

Yogendra Singh and anr Vs. Union of India Represented By: the General

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Court : Delhi

Decided On : Jan-29-2013

Judge : Pradeep Nandrajog

Appellant : Yogendra Singh and anr

Respondent : Union of India Represented By: the General

Judgement :

\$~5 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of decision: January 29, 2013 + W.P.(C) 4519/2012 YOGENDRA SINGH AND ANR Petitioners Represented by: Mr.Pankaj Sinha, Advocate versus UNION OF INDIA REPRESENTED BY: THE GENERAL MANAGER NORTHERN RAILWAY AND ORS.... Respondents Represented by: Kumar Rajesh Singh, Advocate CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE VEENA BIRBAL PRADEEP NANDRAJOG, J.

(ORAL) 1. Heard learned counsel for the parties.

2. On January 02, 2004 the Railway Board issued a policy decision No.04/2004 on the subject Safety Related Retirement Scheme for Drivers and Gangmen. The scheme noted that the nature of work performed by Drivers and Gangmen causes extreme stress on their eyesight resulting in faster deterioration of the eyesight as compared to those performing normal jobs while serving in the Railways.

3. The Scheme in question notifies Voluntary Retirement and enlists the conditions pertaining thereto; and suffice would it be for us to record that as per the scheme Drivers and Gangmen above the age of 50 years may seek voluntary retirement with entitlement of one ward to be given employment in the lowest category of post in the applicable grade. In other words, the ward of a Driver or a Gangmen would be entitled to be employed in the lowest category of post for Drivers or Gangmen.

4. Petitioner No.1, working in the Indian Railways in the cadre of Drivers called Loco Pilots sought benefit of the scheme in question and requested to be voluntarily retired informing that he was aged 56 years 11 months and 24 days. He sought employment for his son, petitioner No.2 under the scheme.

5. Unfortunately, petitioner No.2 was found to be suffering from a locomotor disability, disentitling him to be employed in the lowest post of Loco Pilots. The result was that the request made by petitioner No.1 for being voluntarily retired being turned down and the son not being given any employment.

6. Challenge by the two before the Central Administrative Tribunal has failed as per the impugned order dated January 04, 2012.

7. It is the case of the petitioners that the right of petitioner No.2 under the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 has been violated. It is asserted that in each category of employment benefit of reservation has to be provided to the physically, visually and hearing impaired persons. Reliance is placed upon an Office Memorandum dated December 29, 2005 issued by the Government of India on the subject which required reservation for visually, hearing and physically disabled persons in Group-D and GroupC posts.

8. Suffice would it be for us to highlight that the Office Memorandum in question refers to the mandate of Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 which requires reservation for the visually challenged, hearing impaired and persons suffering from physical disabilities to be provided reservation; but only where the element is of direct recruitment.

9. Learned counsel for the petitioner would submit that being a beneficial Legislation the benefit of reservation has to be extended wherever there is an element of recruitment; be it direct or otherwise.

10. The extended interpretation sought to be imparted cannot be accepted for the simple reason benefit of reservations under the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 has to be made available, across the board to all disabled persons with an opportunity for all disabled persons to compete within their category and this would mean whenever recruitment whether to a Group-C or a Group-D post is by way of direct recruitment.

11. If under a particular scheme pertaining to voluntary retirement where-under a father seeks voluntary retirement and there is a term of that voluntary retirement scheme that subject to suitability one ward would be given employment in the lowest category of post in the cadre in which the father is, the scheme cannot be modified to direct that the ward be given employment in a post in some other cadre.

12. Surely, petitioner No.2 can enforce a right under the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 but this would be with respect to the category of all disabled persons within which category he must compete.

13. The scheme in question recognizes that those who work as Drivers and Gangmen, due to work stress, suffer early impairment of their eyesight and confers a special benefit on these employees only to seek voluntary retirement with an additional right of one family member being given employment, but the same has to be in the same category of post at the lowest level and additionally subject to suitability.

14. To issue a direction that in some other category of posts benefit of reservation be extended would be to violate the policy in question.

15. We agree with the view taken by the Tribunal and dismiss the writ petition.

16. No costs. CM No.9376/2012 Dismissed as infructuous. PRADEEP
NANDRAJOG, J.

VEENA BIRBAL, J.

JANUARY 29 2013 srb

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