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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : 1st April, 2016

**+ CM Nos.12212/2015 & 7285/2016 in
W.P.(C) No. 5554/2012**

KESHRI CHAND & ORS. Petitioners
Through: Mr. Suresh Chand, Adv.
versus

UNION OF INDIA AND ORS. ... Respondents
Through: Mr. Joydeep Mazumdar, Mr.
Kalyan Bhaumik, Ms.
Shalini Kaul and Mr. Rohit
Dutta, Advs.

**+ CM No.12210/2015 in
W.P.(C) No. 876/2013**

SHIV CHARAN SINGH & ORS. Petitioners
Through: Mr. Suresh Chand, Adv.
versus

UNION OF INDIA AND ORS. ... Respondents
Through: Mr. Joydeep Mazumdar, Mr.
Kalyan Bhaumik, Ms.
Shalini Kaul and Mr. Rohit
Dutta, Advs.

**CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MS. JUSTICE DEEPA SHARMA**

JUDGMENT (ORAL)

GITA MITTAL, J.

**CM Nos.12212/2015 & 7285/2016 in W.P.(C) No. 5554/2012
CM No.12210/2015 in W.P.(C) No. 876/2013**

1. Heard.

2. By way of CM Nos.12212/2015 and 12210/2015, the applicants have sought recall and modification of the order dated 22nd April, 2013 passed by us making directions in W.P.(C)Nos.5554/2012 and 876/2013. Inasmuch as the essential facts have been set out in the order dated 22nd April, 2013, we reproduce the same in extenso hereafter :

“1. The instant case has been filed by a group of ancillary staff of the Railway Protection Special Force (RPSF) contending that they are entitled to the benefit of promotion to the post of Constable (Executive) under Directive 14 issued by the Director General/RPF in exercise of powers under Section 8 of the RPF Act, 1957. By virtue of this Directive, promotional prospects were provided to those ancillary staff who were matriculates and were willing to serve as a Constable in the Executive Branch of RPF. As a result, the change of cadre upto 10% of the vacancies of Constables on any railway was committed to staff eligible in terms of the Central Government’s circular. Our attention is drawn to the letter dated 13th March, 2009 issued by the Ministry of Railways constituting a Selection Board for changing of the above category from ancillary staff to Constable (Executive). The same circular required the Battalions to obtain willingness certificates from members of the staff who were eligible in terms of the Directive No.14. Unfortunately, the selection process did not proceed any further and the signal dated 4th June, 2009 was issued aborting the holding of the selection for the change of the category. This signal issued by the Government of India notifying that “the selection for change of category from ancillary to constable has been postponed till further orders”.

2. It appears that the matter has moved not a whit.

3. In response to the petitioner’s queries as to when the re-scheduled selection would be conducted, the

respondents have responded on 19th August, 2011 informing one of the petitioners that on account of large number of vacancies, the proposed selection could not be held. This was reiterated in a similar communication sent on 14th October, 2011.

4. Mr. Suresh Chand, learned counsel for the petitioner has submitted that at the same time, the respondents are attempting to outsource the activities being undertaken by the ancillary staff and has placed a message dated 30th September, 2011 before us in this regard.

5. The challenge by the petitioners to the non-action of the respondents has been necessitated inasmuch as the same is resulting in grave injustice to a large number of ancillary staff who, in the meantime, are becoming over age for consideration for the change of cadre in terms of Directive No.14. It is submitted that as a result, the opportunity of promotion to a large number of staff are being foreclosed forever.

6. It is also pointed out by Mr. Suresh Chand, learned counsel for the petitioners that the respondents admittedly have vacancies in the post of Constable (Executive). As a result of the non-action of the respondents, those positions remained unfulfilled to the detriment of the organization.

7. We find that in the counter affidavit the respondents have placed reliance on Rule 75 of the Railway Protection Rule, 1987. We find that Rule 75.2 itself enables the candidate (who is an ancillary staff) who is otherwise qualified and proficient in his trade or skill, to be enlisted as a Constable for that trade or skill.

8. The counter affidavit would only show the requirement of ancillary staff in the RPSF company for discharging the security duties effectively especially in far-flung, remote and sensitive areas without even suggesting that any efforts to recruit having been made.

9. Mr. Chandan Kumar, learned counsel for the respondent informs us that recruitment stands

centralized and has to be undertaken by the Railway Board and that there has been no fresh intake of the ancillary staff in the RPSF for the last two and a half years. The last intake was in July, 2010. This is the position even though several members of the ancillary staff have superannuated/expired during the period, there has been depletion of the available ancillary staff for undertaking these functions.

10. In para 4.9 of the counter affidavit, the respondents have urged an additional plea that depletion of the number of ancillary staff would impact the seamless operation of the RPSF which would put the nation at risk. But this plea ignores the important factor that as a result, the vacancies of Constable (Executive) also remain unfilled.

11. The above narration would show that the denial of promotion to the petitioners is not for the reason that they are not eligible. The denial is also not for the reason that there is no requirement of Constables (Executive) in the RPSF. The respondents have tried to advance the plea that they have not effected any recruitment to the vacant positions of ancillary staff as the sufficient reasons to deny promotions to the petitioners. The delay in effecting recruitment of the ancillary staff from 2010 till date, would be for a period of almost 3 years. It needs no elaboration that depletion of even a single hand impacts operational efficiency. The fact that the members are short not in few numbers but in several hundreds (225), would show that the failure to take action by the respondents has resulted not only in denial of the promotion to the petitioners at the appropriate time but results in the imperilling the national security (as asserted by the respondents) for which the respondents are squarely to blame. On the other hand for their non-action, the respondents are causing prejudice to the members of the ancillary staff who were eligible and were entitled to be promoted against the vacancies of Constable (Executive).

