

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE SMT JUSTICE ANIS

WRIT PETITION NO.2158 OF 2014

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ORDER: (*Per Hon'ble Justice Nooty Ramamohana Rao*)

This writ petition is directed against the order passed by the Central Administrative Tribunal (C.A.T), Hyderabad Bench in O.A.No.560 of 2011 instituted by the first respondent herein.

The Senior Divisional Personnel Officer of Guntakal Division published a notification on 30.12.2004 setting out that the Railway Board has decided to fill 5 vacancies of Safaiwalas in the scale of Rs.2550-3200 (RP) in Guntakal Division by engaging substitutes drawn from the wards of Safaiwalas who had retired from service on superannuation from January, 2000 onwards. Community wise break-up of the vacancies are notified as Unreserved (UR)-02 and Other Backward Classes (OBC)-3. The candidates should have passed 8th class and they should be within the age group of 18 to 33 years and the upper age is relaxable in case of SC/ST and OBC candidates by 5 years and 3 years respectively. Candidates are also required to fit into CEE-ONE medical classification. The mode of selection has been notified that the candidates will be subjected to screening test and since the vacancies are limited, if applications are received over and above the requirement, preference would be given to the wards of those employees who are older in age and in case if two persons happen to be of the same, preference is given to the ward who is older. The screening of the candidates was scheduled to be held on 25.01.2005 at the Divisional Office of the Guntakal Division. The notification made it clear that candidates fulfilling the eligibility criteria will be screened by a Screening Committee consisting of 3 Senior Scale Officers, one of them would be drawn from the Personnel Branch who can be in the junior scale or Group B service. After the

screening is held, proposals will be sent to the headquarters of the Zonal Railway for approval of the General Manager. Accordingly, the Screening Committee conducted the screening on 31.05.2005 and recommended names of four candidates who are found suitable for placement on the panel including the first respondent/applicant herein. It is now asserted that since one of the four candidates (not the respondent/applicant) education certificate was found to be not genuine, the Screening Committee's recommendations were approved by the Divisional Railway Manager (D.R.M.) for only 3 candidates and the necessary proposals were sent for approval of the General Manager on 31.10.2006. However, it appears, the Railway Board issued guidelines afresh to be adopted for recruitment of Group D posts of Indian Railways on 18.07.2005. As per the revised guidelines, a recruitment cell is to be formed at the headquarters of the Railway Zone. In view of these latest guidelines, the approval sought for, for engagement of substitute Safaiwalas could not be accorded and hence the decision taken in that regard has been communicated to the first respondent which gave rise to institution of O.A.No.560 of 2011. The Central Administrative Tribunal (C.A.T.) by its order dated 25.09.2013 directed the competent authority to finalize the selection and also appoint the applicant in the post of Safaiwala, based upon the recruitment rules/instructions available on the date of notification namely 30.12.2004, within a period of 6 weeks from the date of receipt of a copy of the order. It is this order which is challenged in the above writ petition.

Heard Sri P. Ganga Rami Reddy, learned Standing Counsel for the Indian Railways on behalf of the petitioners and Sri G.V. Sivaji, learned counsel on behalf of the first respondent.

It is contended that when the cleanliness drive was undertaken during the year 2004, a decision was taken to engage substitute Safaiwalas as an interim measure and that is how the Railway Board issued instructions to the Divisions to take action for engagement of

substitutes against the existing vacancies of Safaiwalas by calling for applications from the wards of Safaiwalas who had retired from service on superannuation from 2000 onwards. That is how the process has been initiated by the Guntakal Railway Division. But however, half way through this process, instructions have been passed on by Railway Board for constituting a recruitment cell, one such cell has been constituted at Secunderabad, the headquarters of the South Central Railway and that Recruitment Cell had undertaken the recruitment for filling up the vacancies. All that the statement made in this regard in paragraph 5 of the affidavit sworn to by the Senior Divisional Personnel Officer filed in support of this writ petition sets out is this:

“.....After formation of Railway Recruitment cell at Secunderabad the Recruitment cell had undertaken the recruitment for filling up vacancies and most of the vacancies have been filled up.....”

There was no assertion that the 5 vacancies of Safaiwala for which the Guntakal Railway Division has taken out the notification on 30.12.2004 have also been filled up in this process and therefore, the issue has been vaguely left by the Senior Divisional Personnel Officer of the Railways for the imagination of the concerned. Only two grounds have been urged before us.

