

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
CIRCUIT AT INDORE

O.A. NO.836/1998

This the 1st day of September, 2003.

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

HON'BLE SHRI J.K. KAUSHIK, MEMBER (J)

Vinay Kumar S/O Kanhaiyalal Porwal,
R/O Shanti Nagar, Ratlam (MP).

... Applicant

(By Shri G. L. Gupta, Advocate)

-versus-

1. Union of India through
Shri V.D.Gupta, General Manager,
Western Railway, Churchgate,
Mumbai-400020.

2. Shri D.N.Mathur,
Divisional Railway Manager,
Western Railway, Do-batti,
Ratlam.

3. Suresh Kumar Nayar,
Khallasi, Engineering Department,
C/O Sr. Divisional Engineer (HQ),
Western Railway, Ratlam (MP).

4. Surendersingh M.,
Gangman, under Chief Permanent
Way Inspector (North),
Western Railway, Ratlam.

... Respondents

(By Shri Y.I.Mehta with Shri H.Y.Mehta, Advocate)

O R D E R (ORAL)

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A) :

Applicant's father Shri Kanhaiyalal Porwal was working as Fitter Grade-III in Carriage & Wagon Department Down Yard, Western Railway, Ratlam prior to his retirement. He made an application on 20.2.1996 for engagement of applicant as casual labour as a special case on the analogy of sanction granted in favour of respondents 3 and 4 S/Shri Suresh Kumar Nair

16

and Surendersingh M. According to applicant, respondents 3 and 4 were appointed as fresh casual labour on the recommendations of Private Secretary to Minister. When respondents did not appoint applicant, ^{his father} had filed O.A. No.298/1997 before the Tribunal which was disposed of by order dated 13.1.1998 (Annexure A-4) with observation/direction to respondents that if applicant's son makes a representation to the General Manager, the General Manager shall suitably reply by a speaking order. Applicant made a representation accordingly on 16.2.1998 which was rejected. The learned counsel of applicant contended that applicant's representation was rejected contrary to his right of equal treatment and opportunity under Articles 14 and 16 of the Constitution. Applicant has sought that respondents 1 and 2 be directed to accord sanction for applicant's appointment as fresh casual labour like respondents 3 and 4.

2. The learned counsel of applicant stated that applicant's father had been ill prior to his retirement, however, he retired on superannuation without medical decategorisation. The learned counsel stated that instructions existed that applications of sons of Railway employees who are about to retire may be considered for employment with the prior approval of the General Manager. He referred to Railway Board's letter dated 30.1.1961 in accordance with which a ward of Railway servant has a privilege of appointment as casual labour/substitute. Applicant has challenged Annexure A-2 which is enclosed with Annexure-A dated 2.9.1998 rejecting applicant's request for appointment

11

as a fresh face casual labour stating that there is no provision to give appointment to each and every unemployed ward of retired employees and and that the "rule provides for compassionate appointment to widow/wards of employees who die while in service or medically decategorised. This rule cannot be made applicable to wards of retired employees". However, in case applicant fulfils the eligibility criterion, he can apply for recruitment to be made by the Railways either directly from open market or through the Railway Recruitment Board, and that he has to compete with others in the selection for appointment in the Railways. The learned counsel relied on 1986 (1) SLJ 54 (CAT) : Smt. Munni Devi v. General Manager, Northern Railway & Ors., decided by C.A.T., Delhi on 7.2.1986.

3. The learned counsel of respondents, at the outset, drew our attention to respondents' application dated 10.12.1999 stating that applicant has wrongly arrayed the Union of India through persons by name and more so respondents who are working as Khalasi and Gangman. The learned counsel stated that the O.A. is liable to be rejected as not maintainable in this light.

4. We find that indeed the Union of India has been arrayed through persons by name as also respondents 3 and 4 who are functioning as Khalasi and Gangman. As per Government instructions, the Union of India can be arrayed through a General Manager of the Railways by designation and no one can be arrayed by name unless there are allegations of mala fides against him. While from the records it is clear that allegations of mala fides have not been brought home, respondents 1 and 2 have been unnecessarily arrayed as respondents

by name. In the interest of justice, in the present O.A., the Union of India is deemed to be represented through (1) General Manager, Western Railway, Churchgate, Mumbai, and (2) Divisional Railway Manager, Western Railway, Do-batti, Ratlam. While Shri Y.I.Mehta, Senior Counsel with Shri H.Y.Mehta is deemed to be counsel for respondent No.1, i.e., Union of India through General Manager, Western Railway, Churchgate, Mumbai, and respondent No.2 Divisional Railway Manager, Western Railway, Do-batti, Ratlam, he cannot represent respondents 3 and 4. The learned counsel of respondents 1 and 2 contended that the Railways have a policy of providing employment to dependents of Railway employees who die in harness; there is no policy of respondents to provide such a facility to Railway employees who suffer from illness during their active service and retire on superannuation without being medically decategorised. He submitted that as applicant's father retired in the normal course on attaining the age of superannuation and without getting medically decategorised, there is no question of considering him for employment as a special case. He has to compete with other candidates when general recruitment is made through open market or through the Railway Recruitment Board.

