

# **Bhawani Prasad Sonkar vs Union Of India & Ors on 11 March, 2011**

**Equivalent citations: 2011 AIR SCW 2039, 2011 (4) SCC 209, 2011 LAB IC 1848, 2011 (3) ALL LJ 651, (2011) 5 MAD LJ 187, (2011) 1 CURLR 1002, (2011) 3 MAD LW 142, (2011) 3 SERVLR 225, (2011) 3 LAB LN 37, (2011) 2 ALLMR 967 (SC), (2011) 3 SCALE 513, (2011) 2 SERVLJ 44, (2011) 2 CAL LJ 68, 2011 (3) KCCR SN 247 (SC)**

**Author: D.K. Jain**

**Bench: H.L. Dattu, D.K. Jain**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5101 OF 2005

BHAWANI PRASAD SONKAR

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APPELLANT

VERSUS

UNION OF INDIA & ORS.

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RESPONDENTS

J U D G M E N T

D.K. JAIN, J.:

1. This appeal, by grant of special leave, is directed against the judgment dated 1st September, 2003 delivered by the High Court of Judicature at Allahabad at Lucknow, whereby the writ petition filed by the appellant herein, seeking compassionate

appointment, has been dismissed on the ground that he did not fulfil the conditions envisaged in the Railway Board Circular dated 29th November, 2001.

2. Appellant's father, Mr. Prahladi Sonkar, was posted as a Guard Mail/Express, North Eastern Railway at the Lucknow Junction.

Respondent No. 2 viz. the Senior Divisional Karmik Adhikari, North Eastern Railway (N.E.R.), Lucknow directed the appellant's father to appear before the Medical Board for a medical examination.

Accordingly, appellant's father appeared before the Medical Board and was declared medically unfit in A2, A3, B1 and B2 categories vide certificate dated 6th March, 1998. However, he was found fit in C1 and C2 categories and was directed to appear for another medical examination after six months.

3. Accordingly, appellant's father again appeared for a medical examination and vide certificate dated 13th July, 1999, he was declared medically unfit as de-categorized employee. Nevertheless, he was found fit in category B1 and below. Thereafter, on 9th August, 1999, appellant's father appeared before the Standing Committee which decided to retire him without offering him any alternate employment, as stipulated in the service rules. Ultimately, appellant's father was retired from service vide retirement order dated 30th August, 1999 issued by respondent No. 3 viz.

Divisional Railways Manager (Karmik), Lucknow, which stated that:

"Shri Prahlad Ji Sonkar, Guard Mail/Express in the pay scale of (5500-9000) at Lucknow Junction who having been declared as decategorised employee has been recommended by the standing committee for retirement, is retired with immediate effect."

4. At this juncture, it would be relevant to note that an appointment on compassionate ground in the Railways was governed by Railway Board Circular dated 22nd September, 1995 which provided that:

"1. In terms of the instructions contained in para I(iv) of Board's letter No. E(NG)III/78/RC-1/1 dated 07.04.1983 and 03.09.1983, appointment on compassionate grounds is permissible where a Railway employee becomes medically decategorised for the job he is holding and no alternative job with the same employee is but it is not accepted by the employee and he chooses to retire from service.

2. The question whether appointment on compassionate ground can be considered in the case of a medically decategorised employee who does not wait for the Administration to identify an alternative job for him but chooses to retire under consideration of the Board.

3. After careful consideration of the matter, Board have decided that in partial modification of Board's letter No. E(NG)III/78/RC-1/1 dated 03.09.1983, in the case

of medically decategorised employee, compassionate appointment of an eligible ward may be considered also in cases where the employee concerned does not wait for the administration to identify an alternative job for him but chooses to retire and makes a request for (sic) such appointment."

5. It is also pertinent to mention here that on 29th April, 1999, the Railway Board issued a circular stating, inter alia, that in light of the mandate of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, employees who become incapacitated from holding the post they were currently holding, but found eligible for retention in service in posts corresponding to lower medical category, shall be offered alternative employment in the posts for which they are found suitable.

6. Appellant's father moved an application dated 1st September, 1999, before respondent No. 2 requesting that his son be given compassionate appointment as a Class IV employee. Since there was no response to the said request, the father of the appellant moved another application, dated 30th December, 1999, before respondent No. 3. On 18th January, 2000, the Railway Board issued a letter stating that when an employee is declared as medically unfit to perform the work which he was performing but is found to be fit to perform work in a lower category, any request for giving compassionate employment to such employee's ward would not be considered if the employee opts for voluntary retirement after being de-categorized.

7. Thereafter, on 29th November, 2001, the General Manager (Personnel), Gorakhpur issued a letter stating that in case of employees who opted for voluntary retirement after 29th April, 1999, the cases of wards of only totally incapacitated employees would be considered for appointment on compassionate grounds. In pursuance of the same, respondent No. 3 issued a letter dated 15th February, 2002 to appellant's father stating that the application for appointment of his son on compassionate ground was not found fit for consideration by the competent authority.

8. Being aggrieved, the appellant preferred an Original Application before the Central Administrative Tribunal, Lucknow (for short "the Tribunal").

9. Vide order dated 31st December, 2002, the Tribunal dismissed the Original Application, observing thus:

"I have considered the facts of the case and submissions made on behalf of the parties, and I am of the view that the O.A. deserves to be dismissed on the basis of the circular letter dated 29.11.2001 which had the effect of superseding the earlier instructions on the subject. Since, the applicant's father was not totally incapacitated and retired on 30.8.99, the claim of the applicant for compassionate appointment has to be considered in the light of the instructions of the Railway Board letter dated 29.11.2001 according to which he is not eligible for compassionate appointment."

