A MS. SAVITA SAMVEDI AND ANR.

v.

UNION OF INDIA AND ORS.

JANUARY 30, 1996

B [MADAN MOHAN PUNCHHI AND K. VENKATASWAMI, JJ.]

Service Law :

Railways—Residential accommodation allotted to railway servant—Regularisation of in favour of son/unmarried daughter of retiring employee—Position of married daughter amongst eligibles—Employee exercising option in favour of married daughter—Railway authorities rejecting claim relying on Railway Board circular dated 11.8.1992—Held Circular is violative of Article 14 of the Constitution in so far as it discriminates against married daughter—Circular to be read in favour of married daughter as one of eligibles.

Constitution of India :

Article 14—Government accommodation—Regularisation of in favour of son/daughter of retiring employee—Railway Board Circular dated 11.8.1992—Held to be violative of Article 14 in so far as it discriminates against married daughter—Married daughter placed at par with other eligibles.

Appellant no. 2, a railway employee stationed at Delhi, prior to his retirement requested the railway authorities to permit his married daughter, appellant no. 1, also a railway employee, to share the railway quarter allotted to him. He stated that both of his sons were working out of Delhi and he needed his daughter to look after him and his ailing wife. His request was acceded to and appellant no. 1 was allowed to share the railway quarter allotted to her father with the rider that she would not be entitled for regularisation of the accommodation after the retirement of her father. Appellant no. 1, one day before retirement of her father, applied for regularisation of the quarter, but her claim was rejected on the ground that a married daughter was not eligible for regularisation of railway quarter. Representation of appellant no. 2 was also rejected. The appellants after being unsuccessful before the Central Administrative Tribunal, filed the present appeal.

The respondents relied upon the Railway Board Circular dated 11.8.1992, stipulating that son/unmarried daughter of a retiring railway servant would be eligible for allotment of railway quarter, and concession to a married daughter would be extended only if the employee had no son or if the married daughter was the only person prepared to maintain the parents and the sons were not able to do so (e.g. minor sons). A B

Allowing the appeal, this Court

HELD : 1.1. The railway Ministry's Circular dated 11.8.1992 suffers from twin vices of gender discrimination and discrimination *inter se* among women on account of marriage. The circular, in so far as it discriminates against a married daughter is wholly unfair, gender biased and unreasonable, liable to be struck down under Article 14 of the Constitution. The eligibility of a married daughter must be placed at par with an unmarried daughter (for she must have been one in that state), so as to claim the benefit of the earlier part of the Circular. [1082-A-C] C D

1.2. The retiring official's expectations in old age for care and attention and its measure from one of his children cannot be faulted, or his hopes dampened, by limiting his choice. That would be unfair and unreasonable. If he has only one married daughter, who is a railway employee, and none of his other children are, then his choice is and has to be limited to that railway employee married daughter. He should be in an unfettered position to nominate that daughter for regularisation of railway accommodation. It is only in the case of more than one children in Railway service that he may have to exercise a choice and there is no reason why the choice be not left with the retiring official's judgment on the point and be not respected by the railway authorities irrespective of the gender of the child. [1050-A-B] E F

1.3. The Tribunal overlooked the fact that the Circular was meant only to enlist the eligibles, who could claim regularisation but the important condition of one being a railway employee had to be satisfied before claim could be laid. The first appellant, on that basis alone was eligible (subject to gender disqualification going), and the second appellant could exercise his choice/option in her favour to retain the accommodation, obligating the railway authorities to regularise the quarter in her favour, subject of course to the fulfilment of other conditions prescribed. The error being manifest is hereby corrected. The first appellant, in the facts and circumstances would G H

be the sole eligible person for regularisation of the quarter and the respondents would order in her favour accordingly. [1051-E-G]

1.4. The Circular dated 11.8.1992 being of gender discrimination is hereby brought in accord with Article 14 of the Constitution. The Circular shall be taken to have been read down and deemed to have been read from its initiation in favour of the married daughter as one of the eligibles, subject, amongst others, to the twin conditions that she is (1) a railway employee; and (ii) the retiring official has exercised the choice in her favour for regularisation. [1052-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2441 of 1996.

