

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

W.P.NO. 11150 of 2013

And

M.P.No.1 of 2013

Union of India
rep. by its General Manager,
Southern Railway,
Park Town, Chennai-600 003.

... Petitioner

Vs.

1. S.Manicka Kannan

2. The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, seeking to issue a writ of certiorari to call for the entire records on the file of the second respondent herein in O.A.No.1518/2010 and quash the order passed therein dated 18.02.2013.

For Petitioner .. Mr.P.T.Ramkumar

For Respondent No.1 .. No Appearance.

O R D E R

(Order of the Court was made by Justice V.Ramasubramanian)

The Union of India, represented by the General Manager, Southern Railway, has come up with the above writ petition, challenging an order passed by the Central Administrative Tribunal, Madras Bench, in an application filed by the first respondent seeking alternative employment.

2. Heard Mr.P.T.Ramkumar, learned counsel for the petitioner.

3. The first respondent was already served with notice way back in June 2013. He has not chosen to enter appearance. His name is printed in the cause list. There is no representation for him.

4. The first respondent appeared for selection to the post of Junior Engineer in the selection conducted by the Railway Recruitment Board, in the year 2007. By a letter dated 22.5.2008, issued by the Railway Recruitment Board, he was informed that the first respondent was provisionally selected for appointment and that the same will be subject to his being found medically fit.

5. The first respondent appeared for medical examination. In the medical examination he was declared unfit. Though the actual illness on account of which the first respondent was declared medically unfit is not indicated in the medical certificate, it is stated therein that the first respondent was unfit in "Aye Three" category.

6. The first respondent was given an option to appeal against the decision to the Medical Board within one month. But unfortunately, the first respondent did not exercise the said option. On the contrary, he made a request for alternative employment. Thereafter, he applied under the Right to Information Act and got a communication to the effect that the provision for alternative employment of medically unfit candidates had been scrapped from 2004 onwards.

7. Challenging the communication received under the Right to Information Act, the first respondent filed an application in O.A.No.615 of 2009 on the file of the Central Administrative Tribunal, Madras Bench. The Union of India contested the application on the ground that the Scheme for alternative employment of medically de-categorised persons had already been scrapped in 2004 and that more than about 500 persons are waiting for redeployment.

8. Rejecting the arguments of the Railway Administration, the Central Administrative Tribunal allowed O.A.No.615 of 2009 filed by the first respondent, by an order dated 29.6.2010. The operative portion of the order of the Tribunal reads as follows:-

"In the result, the OA is allowed, setting aside the impugned order dated 18.5.2009 (Annexure-A) with a direction to the respondents to consider the claim of the applicant who have been selected for the post of Junior Engineer (Works) in any alternative job and pass reasoned order within a period of 5 weeks from the date of supply of copy of this order. No order as to costs."

9. It is relevant to note that the prayer with which the first respondent went before the Tribunal was not only for quashing the communication received under the Right to Information Act but also

for a direction to the respondent to grant alternative employment.

10. As against the order of the Tribunal dated 29.6.2010, passed in OA No.615 of 2009, the Railway Administration did not come up with a writ petition. On the contrary, they chose to comply with the order by examining the request. After examination of the request, the Southern Railway Administration passed an order dated 9.11.2010, rejecting the request of the first respondent for alternative employment. Therefore, finding himself back to square one, the first respondent filed a second application in O.A.No.1518 of 2010 on the file of the Central Administrative Tribunal. That application has been allowed by the Tribunal by an order dated 18.2.2013, forcing the Railway Administration to come up with the above writ petition.

11. The contention of Mr.P.T.Ramkumar, learned counsel for the petitioner/Railway Administration is that when the Scheme to provide alternative employment to medically de-categorised persons, had already been scrapped, the question of providing alternative employment to the first respondent, who was not permitted to join duty, did not arise. The learned counsel further contended that though the first respondent was given an opportunity to appeal against the decision to declare him medically unfit, he did not appeal. Therefore, the learned counsel contended that the declaration of medically unfitness, had been accepted by the first respondent. Once it is accepted, the first respondent cannot insist upon alternative employment under the Scheme that had already been scrapped.

12. We have carefully considered the above submissions.

13. As rightly observed by the Tribunal, the two contentions raised by the Railway Administration namely:

(i) That the Scheme had already been scrapped; and

(ii) That more than about 550 de-categorised employees are waiting for alternative employment, had already been considered by the Tribunal in the first round of litigation and rejected. As against the findings categorically recorded by the Central Administrative Tribunal in the first round of litigation, the Railway Administration did not come up with a writ petition. Therefore, on the basis of the very same reasoning that were rejected by the Tribunal in the first round of litigation, it was not open to the Railway Administration to reject the request for alternative employment. A seal of finality has reached, in so far as those two issues are concerned. As a matter of fact in the first round of litigation, the Tribunal recorded a finding that after the so called scrapping of the Scheme in 2004, more than about 101 Railway Recruitment Board candidates were given appointment. During the period 2005 to 2010 also, many persons have been accommodated.

Therefore, the findings recorded by the Tribunal in the first round of litigation, cannot be reopened by the Railway Administration in a second round and the Tribunal was right in rejecting the same as having attained finality.

14. The Tribunal even in the first order had noted that the decision was not only with respect to serving employees but also with respect to candidates selected and empanelled through the Railway Recruitment Board. Therefore, the said finding is also reached its finality.

15. The learned counsel for the petitioner relies upon two circulars one dated 25.5.2009 and another dated 28.7.2010, in support of his contention that the rejection of the request was in conformity with the requirements.

16. But, unfortunately, for the petitioner, the first respondent relied upon paragraph 509 of the Indian Railway Medical Manual. The petitioner's selection was of the year 2007. Therefore, the Tribunal has rightly held that the circulars issued in the year 2009 and 2010, cannot take away the benefit to which the first respondent became entitled in 2007 selection. The circulars also cannot have any retrospective effect and these two circulars were placed before the Tribunal in the first round of litigation and they have been held in paragraph 11 of the order passed by the Tribunal in the first application to have only prospective effect. This finding has also gone unchallenged.

17. Therefore, we see no reasons to interfere with the order of the Tribunal. Hence, the writ petition is dismissed. There will be no order as to costs. Consequently, M.P.No.1 of 2013 is closed.

Sd/-
Asst.Registrar

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Sub Asst. Registrar

gr.

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To

The Registrar, Central Administrative Tribunal,
Chennai Bench, Chennai.

+1cc to M/s T.P.Ramkumar, Advocate Sr.4964

W.P.NO.11150 OF 2013

VD (CO)
rvr
21/02/2015



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