

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

Writ Petition No. 1497 of 2016

Suresh son of Vinayakrao Waghchoure,

aged about 60 years,

occupation : Working under

DRM [P], Central Railway,

Nagpur, resident of

Dharamdeep, Indora, Nagpur.

..... **Petitioner.**

Versus

1. The Central Administrative Tribunal,

Bombay Bench, Gulestan

Building No.6,

3rd/4th floor, Dr. Ghamshyam Marg,

[Prescot Road], Fort,

Mumbai.

2. Union of India,

through the General Manager,

Central Railway,

C.S.T. Mumbai-400 001.

3. Divisional Railway Manager,

Central Railway, Nagpur Division,

Nagpur.

.... **Respondents.**

Mr. M.M. Sudame, Adv., for the petitioner.

Mr. P.S. Lambat, Adv., for respondent nos. 2 and 3.

**CORAM : B. P. DHARMADHIKARI
AND
A. S. CHANDURKAR, JJ.**

Date : 22nd August, 2016

ORAL JUDGMENT [Per B. P. Dharmadhikari, J.]:

01. Considering the nature of controversy, matter is heard finally by issuing Rule and making it returnable forthwith.

02. Learned Adv. Mr. Sudame submits that the representations sent by the petitioner in pursuance of the policy decision RBE No. 78/2006 were addressed to various authorities, including the General Manager. He contends that because later on junior persons to the petitioner were absorbed in equivalent or same grade, the petitioner accordingly sought re-determination of his absorption. Incompetent authority, namely Divisional Railway Manager [Personnel], decided it and Central Administration Tribunal has overlooked this aspect. He further states that in this situation, the impugned order is liable to be

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quashed and set aside and the matter needs to be placed back before Central Administrative Tribunal for passing a reasoned proper order.

03. Learned Adv. Mr. Lambat states that a representation was sent to the authority which has decided it and that authority has correctly found that benefit of said RBE could not have been extended to the petitioner, as he was not in same grade.

04. During hearing the Court was constrained to ask the question as to how and why RBE No. 78/2006 was required to be issued. Adv. Mr. Lambat, then to assist the Court, submitted that said RBE is not applicable to the case of the petitioner and he should have submitted a representation as per the communication dated 31st July, 2006 sent by the Ministry of Railways to General Manager [Personnel] having RBE No. 104/2006. He also states that petitioner nowhere relied upon the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. He adds that, in fact, the grievance of the petitioner was time barred.

05. In the light of the grievance as made in the petition, we find that the Central Administrative Tribunal ought to have considered the

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provisions of Section 47 of above mentioned 1995 Act. The respondents have very fairly placed RBE 104/2006 as Annexure-R-6 with the reply-affidavit before this Court.

06. In such a situation, when provisions of Section 47 of 1995 Act are in force, prior to issuance of BBE No. 104/2006 or RBE No. 78/2006, the respondents ought to have considered the representation of the petitioner in the correct spirit and attempted to redress his grievance if it was covered under Section 47 of that Act.

07. We find that the petitioner unfortunately did not make any reference to said Section and relied upon RBE No. 78/2006. It appears that he was not aware of RBE No. 104/2006.

08. Petitioner has superannuated in the year 2013.

09. In this situation, we do not observe anything on merits of controversy. Interest of justice can be met with by granting the petitioner leave to make a fresh representation in accordance with law to competent authority within a period of four weeks from today. If such representation is made, said authority shall consider it as per law within next three months. It is clarified that such consideration shall

be impartial and uninfluenced by the orders of Central Administrative Tribunal dated 30th September, 2015 in Original Application No. 2081 of 2012.

10. With these directions, we dispose of the Writ Petition. No costs.

Judge

Judge

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C E R T I F I C A T E

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

Uploaded by : R.B. Hedau,
Pvt. Secretary.

Uploaded on : 23rd Aug., 2016

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