

**SUPREME COURT OF INDIA**

Union of India

Vs.

Brij Bhushan Sharma

C.A.No.472 of 2010

(R.V.Raveendran J.)

15.01.2010

**ORDER**

1. Delay condoned. Leave granted. Heard the counsel.

2. The facts in brief are as under: The first respondent was appointed as an Extra-departmental Mail Carrier on 27.10.1978. It is stated that on 2.11.1998, someone threw acid in his eyes, as a result of which, he lost his vision in both eyes. The Department terminated him from service on 25.1.1999 and appointed the third respondent in his place. The first respondent submitted a representation to the Department praying that his wife (the second respondent) be appointed in his place. The said request was not accepted. The first and the second respondents therefore approached the CAT, Jaipur in OA No.445/2000 praying inter alia to set aside the 2 appointment given to the third respondent and to direct the Department to consider second respondent for appointment on compassionate grounds. The Tribunal dismissed their application on 26.7.2001 on the ground that the case did not come within the purview of the rules for consideration for appointment on compassionate grounds, as first respondent had voluntarily resigned from the post.

3. The first and second respondents challenged the said order of the Tribunal, by filling CWP No.890/2002. The High Court, by the impugned order dated 2.4.2003, allowed the writ petition with a direction to the Department to reinstate the first respondent in service with all consequential benefits with a further direction that if he was found unfit to discharge his duties, he should be considered for retirement on invalidation pension; and that in the event of such retirement, second respondent, who is his wife should be provided suitable employment as per her qualification and eligibility as a special case, even if there was no provision for compassionate appointment in such cases. The High Court also awarded Rs.10,000/- as costs. Feeling aggrieved, the appellants have filed this appeal by special leave.

4. The direction of the High Court to appoint the second respondent on compassionate grounds even if the rules do not permit it, in the event of first respondent being retired with invalidation pension, is clearly unsustainable. When an employee is retired on the ground of

disability and is paid invalidation pension, there cannot be any compassionate appointment, unless of course the rules provide for it. As rightly contended by the appellants, there cannot be a double benefit.

5. In regard to other directions given by the High Court, we find that the subsequent developments have some bearing. When the matter came up on 9.4.2009, both sides informed the court that in pursuance of the order of the High Court, the first respondent had been appointed as a Peon subject to the decision of this Court and is working ever since then, in the Post Office without any complaint. In view of it, this Court directed the learned counsel for the appellants to seek instructions as to whether the first respondent could be continued in service as a peon, having regard to the spirit of the Persons with Disabilities (Equal Opportunities etc.) Act, 1995. But as there is no specific decision by the appellants as yet in that behalf, we have considered the matter. Having regard to the peculiar facts and circumstances and as the first respondent is 4 satisfactorily serving the department, we are of the view that the first respondent should be continued in service as a Peon, as directed by the High Court but subject to certain modifications in the order of the High Court.

6. The appeal is accordingly disposed of with the following directions:

(i) The first respondent who has been reinstated in pursuance of the decision of the High Court may be continued in service as a peon. If the appellants find it difficult to continue him in service, he may be retired subject to payment of invalidation pension.

(ii) While he is entitled to continuity of service from the date of termination to date of reinstatement, the first respondent shall not be entitled to any salary or other financial benefits for that period. It is however made clear, that if any amount has already been paid to him for that period, in pursuance of the order of the High Court, it may be recovered back in easy instalments.

(iii) The direction levying costs of Rs.10,000/- is set aside.

(iv) The adverse observations made against the Department and its officers stand deleted.

(v) The direction to offer appointment to second respondent (wife of first respondent) in the event of 5 first respondent being retired on invalidated pension, is set aside.