costs.


MEMBER (ADMINISTRATIVE)
05 AUG 94.

Central Administrative Tribunals
Cuttack Bench, Cuttack
dated the, 5, 1994/ B.K.Sahoo