1. Once the recruitment guidelines have been changed by the Railway Board vide their letter dated 18.07.2005, the earlier recruitment process cannot be taken to its logical conclusion.
2. The Screening Committee conducted the screening on 31.05.2005. nearly 6 years thereafter, the O.A. is instituted and after lapse of nearly 9 years time, the Central Administrative Tribunal issued the directions and hence, it was very difficult to complete the selection process at this juncture.

The following statement is also made in paragraph 8 of the affidavit filed in support of this writ petition:

“.....There is no acute shortage of manpower exists warranting engagement of Safaiwalas. Due to change in recruitment policy, recruitment of Safaiwala has to be made by following the recruitment Rules.”

The above statement does not indicate that there was no shortage of Safaiwalas, which may not have been perceived by the Railway Administration as an acute shortage. The equivocal statement made by the Railways, cannot defeat the rights of the candidates.

The contentions canvassed on behalf of the railways are clearly opposed to the legal principles on the subject. Firstly, the Supreme Court in ***State of Bihar and others v. Mithilesh Kumar***^[1] had occasion to consider the effect of the change of norms of recruitment during the currency of selection process. The Supreme Court has noticed the ratio laid down by it earlier in ***Shankarsan Dash v. Union of India***^[2] and ***All India Railway Recruitment Board v. K. Shyam Kumar***^[3], wherein, it was held that even after vacancies were notified for appointment and adequate number of candidates were found successful, such candidates would not acquire any indefeasible right to be appointed against the existing vacancies and thereafter, it had also considered the ratio laid by Supreme Court in ***Y.V. Rangaiah v. J. Sreenivasa Rao***^[4] and ***N.T. Devin Katti v. Karnataka Public Service Commission***^[5] and ***A.P. Public Service Commission v. B. Swapna***^[6], setting forth that when once the norms of recruitment/selection for filling up the vacancies which had been initially advertised, such norms of selection cannot be altered after commencement of the selection process and rules prescribing qualification which were amended during the continuation of the selection process and such amended/modification of the criteria would normally have prospective operation, unless something to the contrary is indicated expressly or by necessary implications in the modification.

Thereafter, in paragraph 22 and 23 of the judgment in **Mithilesh Kumar's case** it was held as under:

“22. There is no reason for us to have any disagreement with the decision of this Court in All India Railway Recruitment Board case regarding the right to appointment even of selected candidates, but this is not a case of the respondent having acquired any indefeasible right which has to be cancelled on account of certain exigencies. On the other hand, this is a case where although selected for the purpose of appointment by BPSC, Patna, the case of the respondent was not even considered as there was a change in policy regarding recruitment in the meantime.

23. While a person may not acquire an indefeasible right to appointment merely on the basis of selection, in the instant case the fact situation is different since the claim of the respondent to be appointed had been negated by a change in policy after the selection process had begun.”

The fact situation in the instant case is that, the notification appeared on 30.12.2004; though initial screening is slated to be conducted on 25.01.2005, it was ultimately held on 31.05.2005 and the Screening Committee comprising of senior officers have recommended four names for approval as against 5 posts notified and the D.R.M. of the Guntakal Railway Division made his recommendation for approval of three names on 31.10.2006 as the educational certificate of the fourth candidate was found to be not genuine.

The fresh guidelines were issued by the Railway Board on 18.07.2005, changing the norms of selection of Group-D employees. A recruitment cell at the headquarters of the zonal railway is to be formed and the selection process is obviously entrusted to such a cell. What emerges from this is, that the change in the norms of selection has taken place after the selection process is completed, except receiving approval. This apart, even thereafter, as on 31.10.2006, the D.R.M

recommended approval of three names against the 5 vacancies notified. The notification dated 31.12.2004 has not been cancelled to this day. The selection process has not been found vitiated either in any respect. In spite of these things, the selection process of a Safaiwala has been held back by the Railway Administration.

No meaningful explanation worth the serious consideration has been put forth as to why years have been allowed to be rolled down for according approval to the selections carried out on 31.05.2005. The post of a Safaiwala is essentially forming part of manual services to be rendered in the Ministry of Railways. It almost occupies the lowest of the rank and status amongst the servants of Ministry of Railways. It is not as if that the Ministry of Railways has dispensed with engaging Safaiwalas for rendering manual services, by undertaking the help or assistance of any mechanical process by which various public premises and assets of the Ministry of Railways are to be kept clean and tidy.