5. The learned counsel of applicant has not been able to produce copy of instructions dated 30.1.1961 mentioned in Annexure A-3 dated 16.2.1998 under which applicant had claimed privilege for appointment as casual labour/substitute as a ward of Railway servant. He drew our attention to Annexure A-4 which is order

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dated 13.1.1998 in O.A. No.298/1997 : Kanhaivelal v. Union of India stating that the circular on the basis of which applicant had sought consideration of his candidature ^{For} appointment as casual labour/substitute is reproduced in the order. He particularly referred to paragraph 3(C) wherein it is stated, "Applications of sons of rly. employees who are about to retire may be considered alongwith others.....The intake of new CLs should be resorted to only after obtaining the prior approval of the G.M." We find that the above extracted portion is not a part of any circular issued by respondents but is merely a point "insisted by the learned counsel for the applicant" as stated by the Court in the said order. However, respondents cannot escape the findings in the case of Smt. Munni Devi (supra). In this case, paragraph 1 of circular letter No.E(NG)III/78/RCI/1 dated 7.4.1983 governing appointments on compassionate grounds has been reproduced as follows :

"1. Circumstances in which compassionate appointment may be made.

Appointments on compassionate grounds relate to those appointment which can be made of dependents of Railway servants who lose their lives in the course of duty or die in harness otherwise while in service or are medically incapacitated. The circumstances in which appointments on compassionate grounds may be made are as below :

- (i) ...
- (ii) ...
- (iii) ...

(iv) When Railway employees become crippled while in service or develop serious ailments like heart disease, cancer etc, or otherwise medically decategorised for the job they are holding and no alternative job of the same emoluments can be offered to them.

Note : The appointment on compassionate grounds is admissible to the dependents/wards of regular employees only."

Paragraph 1(iv) is particularly applicable to the facts of the present case wherein applicant's father had suffered from a serious ailment like heart disease. In terms of this circular, even if the Railway employee had not been medically decategorised just because he had suffered from a serious ailment like heart disease, applicant who is ward of the Railway employee could be considered for appointment on compassionate grounds. It was held in that case that respondents were in error in holding that the petitioner therein, although suffering from serious ailment/heart disease could not be given the benefit of that circular unless she was medically decategorised. The impugned order in that case was quashed and respondents were directed to give benefit of the circular to the petitioner by appointing her daughter in terms of the above mentioned circular.

6. The provisions of circular dated 7.4.1983 and the observations and directions in Munni Devi (supra) are squarely applicable to the facts of the present case. By Annexure A-2 conveyed to applicant through Annexure A-1 dated 2.9.1998 applicant was informed that respondents had held the view that he could not be considered for compassionate appointment as ward of the Railway employee as he did not die while in service or medically decategorised.

7. Having regard to the discussion made above and particularly relying on the ruling in the case of Munni Devi (supra) Annexure A-2 conveyed through Annexure A-1 dated 2.9.1998 is quashed and set aside. Respondent No.1, Union of India through General Manager, Western Railway, Churchgate, Mumbai and respondent No.2, the

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Divisional Railway Manager, Western Railway, Do-batti, Ratlam, are directed to consider applicant as a ward of the Railway employee who had suffered from serious ailment of heart disease prior to his retirement, though not medically decategorised, for appointment as casual labour/substitute in the Ratlam Division on compassionate ground, if otherwise eligible under the rules and instructions, within a period of three months from the date of communication of these orders.

8. The O.A. is disposed of in the above terms.
No costs.

J. K. Kaushik
(J. K. Kaushik)
Member (J)

V. K. Majotra
(V. K. Majotra)
Member (A)

/as/

पृष्ठान्त सं ओ/न्या.....जबलपुर, दि.....
पतिलिपि अर्जो धित:-

- (1) सविद, उच्च न्यायालय बार एसोसिएशन, जबलपुर
 - (2) आवेदक ओ/डीपती/कु.....के काउंसल
 - (3) प्रत्यक्षी ओ/डीपती/कु.....के काउंसल
 - (4) बंधपत्र, को.प्र.ज., जबलपुर न्यायापीठ
- सूचना एवं आवश्यक कार्यवाही हेतु

Adm. Rallam
Adm. Indore
Y. I. mehta

Received
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17/9/03

J. K. Kaushik
उप-सचिव
15.9.03