10. Still being aggrieved, the appellant filed a writ petition before the High Court. As afore-mentioned, the High Court has, vide the impugned judgment, dismissed the petition, stating

that:

"The Tribunal has recorded clear-cut finding to the effect that the petitioner was not eligible for any compassionate appointment which (sic) could be offered as envisaged in the policy decision of the Railway Board as indicated in the Circular dated 29.11.2001, were not satisfied. .... Taking into consideration the facts and circumstances of the case as brought on record in their totality no justifiable ground for any interference by this Court can be said to have been made out while exercising the extraordinary jurisdiction under Article 226 of the Constitution."

11. Meanwhile, the appellant also preferred a review application before the Tribunal for reviewing its earlier order dated 31st December, 2002. Vide order dated 5th March, 2004, the said application was dismissed by the Tribunal on the ground that the same was barred by limitation.

12. Hence, the present appeal.

13. Mr. D.P. Chaturvedi, learned counsel appearing on behalf of the appellant, while assailing the impugned judgment, strenuously urged that having retired appellant's father without offering him a suitable alternative job, despite the fact that he was found medically fit in category B1, the respondents were obliged to appoint the appellant in terms of instructions dated 7th April, 1983 and 3rd September, 1983, which were reiterated in Circular dated 22nd September, 1995.

14. Per contra, Mr. Ashok Bhan, learned counsel appearing on behalf of the respondents, contended that appellant's father, having opted for voluntary retirement in terms of the Railway Board's letter dated 18th January, 2000, could not seek appointment of his son on compassionate ground.

Learned counsel urged that the appellant has not brought any material on record to substantiate his plea that his father was forced to retire.

15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our Constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible.

Nevertheless, the concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. We do not propose to burden this judgment with reference to a long line of decisions of this Court on the point. However, in order to recapitulate the factors to be taken into consideration

while examining the claim for appointment on compassionate ground, we may refer to a few decisions.

16. In *Umesh Kumar Nagpal Vs. State of Haryana & Ors.*<sup>1</sup>, while emphasising that a compassionate appointment cannot be claimed as a matter of course or in posts above Class III and IV, this Court had observed that:

"The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the 1 (1994) 4 SCC 138 legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

17. Similarly, in *Steel Authority of India Limited Vs. Madhusudan Das & Ors.*<sup>2</sup>, this Court has observed that:

"This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right." (See also: *General Manager, State Bank of India & Ors. Vs. Anju Jain*<sup>3</sup>.)

18. In V. Sivamurthy Vs. State of Andhra Pradesh & Ors.<sup>4</sup>, this Court while observing that although appointment in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution, yet appointments on compassionate grounds are well recognized exception to the general rule, carved out in the interest of justice to meet certain 2 (2008) 15 SCC 560 3 (2008) 8 SCC 475 4 (2008) 13 SCC 730 contingencies, highlighted the following two well-recognised contingencies as exceptions to the general rule :

"(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the breadwinner."

19. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

20. Tested on the touchstone of these broad guidelines governing appointment on compassionate ground, we are of the opinion that the appellant has made out a case for such appointment. It is manifest that in terms of circular dated 29th November, 2001 only those employees, who have been totally incapacitated from performing any service after 29th April, 1999 were entitled to seek compassionate employment for their wards. In the instant case, appellant's father retired on 30th August, 1999 i.e. after 29th April, 1999, but was not offered alternative employment in terms of the Circular dated 29th April, 1999.

21. The circular/letter dated 29th November, 2001, on which reliance was placed while rejecting appellant's claim has to be understood in its correct perspective. Evidently, it seeks to limit the benefit of compassionate employment to only those incapacitated employees who had been retired after 29th April, 1999, as in case of employees who were found fit for performing services in a lower category, Circular dated 29th April, 1999 would be applicable, and the Railways was bound to offer alternative employment to such employees. It flows therefrom that after 29th April 1999, those employees who did not accept the alternative employment, and opted for voluntary retirement could not be given the benefit of compassionate employment for their wards.

22. In the instant case, the respondents have not placed any material on record to establish that the appellant's father was offered any alternative employment in terms of Circular dated 29th April, 1999. On the contrary, it appears that the Standing Committee recommended his retirement.

Having denied appellant's father the benefit of Circular dated 29th April 1999, the respondents cannot claim that Circular dated 29th November, 2001 was applicable to appellant's father, disentitling him from seeking employment on compassionate ground for his son as he was not totally incapacitated and had sought voluntary retirement. It is clear from the retirement order dated 30th August, 1999 that the appellant's father was retired from service pursuant to the recommendation of the Standing Committee.

23. In light of the fact that Circular dated 29th November, 2001 was not applicable in the case of appellant's father, inasmuch as the benefit of the 29th April, 1999 Circular was not extended to him, and he was made to retire from service, we are of the opinion that the earlier circular dated 22nd September, 1995 is applicable in the instant case. Consequently, the appellant would be entitled to employment on compassionate ground as the said Circular contemplates compassionate employment for the wards of those employees who have been medically de-categorized, and have retired, without being offered an alternative suitable job. We are unable to accept the plea of the respondents that on being de-categorized, appellant's father had opted for voluntary retirement.

24. In light of the foregoing discussion, the appeal is allowed; the impugned judgment is set aside and it is directed that the appellant shall be granted employment on compassionate ground within three months of the receipt of copy of this judgment, subject to his complying with other eligibility conditions, as applicable on 1st September, 1999. However, for all intents and purposes, he shall be deemed to be in service from the date of actual joining.

25. In the facts and circumstances of the case, there shall be no order as to costs.

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(D.K. JAIN, J.) .....

(H.L. DATTU, J.) NEW DELHI;

MARCH 11, 2011.

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