

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

% Judgment Reserved On: 18th October, 2010
Judgment Delivered On: 1st November, 2010

+ **W.P.(C) 5779/2007**

UOI & ANR. Petitioners
Through: Ms.Geetanjali Mohan and Mr.Ketan
Madan, Advocates

versus

A.K.MEHROTRA & ORS. Respondents
Through: Mr.G.D.Bhandari, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. The facts leading to the filing of the above captioned petition are that the respondent No.1 and 2 were appointed as Coaching/Goods Clerk in the pay-scale ₹260-430 on 17.06.1975 and 12.04.1976 respectively.

2. As per the Recruitment Rules applicable in the year 1982, the post of Commercial Apprentice in the pay-scale ₹455-700 was to be filled up in the following manner:- (i) 75% through promotion by selection (written test and viva-voce) and by passing pre-requisite promotional course (CP-7/CP-8); (ii) 15% through direct recruitment from open market and (iii) 10% through departmental competitive examination from amongst serving staff of Commercial Department other than ministerial

staff who are graduate and below 40 years of age and qualifies promotional course (P28-A & B) from ZTS/CH.

3. In the year 1983 the respondents appeared in the examination conducted for selection for the post of Commercial Apprentice against 10% departmental quota and successfully cleared the same upon which they were empanelled in the selection list. Thereafter the respondents were required to undergo training for a period of two years as prescribed under the Recruitment Rules. After completion of the training, the respondents were posted as Goods/Booking Supervisors vide Office Order dated 18.10.1984 issued by the Railways.

4. In the meantime, restructuring of the cadre took place on 01.01.1984.

5. On 24.05.2005 a seniority list of Class-III Commercial Staff was published by the Railways wherein the seniority of the respondents was reckoned from the date of their joining the post after successful completion of training undergone by them and they were shown as juniors to some persons who were empanelled in the selection list subsequent to the respondents inasmuch as said persons were assigned seniority as per principles adopted for cadre restructuring i.e. considering the length of service in the equivalent post.

6. Aggrieved by the seniority list dated 24.05.2005 published by the Railways, the respondents filed an application under Section 19 of Administrative Tribunals Act, 1985 before the Tribunal inter-alia stating that their seniority should have been reckoned from the date of their empanelment in the selection list and not from date of their joining the post after successful completion of training undergone by them.

7. Relevant would it be to note that the persons who were to be adversely affected in case of success of the respondents before the Tribunal were not impleaded as parties by the respondents in the application filed by them.

8. In the meantime, a similar issue arose for consideration before Allahabad Bench of the Tribunal. Vide judgment dated 25.11.1992 Allahabad Bench held that the seniority of the applicants before Allahabad Bench should have been reckoned from the date of their empanelment in the seniority list and not from the date of their joining the post after successful completion of training undergone by them.

9. Aggrieved by the judgment dated 25.11.1992 passed by Allahabad Bench of the Tribunal, the petitioner filed a Petition for Special Leave to Appeal under Article 136 of Constitution of India before Supreme Court, which petition was dismissed in limine vide order dated 02.03.1994.

10. In view of dictum of law laid down in judgment dated 25.11.1992 passed by Allahabad Bench of Tribunal, vide judgment and order dated 02.02.2007 the Tribunal allowed the application filed by the respondents. With respect to non-impleadment of necessary parties, the Tribunal observed as under:-

“As the principle of seniority is now being followed by extending the benefit of decision of Allahabad Bench to the applicants, we do not find necessary that all the persons are to be impleaded as party in the present OA, however in the wake of principles of natural justice, before amending their seniority in any manner whatsoever, they should be put to notice, which would be a valid compliance of law.”

11. Whether the Tribunal could have passed an order detrimental to interests of some persons in the absence of such persons?

12. The issue regarding effect of non-impleadment of necessary parties was recently examined by the Supreme Court in Civil Appeal No.9227/2010 titled 'Girjesh Shrivastava & Ors vs State of MP & Ors' decided on 22.10.2010 wherein following pertinent observations were made:-

"The next point urged by the appellants, that they had never been impleaded in the two petitions, even as orders passed by the High Court had a direct effect on their livelihood, also goes to the root of the matter as it violates the principle of audi alteram partem.

22. This Court in Prabodh Verma and Ors. v. State of Uttar Pradesh and Ors. (1984) 4 SCC 251 at p. 273 held, "A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents...". Similarly this Court in Ramarao and Ors. v. All India Backward Class Bank Employees Welfare Association and Ors. (2004) 2 SCC 76, at page 86 said, ".... An order issued against a person without impleading him as a party and thus, without giving an opportunity of hearing must be held to be bad in law. The appellants herein, keeping in view the fact that by reason of the impugned direction, the orders of promotion effected in their favour had been directed to be withdrawn, indisputably were necessary parties. In their absence, therefore, the writ petition could not have been effectively adjudicated upon." Also in B. Ramanjini and Ors. v. State of Andhra Pradesh and Ors. (2002) 5 SCC 533 at pages 542-543, paragraph 19 where selection of certain teachers was challenged without impleading them, this Court held, "Selection process had commenced long back as early as in 1998 and it had been completed. The persons selected were appointed pursuant to the selections made and had been performing their duties. However, the selected

candidates had not been impleaded as parties to the proceedings either in their individual capacity or in any representative capacity. In that view of the matter, the High Court ought not to have examined any of the questions raised before it in the proceedings initiated before it. The writ petitions filed by the respondents concerned ought to have been dismissed which are more or less in the nature of a public interest litigation."

13. In the view of afore-noted authoritative pronouncement of Supreme Court in Girjesh's case (supra), we have no doubt whatsoever in holding that the course adopted by the Tribunal in passing an order detrimental to the interests of some persons without such persons being impleaded as parties despite the fact that a specific objection was raised in said regard is palpably wrong.

14. The reasoning of the Tribunal that principles of natural justice can be complied with by directing the department to put to notice such persons as would be affected by a change in the seniority list are, in our opinion, perverse reasoning for the simple reason the Tribunal has held in favour of the respondents and issued directions to the petitioner to correct the seniority list in the manner it ought to be drawn as per the findings returned by the Tribunal. We wonder what would be the right of the persons whose interests are already been affected to tell the petitioner not to correct the seniority list for the reason the petitioner would be bound by the directions issued by the Tribunal. The way in which the Tribunal has dispensed justice seems to be a leaf out of 'Alice in Wonderland', where the queen had proclaimed decision first let hearing follow.

15. Thus, we do not deal with the merits of the contentions urged and set aside the impugned judgment dated 02.02.2007

passed by the Tribunal with a direction that it would be open to the respondents to seek revival of the Original Application filed by them before the Tribunal with an application to implead such persons as are likely to be affected by the decision which may be taken by the Tribunal and in said eventuality the Tribunal would restore the Original Application filed by the respondents and after impleading such persons who interest is likely to be affected would issue notice to them and then re-decide the matter. Needless to state the finding returned by the Tribunal in the impugned order would be ignored.

16. No costs.

**(PRADEEP NANDRAJOG)
JUDGE**

**(SIDDHARTH MRIDUL)
JUDGE**

NOVEMBER 01, 2010
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