From the Judgment and Order dated 1.6.95 of the Central Administrative Tribunal in New Delhi in O.A. No. 2443 of 1994.

Zaki Ahmad Khan for Anis Suharwardy for the Appellants.

Ashok Bhan and A.K. Sharma for the Respondents.

The Judgment of the Court was delivered by

PUNCHHI, J. Special leave granted.

This appeal voices a cry for gender justice.

The two appellants before us are a married daughter and father. The second appellant was in service of the Indian Railways. While in service, he was allotted quarter No. 30/3, Railway Colony, Kishan Ganj, Delhi. He was due to retire on 31.12.1993. It is a different matter that he was permitted to retain the railway quarter for the maximum permissible period of eight months thereafter upto 31.8.1994. Much prior to retirement, the second appellant on 18.3.1993 requested the railway authorities concerned in permitting his married daughter, the first appellant to share the accommodation allotted to him on the basis that she was a railway employee at Delhi described as "Sr. S.O./T.A./D.K.Z.". He pointed out that he had two sons working out of Delhi, but neither of them was a railway employee, whereas he married daughter was one, and he needed her to look after him and his ailing wife. His request was granted favourably in as much as on 31.5.1993, permission was granted to the first appellant to share railway

quarter of her father with effect from 16.3.1993 with the rider that she would not be entitled for regularisation of the railway quarter after the retirement of the second appellant. All the same, a day short of the retirement of the second appellant, the first appellant laid claim to the regularisation of the quarter contending that her brothers were not in a position to look after her parents, whereas she was, and would in future also look after her parents. The prayer was declined on 31.1.1994 on the ground that a married daughter was not eligible for regularisation of a railway quarter. The second appellant also made a representation to the Divisional and Superintending Engineer (Estates), Northern Railways, quoting instances where regularisation of railway accommodation had been made in favour of married daughters. The request was forwarded by the Divisional and Superintending Engineer to the General Manager, Northern Railways on 4.7.1994 pointing out that the first appellant was in Railway Service w.e.f. 25.2.1973, sharing accommodation with her father with effect from 16.3.1993 and that she was not drawing House Rent Allowance on her part with effect from that date. Her request was declined because of the Railway Circular on the subject. Both the appellants then took the matter to the Central Administrative Tribunal, Principal Bench, New Delhi but without any success. They have thus knocked the doors of this Court for appropriate relief.

The respondents in defence rely upon the Railway Board Circular dated 11.8.1992, whereunder regularisation is permitted on terms. The operative part thereof reads as follows :

> 'Reference Railway Ministry' letters No. E(G) 82 OR 1- 23 dated 27.12.1982 and E(G) 85 OR 1-9 dated 15.1.90 as clarified vide their letters No. E(G)90 OR 1-11 dt. 15.3.91 and 1.7.91, conveying instructions that when a Railway servant who is an allottee of Railway accommodation retires from service, his/her son, unmarried daughter, wife, husband or father as the case may be, may be allotted Railway accommodation on out of turn basis subject to fulfilment of prescribed condition.
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> The Ministry of Railways have reviewed the matter and in supercession of the instructions vide their letter No. E(G) 82 OR dt. 27.12.82 have decided to extend the scope of this concession to the married daughter of a retiring official, in case he does not

A have any son or in case where the married daughter is the only person who is prepared to maintain the parent(s) and the sons are not in a position to do so (e.g. minor sons). This will be subject to the conditions already prescribed which are applicable to the other eligible wards seeking such concessions.

B The decision communicated above will also be equally applicable in the case death/medical unfitness."

