

\$~28.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+

Date of Decision:16.04.2019

% **W.P.(C) 3960/2019**

UNION OF INDIA AND ORS.

..... Petitioner

Through: Mr. Jagjit Singh with Mr Preet Singh,
Advs.

versus

RAKESH KUMAR AND ANR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

C.M. No. 17955/2019

1. Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 3960/2019 & C.M. No. 17954/2019

2. The petitioner Union of India assails the order dated 16.11.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 2553/2018. By the impugned order, the Tribunal has disposed of the respondent's original application by directing the petitioner herein to continue the respondent applicants if there is work, in the

same capacity and on the same terms, in preference to their juniors, or freshers, or outsourced employees.

3. The respondent applicants were engaged on contractual basis as pharmacists by the petitioner – Railways since December, 2017. Their contractual engagement was continued from time to time. They approached the Tribunal by preferring the aforesaid Original Application, faced with the communication dated 17.01.2018 issued by the petitioner on the subject of filling up of group ‘C’ posts on contract basis by re-engagement of retired employees in exigencies of service. This communication, inter alia, contained the decision of the Government, which reads as follows:

- “i. Filling up of posts of para-medical staff in Group ‘C’ are permitted by re-engaging the retired employees as a first preference. Such re-engagement should be done as per extant guidelines including the ones contained in Railway Board letter no. E(NG)-II/2007/RC-4/CORE/1 dated 16.10.2017 and 12.12.17.*
- ii. Only if retired para-medical staff is not available, the option of recruiting such staff on contractual basis should be exercised which should be done as per extant guidelines including the ones given in letter no. E(NG)II/2004/RC-4/SC/2 dated 19.07.2005.*
- iii. The scheme of filling of posts in para-medical categories in Group ‘C’ on contract basis is valid till 30.06.2018 (Rly Board letter no. E(NG)II/2005/RC-4/SC/2 dated 22.06.17). The scheme is now extended to 30.06.2019 subject to compliance of para (i) and (ii) above.*

- iv. *The monthly remuneration rates, for filling up posts in para-medical categories in Group 'C' on contract basis, are under revision. Therefore, recruitment of para-medical staff on contract basis should be done only after the revised rates are issued by Ministry of Railways.*
- v. *The power of engagement of para-medical staff in Group 'C' on contract basis is delegated to DRMs for divisions and CWMs for workshops. For rest of the units, existing delegation will continue.” (emphasis supplied)*

4. Since the respondents were threatened with discontinuation of service and their replacement by another set of contractual employees, they approached the Tribunal. In their Original Applications, the Original Applicants/ respondents had specifically assailed the communication/ circular dated 17.01.2018 issued by the petitioner. After taking note of the same, the Tribunal has issued the direction, as aforesaid.

5. Learned counsel for the petitioner places reliance on the said communication dated 17.01.2018 and submits that retired employees have the first preference to be appointed on contractual basis, and only if retired para- medical staff is not available, they have option of recruiting others on contract basis.

6. It appears that the communication dated 17.01.2018 – laying down the policy as aforesaid, itself is highly suspect. It is obvious to us that within the organisation of the Railways, vested interests have led to the making of the aforesaid decision. It is obvious that the serving staff of the Railways, which is facing retirement, or would evidently retire in future, have lobbied

to safeguard their own interest by manipulating the powers that be, into laying down the policy that posts of para-medical staff in Group 'C' should be filled by engaging the retired employees, as the first preference.

7. This policy, in our view, is completely unfair and unwarranted. The retired employees of the Railways are those who have rendered long tenures of service and retired with retiral benefits such as pension, gratuity, etc. By and large, they have lived their productive lives, and settled their families by the time they retire. It is the younger generation, which is looking for employment, and which is in need of employment to be able to earn their living and settle themselves in their respective lives, whose needs deserves to be addressed.

8. There is no reason, whatsoever, to grant preference to retired employees. Inherent in the concept of retirement is the fact that the retired employees, on account of their age, loose their motivation, desire and efficiency. The decision of the petitioner Railways to re-engage them on preference basis, and to deny such opportunities to young persons who are full of zeal and motivation to give their best, is most unreasonable and absurd, to say the least.

9. Pertinently, the two respondents, who approached the Tribunal were only aged 26 and 27 years. They are now faced with ouster only on account of the fact that the retired employees of the Railways, who would be in their sixties, would be re-employed if the petitioners were to have its way.

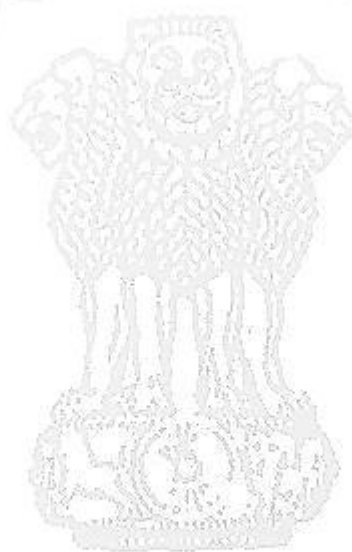
10. For the aforesaid reasons, we are not inclined to interfere with the impugned order. Accordingly, we dismiss this petition and also direct the petitioner not to implement its communication/ circular dated 17.01.2018.

11. Dismissed.

VIPIN SANGHI, J.

REKHA PALLI, J.

APRIL 16, 2019
N.Khanna



न्यायमेव जयते