

Union Of India vs Kiran Kanojia on 3 June, 2021

Author: J.R. Midha

Bench: J.R. Midha

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO 265/2014

UNION OF INDIA

Through:

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Mr. Jagjit Singh, Senior
Counsel for Railways
Mr. A.S. Chandhiok, Sen
as amicus curiae with M
Deol, Advocate

Versus

KIRAN KANOJIA

Through:

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Ms. Punam Kumari, Advoc

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% 03.06.2021

1. Allowed, subject to all just exceptions.

2. Issue notice. Mr. Jagjit Singh, learned Senior Standing Counsel for Railways accepts notice.

3. The Applicant, Kiran Kanojia was travelling by Andhra Pradesh Sampark Kranti Express, Train No.12707, Coach No.S-5, berth No.68, having a railway ticket bearing PNR No. 4654499444 on 23rd December, 2011. The Applicant was sitting on the lower birth near the gate. The Applicant was traveling from Secunderabad to Nizamuddin to go to New Faridabad where her parents reside. The train was moving slowly through the Palwal station when a boy suddenly snatched her bag containing valuables. On resistance, she was dragged with the bag towards the gate of the coach. In the meanwhile, an accomplice of the said boy pushed the Applicant from behind. The Applicant fell down and her left leg got entangled in the footboard of the coach. The boys ran away with the bag containing the valuables. Hearing hue and cry of the Applicant, passengers pulled the chain to stop the train. The leg of the Applicant was tied with a cloth. She was made to lie down in the train.

4. Upon the train reaching Old Faridabad Railway Station, the Applicant was taken to Escorts Fortis Hospital, Faridabad by TT in the police jeep. The Hospital demanded Rs. 1,00,000/- to start the

treatment and look after the Applicant. After begging and borrowing, the father of the Applicant deposited the said amount. The left leg of the Applicant was amputated on 24th December, 2011 and the Applicant was discharged on 05th January, 2012. Copy of the hospital record in this regard is annexed and marked as Annexure A1 to the application.

5. Another surgery was required for de-abridgement, skin grafting and plaster application which was carried out on 21st January, 2012 and the Applicant was hospitalized till 27th January, 2012. Copy of the hospital record in this regard is annexed and marked as Annexure A2 to the application.

6. The Applicant during that time was a Bachelor of Computer Applications which she had successfully completed in the year 2008. Copy of the Educational Qualification record of the Applicant in this regard is annexed and marked as Annexures A3 and A4 to the application.

7. The Applicant joined Infosys Limited in the year 2009 and was working when the abovementioned incident took place.

8. Despite the leg being amputated, the Applicant did her Masters in Computer Application in the year 2012 taking benefit also of the leave granted by Infosys Limited for one year.

9. Due to amputation of the leg, it was almost impossible for the Applicant to move and she managed her life and work with crutches. A true and correct copy of Disability Certificate dated 07th March, 2012 is annexed and marked as Annexure A5 to the application. In 2014, the Applicant got the artificial leg from Dakshin Rehabilitation Center, Hyderabad which costed her Rs. 4,36,400/-. The then employer Infosys Limited contributed from Rs. 2,40,000/- from the Welfare Trust and the remaining amount of Rs.1,96,400 /- was paid by the Applicant in instalments. Copy of the document of Dakshin Rehabilitation Center in this regard is annexed and marked as Annexure A6 to the application.

10. The Applicant did join Infosys Limited back but the Applicant did not get any enhancement either in her career or in pay package. The Applicant, therefore, changed her employer and joined another Company EMC-2- Dell- EMC Open Text as a Senior Software Engineer in the year 2016. This did not last for very long for the Project in which the Applicant was working was transferred to a third party. The Applicant was not granted option to work from home nor was she provided a transport facility and consequently, it became impossible for the Applicant to travel a distance of over 25 kms. everyday. Extract of the biodata and work experience of the Applicant is annexed and marked as Annexure A7 to the application.

11. By this time, the bone in the amputated leg started hurting because of the growth in the bone. Another surgical operation was performed in March, 2020. Thereafter, COVID-19 Pandemic brought about lockdown. The Applicant has not been able to get any job as the Companies are not giving new employment. Thus, post 2018, the Applicant has been deprived of Right to life with dignity.

12. That the incident of 2011 resulted in the Applicant filing a Claim Petition before the Railway Claims Tribunal. Even against a meagre amount awarded by the Hon'ble Railway Claims Tribunal, Railways preferred the present Appeal. The amount has been enhanced by this Hon'ble Court and, after great difficulty, the Applicant has been able to get benefit of the same.

13. The artificial leg requires periodical maintenance which costs the Applicant over Rs. 25,000 /- and is a recurring expense.

14. Though the main appeal and the cross appeal are disposed of but question with respect to the Tax Deducted at Source is pending consideration before this Court.