As is obvious from the plain reading of the Circular, the married daughter of a retiring official is eligible to obtain regularisation if her C retiring father has no son. She thus has a foothold, not to be dubbed as an outcaste outright. In case he has a son, she shall not be in a position to do so, unless he is unable to maintain the parents, e.g. like a minor son, but then she should be the only person who is prepared to maintain her parents. It is thus plain that a married daughter is not altogether debarred from obtaining regularisation of a railway quarter, but her right is depend- D ent on contingencies. The authorities concerned as also the Central Administrative Tribunal seemed to have overlooked the important and predominant factor that a married daughter would be entitled to regularisation only if she is a railway employee as otherwise, she by mere relationship with the retiring official, is not entitled to regularisation. E Logically it would lead to the conclusion that the presence of a son or sons, able or unable to maintain the parents, would again have to be railway employees before they can oust the claim of the married daughter. We are not for the moment holding that they would be capable of doing so just because of being males in gender. Only on literal interpretation of the Circular, does such a result follow, undesirable though.

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A common saying is worth pressing into service to blunt somewhat the Circular. It is:

"A son is a son until he gets a wife. A daughter is a daughter throughout her life."

G

The retiring official's expectations in old age for care and attention and its measure from one of his children cannot be faulted, or his hopes dampened, by limiting his choice. That would be unfair and unreasonable. If he has only one married daughter, who is a railway employee, and none H of his other children are, then his choice is and has to be limited to that

railway employee married daughter. He should be in an unfettered position to nominate that daughter for regularisation of railway accommodation. It is only in the case of more than one children in Railway service that he may have to exercise a choice and we see no reason why the choice be not left with the retiring official's judgment on the point and be not respected by the railways authorities irrespective of the gender of the child. There is no occasion for the railways to be regulating or bludgeoning the choice in favour of the son when existing and able to maintain his parents. The railway Ministry's Circular in that regard appears thus to us to be wholly unfair, gender biased and unreasonable, liable to be struck down under Article 14 of the Constitution. The eligibility of a married daughter must be placed at par with an unmarried daughter (for she must have been once in that state), so as to claim the benefit of the earlier part of the Circular, referred to in its first paragraph, abovequoted.

The Tribunal took the view that when the Circular dated 11.8.1992 had itself not specifically been impugned before it an ex-facie the conditions contained in the said Circular has not been satisfied in the present case, no relief need be given to the appellants. The Tribunal viewed that when there were two major sons of the second appellant, gainfully employed, the fact that they were not railway employees, not residing in Delhi, did not alter the situation that the terms of the Circular dated 11-8-1992 had not been satisfied, under which alone regularisation was permissible. As brought about before, the Tribunal overlooked this aspect that the Circular was meant only to enlist the eligibles, who could claim regularisation, but the important condition of one being a railway employee had to be satisfied before claim could be laid. In the instant case, the first appellant, on that basis, alone was eligible (subject to gender disqualification going). So the second appellant could exercise his choice/option in her favour to retain the accommodation, obligating the railway authorities to regularise the quarter in her favour, subject of course to the fulfilment of other conditions prescribed. The error being manifest is hereby corrected, holding the first appellant in the facts and circumstances to be the sole eligible for regularization of the quarter.

It was also pointed out before us that the Central Administrative Tribunal, Bombay Bench in one of its decision in OA 314 of 1990 decided on 12.2.1992 (Ann. P-8) relying upon its own decision in *Ms. Ambika R. Nair and another* v. *Union of india and others*, T.A. No. 467 of 1986, in

A which the earlier Circular of the railway board dated 27-2-1982 had been questioned, held that the same to be unconstitutional per se as it suffered from the twin vices of gender discrimination and discrimination *inter se* among women on account of marriage. We have also come to the same view that the instant case is of gender discrimination and therefore should be and is hereby brought in accord with Article 14 of the Constitution. The B Circular shall be taken to have been read down and deemed to have been read in this manner from its initiation in favour of the married daughter as one of the eligibles, subject, amongst others, to the twin conditions that she is (i) a railway employee; and (ii) the retiring official has exercised the choice in her favour for regularisation. It is so ordered.

C

For the reasons stated above, this appeal is allowed and direction is issued to the respondents to grant regularisation of the quarter in favour of the first appellant with effect from the date of retirement of the second appellant and regulate/readjust the charges on account of house rent accordingly. There shall be no order as to costs.

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R.P. Appeal allowed.