

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3651 of 2015**

1. Union of India, Through General Manager, SEC Railways, Bilaspur, Bilaspur District Chhattisgarh Pin 495004
2. Chief Personnel Manager, SEC Railways, Bilaspur Division, Bilaspur (CG) 495004
3. Sr. Personnel Officer, SEC Railways, Bilaspur Division, Bilaspur (CG) 495004

---- Petitioners**Versus**

K. Vipin Kumar S/o Shri K.V.R.Rao, aged about 26 years, R/o F Pocket, Maroda Sector, Bhilai, District Durg, Chhattisgarh 490006

---- Respondent

For Petitioners	:	Shri Abhishek Sinha, Advocate.
For Respondent	:	Shri K.R.Nair, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Navin Sinha, Chief Justice****09/10/2015**

1. The present writ petition assails the order dated 14.5.2015 in Original Application No. 668 of 2013 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting, Bilaspur (hereinafter called 'the Tribunal'). The Tribunal held that the delay in offer of appointment to the Respondent was occasioned due to the department itself. Applying the dictum that no man can take advantage of his own wrong, directions have been given to appoint the Respondent with retrospective effect granting other service benefits except monetary.

2. Learned Counsel for the Petitioners submitted that the Respondent was an applicant for Talent Scouting Sports Quota. Merely because a candidate may have been successful in trials, did not create any indefeasible right for appointment because further procedures were required to be followed. While the matter was being processed, the time period for which the recommendation remained valid ran out leading to lapsing of the post. Therefore, it was not a case of arbitrary denial of appointment where no reasonable explanation was furnished why appointment could not be made. The Tribunal, in the circumstances ought not to have given directions for appointment. In any event, the Respondent had only prayed for a direction to consider him for appointment. The Tribunal exceeded its jurisdiction by directing appointment.

3. Learned Counsel for the Respondent submitted that the order of the Tribunal calls for no interference. The conduct of the Petitioners speaks for itself. The Respondent was selected in the earlier selection process also and due to delay attributable to the Petitioners, he could not be appointed as necessary formalities were not completed by them within the prescribed time. In the second selection process, the Respondent again qualified and for reasons attributable to the Petitioners again, right of the Respondent to be considered for appointment was defeated. The Tribunal has there correctly applied the principle that no man can take advantage of his own wrong to deny appointment. There is no allegation of any ineligibility or any other disqualification of the Respondent. If during the first selection process, the time period for appointment ran out due to the fault of the Petitioners alone, in the facts of the case any issues of age relaxation are not relevant as the Petitioners cannot act arbitrarily and the age of the Respondent for the purpose of selection has to be considered in accordance with the first selection process in which he had already participated successfully. Clause 5.1.2 of the instructions for appointment in any event contains provision for relaxation of age.

4. We have considered the respective submissions on behalf of the parties.

5. Suffice it to observe that we find no error in the conclusion of the Tribunal that no person can be permitted to take advantage of his own wrong. We do not consider bureaucratic apathy as a valid ground to hold that there was no arbitrariness in conduct on the part of the Petitioners and that because the Respondent had no indefeasible right to appointment, the Tribunal committed error. To that extent, the writ petition is dismissed.

6. We do however find substance to a limited extent that the Tribunal in exercise of judicial review ought to have confined its jurisdiction to errors in the decision making process and could not have given directions for appointment of the Respondent. Aptly, the correct order to be passed by the Tribunal was to direct the Petitioners to take a fresh decision in accordance with law within the time indicated by the Tribunal. The orders passed in exercise of jurisdiction under Articles 136 and 141 of the Constitution of India are on a different platform.

7. In (1994) 4 SCC 448 (State of Haryana v. Naresh Kumar Bali), it was observed as follows:

"16...The High Court could have merely directed consideration of the claim of the respondent in accordance with the rules. It cannot direct appointment. Such a direction does not fall within the scope of mandamus. Judicial review, it has been repeatedly emphasised, is directed against the decision making process and not against the decision itself; and it is no part of the court's duty to exercise the power of the authorities itself. There is widespread misconception on the scope of interference in judicial review. The exercise of the extraordinary jurisdiction constitutionally conferred on the Apex Court under Article 142(1) of the Constitution can be of no guidance on the scope of Article 226. "

8. The order is therefore set aside to the extent that it directs appointment.

The Petitioners are directed to consider the case of the Respondent for

appointment in accordance with the observations contained in order of the Tribunal and as discussed by us within a maximum period of three months from the date of receipt and/or production of a copy of this order.

9. The writ application stands disposed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE