NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 4568 of 2015

1. Union Of India Through General Manager, SEC Railway Bilaspur Zone GM Office, Dist Bilaspur (Chhattisgarh)

2. Chief Personnel Officer SEC Railway, Bilaspur Zone, Dist Bilaspur (Chhattisgarh)

3. Chief Personnel Officer South Eastern Railway, Garden Reach Kolkata (West Bengal)

---- Petitioners

Versus

1. Surendra Kumar S/o Late Suryadeen Aged About 47 Years Working As Sr. Section Engineer (TRS) Electro Loco Shed, SECR, Bhilai R/o Qr. No. 488/ A, Zone 1 BMY Charoda, Dist Durg (Chhattisgarh)

2. Snehangsu Mandal, Working As Sr. W. Engineer (Con), 6th Floor, Metro Rail Bhawan, 33/1 Chowrighee Lane, Kolkata (West Bengal)

---- Respondents

For Appellant : Mr. H.S. Ahluwalia, Advocate
For Respondent : Mr. B.P. Rao, Advocate

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Navin Sinha, Chief Justice

13.01.2016

1. The Writ application assails order dated 13.5.2015 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting, Bilaspur (hereinafter referred to as “the Tribunal”) in O.A. No. 39 of 2013 preferred by Respondent No.1. The Tribunal has directed that the scheduled caste reserved category candidate selected for promotion in 2004 having qualified on merit basis be adjusted against general category vacancy, and in his place Respondent No.1

the next most meritorious scheduled caste reserved category candidate be considered for promotion against the reserved vacancy in accordance with law.

2. Learned Counsel for the Petitioner submits that the selection relates to the year 2004. The O.A. has been filed belatedly on 25.12.2012. The procuring of any information allegedly under the Right to Information Act, 2005 (hereinafter called 'the Act') in the year 2012 cannot be considered as justification to ignore the delay. The Tribunal has completely erred in its interpretation of IREM 208.3 by holding that the matter could be raised anytime on merits without limitation of time. The Application ought not to have been entertained by the Tribunal so belatedly.

3. Learned Counsel for the Respondent No.1 submitted that earlier he was not aware of the fact that the scheduled caste reserved category candidate above him had been promoted against the singular reserved promotional post despite having qualified on merit basis. In that event, Respondent No.1 ought to have been considered for promotion against the only reserved vacancy. The Respondent was made aware of the same only after he obtained information under the Act pursuant to an application filed in 2012. The cause of action therefore accrued when the facts came to the knowledge of the Respondent of the injustice done to him. Reliance was placed on IREM 208.3 to submit that in matters related to wrong denial of promotion, the representation was required to be dealt with on merits without any restriction of time limit. Reliance was also placed on Clause-22.1 of the Master Circular which was in similar terms. Earlier, the Respondent had preferred O.A. No. 607 of 2012 which was disposed on 17.10.2012 to decide his representation leading to the cause of action for the second O.A. Application after its rejection.

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

5. The issue relates to promotion from Group C to Group B on basis of limited departmental competitive examination. The final merit panel was published on 25.02.2004, There was only one vacancy in the scheduled caste reserved category. Promotion was granted against the same to one Samarjit Haldar in preference to the Respondent who was the next most meritorious candidate in that reserved category. Samarjit Haldar, though a necessary party was not impleaded as party respondent before the Tribunal both in O.A. 607 of 2012 or O.A. 39 of 2013. Out of the two general category candidates promoted only one of them, Snehangsu Mandal was impleaded as Respondent in both the O.A. applications.

6. It is the case of Respondent No.1 that Samarjit Haldar had qualified on merit and was therefore required to be considered for promotion against the general quota in place of Arunjyoti Sahoo. If Samarjit Haldar was promoted against the general category vacancy, lone reserved category would have become available to the Respondent. It is difficult to believe that the Respondent working in the same office was not aware of the office environment that Samarjit Haldar had been promoted against the reserved category vacancy to his prejudice though he had obtained merit marks.

7. The cause of action therefore accrued to the Respondent on the date when Samarjit Haldar was promoted on 25.2.2004. The cause of action did not arise for the Respondent when he obtained the information under the Act in 2012. The information obtained under the Act may be material in support of the cause of action. It did not form the cause of action which had accrued earlier on the promotion. Even if that explanation be considered, the Respondent is not in a position to explain that if promotions were granted in 2004 and the Act came into force in the year 2005, why was he indolent for the protection of his own interest for seven long years thereafter till 2012.

8. The institution of O.A. No. 607 of 2012 and the direction to consider the representation cannot explain the long and inordinate delay on part of the Respondent from 2004 to till 2012. The direction to consider his representation does not amount to condoning the delay or waiving it especially when third party rights were concerned and Samarjit Haldar was not impleaded as a party-Respondent. Grant of any relief to the Petitioner by the adjustment of Samarjit Haldar would be at the cost of the other two remaining candidates. In the triangle, all of them were proper parties.

9. The Tribunal gave directions in O.A. 607 of 2012 to consider a belated representation which cannot confer a cause of action on disposal of the same. In (2008) 10 Supreme Court Cases 115 (C. Jacob Vs Director of Geology and Mining and Another), it was observed as follows:

> "14. We are constrained to refer to the several facets of the issue only to emphasise the need for circumspection and care in issuing directions for "consideration". If the representation on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing "consideration" of such claims."

10. Likewise in (2010) 2 SCC 59 (Union of India and Others Vs M.K. Sarkar) it was observed as follows:

> "15. When a belated representation in regard to a `stale' or `dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.
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> 16. A Court or Tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue."

11. Peculiarly, the Tribunal in paragraph 2 of the order observed that the Respondent was approaching the Tribunal 11 years later. It nonetheless allowed the application without applying its mind to Section 21 of the Administrative Tribunal Act, 1985 containing the bar of limitation for moving the Tribunal. It is difficult to appreciate that if the Tribunal was satisfied of the delay why it did not consider the relevance of the same while giving directions to consider the representation in light of IREM 208.3. which reads as follows:

> "208.3 Representations against selection- Representations against selections should be dealt with on merits without restriction of any time limit for their submission."

Likewise the Master Circular Clause 22.1. reads as follows:

> "Representations against selections should be dealt with on merits without restriction of any time limit for their submission."

12. In both of them, undoubtedly the words used are "without restriction of any time limit". Delay has always been considered very vital in service cases especially with regard to promotion. To entertain a belated claim for promotion will create chaos and turmoil in service affecting third party rights. Therefore, if no time limit was prescribed, naturally it has to be read as within reasonable time. What would be the reasonable time in promotion matters was considered in (1975) 1 SCC 152 (P.S. Sadasivaswamy Vs State of Tamil Nadu) observing as follows:

> "2….. A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts can not interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The Petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate

> grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

13. The Order of the Tribunal dated 13.5.2015 is therefore held to be unsustainable and is set aside.

14. The Writ Petition is allowed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

Kishore