

X/5

Reserved

Central Administrative Tribunal, Allahabad.

Registration No. O.A.190 of 1986.

Surendra Mohan Applicant

Vs.

Union of India
and others Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

In this application under section 19 of the Administrative Tribunals Act XIII of 1985, the applicant prays for a direction to the respondents to appoint him as a class III employee on compassionate ground consequent to the death of his father in service.

2. The material facts of this case are that the applicant was appointed as a casual Khalasi and posted at Lucknow on 1.4.1976. The applicant worked on that post till 19.10.1976 when he was removed from service on account of his involvement in a criminal case under sections 363, 376 and 511 of the Indian Penal Code. On trial, the Assistant Sessions Judge, Lucknow released the applicant on 8.1.1978 after giving him the benefit of the first offender under the Probation of Offenders Act, 1958 (hereinafter referred to as the Act) on his furnishing a personal bond of Rs. 2000/- with two sureties of the like amount and for getting good behaviour for a period of two years. Ram Lal, the father of the applicant was also in Railway service but he died on 26.4.1980.

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Thereafter, the applicant's mother applied to the respondents on 16.5.1980 to employ her son, the applicant on compassionate ground but despite favourable reports of several departmental authorities, the respondents did not give any job to the applicant on compassionate ground to which he is entitled under the law.

3. The application has been contested on behalf of the respondents and it has been pleaded by them in their counter affidavit that the applicant was prosecuted in a criminal case under sections 363, 376 and 511 IPC and he remained in Police custody for more than 48 hours and as such, his services as Khalasi were terminated on 19.10.1976. The case of the applicant for appointment on compassionate ground was considered by the General Manager, Northern Railway, respondent no.2 but he ultimately came to the conclusion that since the applicant was convicted on a charge involving moral turpitude, he was not fit for appointment in the railway service. The applicant is, therefore, not entitled to his appointment on any ground under law. The applicant filed his rejoinder reiterating the ground taken by him in his application and further stated that his release on probation cannot be considered to be a disqualification to get employment and the respondents have wrongly refused to give him employment.

.3.

4. We have carefully considered the respective contentions of the parties and have also perused the record. Some of the facts of this case are not in dispute. It is an admitted fact that for about 6 months, the applicant had served the railway administration as a casual Khalasi but on account of his involvement in the criminal case under sections 363, 376 and 511 IPC, he was removed from service. The applicant does not want his reinstatement as a casual Khalasi after his release on probation and it is also not in dispute that the father of the applicant was working in Machine Shop under the respondents and he died on 26.4.1980. It is also not in dispute that after the death of his father, the applicant's mother moved an application, copy annexure 1, to the Deputy Chief Mechanical Engineer, C&W Shops Alambagh, Lucknow- respondent no.3 for appointing the applicant as a Clerk under him. It is also not in dispute that this application given by the mother of the applicant was ~~perused~~ ^{processed} further. The applicant was called for test and interview and his case was recommended by the departmental officers for appointment as a Class III employee on compassionate ground. The General Manager, however, did not agree with the recommendations and turned down the request and recommendations on the ground that the applicant having been involved in a criminal case involving moral turpitude, was not a proper person for appointment in railway service.

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5. The applicant has placed his reliance on ^{Protection of Offenders} Section 12 of the Act which lays down that notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. The case of the applicant is that in view of clear provision of Section 12, his conviction under sections 363, 376 and 511 IPC cannot be taken as his disqualification for appointment in the railway department. The provisions of section 12 of the Act were considered by the Hon'ble Supreme Court in the case of Shankar Dass Vs. Union of India and others (1985 (2) S.L.R.-109) and it was held that the order of dismissal from service consequent upon a conviction is not a "disqualification" within the meaning of Section 12 of the Act. It was further laid down that there are statutes which provide that persons who are convicted for certain offences shall incur certain disqualifications and Chapter III of the Representation of the People Act was quoted as a statute providing disqualification for Members of Parliament and State Legislatures on conviction.

6. The Punjab and Haryana High Court in the case of Sowarn Singh Vs. State ^{Bank of India} (1986 (2) SLJ-171) had considered the applicability of the provisions of Section 12 of the Act and their effect in service matters. We will like to quote below the observations of Punjab and Haryana High Court made in this connection :-

"..... It has been authoritatively held by the Supreme Court in Shankar Dass's case (Supra) that a person dismissed from service consequent upon conviction will not suffer any disqualification under certain other statutes which provide so, because of the bar of Section 12 of the Probation of Offenders Act. In view of that, the plaintiff is not entitled to seek protection of section 12 of the said Act against his dismissal. Release on probation of good conduct may not be a disqualification for contesting the elections of any statutory body but a person could still be dismissed from service if he was convicted by a criminal court, though released on probation, if the offence for which he was convicted involved moral turpitude. "

7. We are, therefore, of the view that Section 12 of the Act on which much reliance has been placed on behalf of the applicant does not remove the obstacle of his conviction in ^a ~~the~~ case under sections 363, 376 and 511 of the IPC from his way. The offence punishable under sections 363/376/511 IPC is an offence involving moral turpitude. We are further of the view that the Assistant Sessions Judge, Lucknow had wrongly released the applicant on probation in this case. As a matter of fact, an offence punishable under section 376 IPC is punishable with imprisonment for life and the applicant could not be released on probation in this case in view of the specific

X/10


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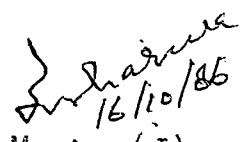
provisions of Sections 3 and 4 of the Act.

8. In Mustaq Vs. State (AIR 1954 Allahabad -580), a Division Bench of the Allahabad High Court had held that Section 4 of the Act does not apply to a person who is convicted of an offence punishable for death or transportation for life. It was further held that an offence under section 376 IPC is punishable with transportation for life and the benefit of the Act could not be given to the accused in such a case.

9. In view of this legal position, the recommendation of the candidature of the applicant by certain officers of the department cannot be taken as a good ground for his appointment on compassionate ground consequent upon the death of his father in harness. We are, therefore, unable to help the applicant in any manner in the matter of his appointment.

10. The application is accordingly dismissed but the parties are directed to bear their own costs.


Member (A)


16/10/86
Member (J)

Dated 16.10.1986
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