15. The Applicant is invoking the Extraordinary Civil Writ Jurisdiction for it is apparent from the record of the appeal and before the Railway Claims Tribunal the Applicant was a bona fide passenger traveling on the train and had a reserved berth yet the Railways, Union of India denied the same and took a stand which was totally contrary to its own record. This Court has ample jurisdiction under the Constitution of India which cannot be curtailed by any statutory limitation including those contained in the Railways Act or even the Protection of Human Rights Act.

16. The Applicant has a fundamental right under Article 21 of the Constitution of India namely 'Right to Life' which means right to live with human dignity. This 'Right to Life' includes all those aspects of life which go to make the Applicant's life meaningful, worth living and complete.

17. The incident took place within the jurisdiction of the Railways and in relation to a train in which the Applicant was travelling. The security of the Applicant was within the ambit of the Railways, Union of India. The Railways, Union of India failed to provide the same but thereafter took defences as observed by this Court which were contrary to its record and policy. Rehabilitation of the Applicant, therefore, is the responsibility of the State and in the absence of the same, the Applicant shall grow in poverty and helplessness. Article 21 as extended by the Hon'ble Supreme Court and this Hon'ble Court includes right to livelihood also.

18. In the fitness of things, it would be fit and appropriate for the Railways, Union of India to grant employment to the Applicant in the Railways to enable the Applicant to live a life with dignity and look after herself. The Applicant took upon herself and has become India's First Female Blade runner and ran 6 Half Marathon (21 km.) and 15 small Runs of 5 and 10 km. and was awarded Woman Transforming India Award 2017. But in the absence of an employment, the Applicant is suffering and that suffering is because of the incident that took place in 2011.

19. The Applicant is now married and her husband is a Mechanical Engineer and was working in a company named Shimizu Corporation but he has lost his job due to lay off in the company in October, 2020 and now he is not getting employment in the prevailing circumstances. The Applicant prays that in the circumstances it is more imperative that the Applicant is given employment as her family is not financially capable to support her.

20. Providing the job by the Railways would also be in conformity with employment given to a similarly situated victim Arunima Sinha who was travelling on a valid ticket and had been pushed from a moving train by robbers and her leg was amputated due to the said incident. The records pertaining to the same are in the custody of the Railways, Union of India Railways and the Applicant prays for passing of appropriate directions to Railways for protection of the said record. The Applicant is well educated and successfully completed Masters of Computer Application in 2012. Technology is today the way of life. Technology has attracted business, entertainment and the Railways have been a part of the same in the recent years. The technology is growing in importance due to reliance on computer system, the internet and wireless networks do constitute the internet of Things. The expertise and experience of the Applicant therefore come handy to Railways, Union of India. The Applicant submits that the Railways, Union of India must give employment to the Applicant at New Delhi as that would ensure equality which is the genus of Article 14 and all other concomitant rights emanating therefrom are spices to make the 'Right to Life' with dignity of the Applicant real and meaningful.

21. In a socialist democracy India is governed by Rule of Law and the right of compassionate employment in the facts and circumstances of this case and the entitlement of the Applicant for employment would all earnestly be blended and would serve a larger human interest and would also serve the principles of Article 39(a) of the Constitution of India.

22. There are job opportunities available in Railway currently. The Applicant submits that the Respondents be directed to inform this Court and the Applicant seeks indulgence of this Court that necessary directions may be issued. The Applicant beseeches the indulgence of this Court to entertain the present application and direct registration of the same as a Writ Petition and pass appropriate directions directing the Railways, Union of India to grant an employment to the Applicant for actually getting complete and substantial justice to the Applicant.

23. Mr. A.S. Chandhiok, learned amicus curiae submits that the Railways offered the job to Ms. Arinuma Sinha who suffered a similar railway accident in 2011. It is submitted that the Applicant is invoking Article 14 of the Constitution and the record of Ms. Arinuma Sinha be requisitioned by this Court and the same relief be given to the Applicant as given to Ms. Arinuma Sinha. It is further submitted that this application be treated as a writ petition and the matter be taken up as an urgent matter.

24. This Court is of the prima facie view that the Applicant is entitled to a job as offered to similarly situated Arunima Sinha. This application is treated and be registered as a writ petition.

25. Mr. Jagjit Singh, learned Senior Standing Counsel for Railways seeks time to take instructions.

26. Mr. Jagjit Singh, learned Senior Standing Counsel for Railways shall produce the service record relating to the job offered by the Railways to a similarly situated railway victim Ms. Arinuma Sinha in 2011. Mr. Jagjit Singh, learned Senior Standing Counsel shall request a Member of Railway Board to participate in the court proceeding.

27. The applicant shall also remain present before this Court at the time of hearing.

28. List on 04th June, 2021 at 3.00 P.M.

29. Learned counsel for the applicant submits that she has inadvertently filed the copy of the judgment of Bharati Rathore's case which is not relevant in the present context. The statement of the learned counsel for the applicant is taken on record. The copy of the judgment of Bharati Rathore shall not be treated as part of the application. Mr. Jagjit Singh for railways has taken note of the same.

J.R. MIDHA, J.

JUNE 03, 2021 dk