Viewed in this backdrop, the conduct of officers concerned occupying such senior post such as that of the General Manager of the Zonal Railway, the Divisional Revenue Manager of the Divisional Railway and a Senior Personnel Officer to advise the administration on matters of personnel and industrial relations cannot be appreciated at all. Unjust delay in finalizing selection process smacks of arbitrariness. It speaks of disinterestedness to deal with the lowly placed posts/people. It conveys a signal that people who do not enjoy status of a particular social order in the society will not have the right to secure appropriate attention to their causes and suffering. All these elements constitute lack of disinterestedness or the lethargy and administrative inefficiency. It is no doubt true that a competing candidate has only a right to be considered for public employment, but he has no indefeasible right to secure appointment unless the employer decides it otherwise.

The Supreme Court has clearly spelt out the principle that the

change in the norms of selection/recruitment process half way through the selection process initiated earlier thereto would not get impacted in any manner by any such change. In spite of these legal principles being settled by the Supreme Court and in spite of the Tribunal giving a direction to consider the case of the first respondent herein, the Ministry of Railways has preferred this writ petition. What grave error of law or fact committed by the Tribunal in deciding the O.A instituted by the first respondent herein has neither been spelt out in the affidavit filed in support of the writ petition nor was urged before us. We fail to understand as to how the petitioners can render themselves accountable for their actions. Institution of writ petitions of this nature are clear cases of misuse of the judicial process. Wasteful indulgence of precious final resources cannot be appreciated. No insignificant issue has been raised for consideration of this Court once again. When once the Supreme Court has already settled the principle, it becomes a binding legal principle and therefore the Ministry of Railways is bound to show adherence and respect to such legal principle and ought to have refrained from instituting this writ petition. The only reason urged was, nearly after 5 years after the selection process was initiated, the first respondent instituted O.A before the Tribunal in the year 2010 and nearly after 9 years after the selection process is initiated, the Tribunal decided the matter. In fact, it is the conduct of the respondents themselves which demonstrates that as on 31.10.2006, the D.R.M of Guntakal Division sought for approval of the selections in question and the communication not to act upon the panel having been made in the year 2010, how is the first respondent responsible for the delay in instituting the case is a question which is left unanswered by the petitioners. It is they who slept over the matter and allowed the connected files to gain dust and also get out of their attention zone. Virtually, the petitioners are oblivious to the fact that it is they who have consumed years time but not the first respondent.

A person competing for as low a public post as that of a

substitute Safaiwala had to put up adequate resistance and take recourse to law. For the sheer lack of concern for the sufferings of the lowly placed citizens of this Country, the writ petition which is otherwise meritless deserves to be dismissed with costs. The petitioners will now take prompt steps for approving the panel as recommended by the DRM and appoint all the 3 candidates and avoid any further litigation.

We accordingly dismiss this writ petition with costs quantified at Rs.10,000/- (Rupees Ten Thousand Only) payable to the first respondent through an account payee demand draft drawn in his name and deliver the same to the Registrar (Judicial) of this Court, drawn on any nationalized bank payable at Guntakal and also deliver to the Registrar (Judicial) a prepaid registered postal cover superscribing the address of the first respondent, to be used for onward transmission by the Registrar (Judicial). Thirty days time is granted for this purpose. However, the costs now ordered to be paid shall be paid at the first instance by the Ministry of Railways, to be recovered in six months time from the persons responsible, for which purpose, a copy of this judgment shall be forwarded to the Financial Advisor and Chief Accounts Officer, Ministry of Railways, South Central Railway, Secunderabad, for necessary follow-up action by him.

Consequently, miscellaneous applications pending if any shall stand dismissed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

03.08.2015

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[\[1\]](#) (2010) 13 Supreme Court Cases 467

[\[2\]](#) (1991) 3 SCC 47

[\[3\]](#) (2010) 6 SCC 614

[\[4\]](#) (1983) 3 SCC 284

[\[5\]](#) (1990) 3 SCC 157

[\[6\]](#) (2005) 4 SCC 154