Financial and other benefits have been denied to otherwise eligible candidates by the respondents for no fault.

12. Matters of recruitment deserve to be considered on priority. The recruiting agencies are required to implement the procedures fairly, strictly and promptly in accordance with the prescribed Rules and Regulations. Delay in effectuating the same cannot be countenanced under any circumstances.

13. Mr. Chandan Kumar submits that as per letter dated 29th October, 2008 bearing R.B.E. No.160/2008 issued by the Railway Board, the working of the Sixth Pay Commission and fixation of salary has come in the way of effecting the recruitment. In this regard this circular contains the following directive:-

“4. Instructions regarding placement of Group ‘D’ employees of RPF/RPSF in PB-1 will be issued separately.”

14. Interestingly, this circular is dated 29th October, 2008 long before the 13th March, 2009 whereby the respondents have constituted the selection board for the change of category of the ancillary staff to Constable (Executive). The staff's willingness also stands taken. Despite a passage of five years the requisite instructions have not been issued by the Railway Board. This direction has been used as a ruse not to complete the recruitment process.

15. As has been stated by the respondents, the RPF and RPSF perform serious functions relating to the security on the Indian Railways which is being compromised for want of the adequate staff in both posts – ancillary staff as well as Constable (Executive). The above narration would show that the respondents have without any sufficient cause failed to discharge their functions and responsibilities thus jeopardising life and property of the public any longer and that of the

Indian Railways. This cannot be countenanced any longer.

16. Learned counsel for the petitioners submits that the petitioners had a vested right for consideration and change of category on the date they became eligible after the issuance of Directive No.14. This aspect of the matter shall be considered after the respondents place before this court the instructions mentioned in clause 4 of the circular dated 29th October, 2008 and take steps to effect the recruitment to the vacant positions and ancillary staff.

17. In view of the above we direct as follows:-

i) The respondents shall finalise the instructions referred to in Clause 4 of the circular RBE No.160/2008 (page 44) dated 29th October, 2008 which shall be placed before this court within a period of 4 weeks from today.

ii) The respondents shall immediately take the requisite steps for effecting the recruitment to the vacant positions of the ancillary staff in the RPSF, the advertisement/schedule whereof shall be placed before us before the next date of hearing.

(iii) The respondents shall also place before us the schedule with regard to change of category from ancillary staff to Constable (Executive).

18. We make it clear that in case appropriate steps are not expeditiously taken appropriate legal action shall be taken for the failure to comply with the directions.

List on 4th July, 2013

Dasti.”

3. The respondents thereafter filed CM No.9716/2013 on 29th June, 2013 before us seeking extension of time for implementing the directions made by us in para 17 of the order dated 22nd April, 2013 on the following grounds :

“3. xxx xxx xxx

(c) Application for certified copy was made on 23.4.2013. The same was prepared on 6.5.2013 itself. ***This was immediately handed over to the Respondents on 07.05.2013 for its due implementation.***

(d) That the answering respondents vide their internal note ***dated 08.05.2013 immediately sent the order dated 22.04.2013 to the Pay Commission Directorate of the Ministry of Railways for implementing the directions*** of the Hon'ble Court regarding issuing the instructions relating to status of ancillary staff of RPF/RPSF pursuant to the acceptance to the recommendation of VI Central Pay Commission by the Government.

(e) That the ***Pay Commission Directorate***, having noticed the order of Hon'ble Court (along with the above note) vide internal note dated 15.05.2013, have ***sought eight weeks additional time to enable implementation of the order of the Hon'ble Court***, relating to issue of the instruction for placement of Group 'D' employees of RPF/RPSF in pay band-1 (PB-1), interalia having noted that the issue for implementing the order dated 22.04.2013 was already under process in consultation with various Ministries like Ministry of Home Affairs (MHA)/Ministry of Finance (MOF) and various other Directorates of the Ministry of Railways. That the aforesaid documents are annexed hereto and marked as ***Annexure-'R/1'*** (Colly).

4. That since ***other activities concerning recruitment of ancillary staff and change of category to constables are also correlated*** as recruitment of ancillary staff would involve amendment of rules in the changed scenario, in view of the aforesaid and in the interest of justice, ***respondents are seeking eight weeks' additional time from 04.07.2013 for implementing the direction issued in terms of paragraph 17(i), (ii) and (iii) of the order dated 22.04.2013.***"

(Emphasis supplied)

4. For the reasons stated in this application, by the order dated

4th July, 2013, the respondents were granted a further period of 8 weeks thereof for implementing the said directions.

5. On 27th September, 2013, an application being CM No.13034/2013 was filed by persons, who were similarly placed as the petitioners, for impleadment which was allowed leaving it open for the respondents to verify their identities.

6. In the proceedings on 13th November, 2013, the learned Additional Solicitor General had placed a letter dated 12th November, 2013 addressed by the Director, Security (ABE), Railway Board stating that an anomaly in the Directive – 29 dated 27th September, 2013, which was issued by the respondents for direct recruitment of ancillary staff has been noticed and the same was removed by a modification dated 12th November, 2013. Extension of time for compliance of the directions was again sought. Given the unwarranted delay in completing the recruitment, the respondents were put to terms and costs imposed which were complied with by them.

7. The respondents thereafter filed CM No.13792/2013 on 26th September, 2013 once again seeking further time for intimating part compliance and extension of time for full compliance of the order dated 22nd April, 2013. In para 3 of the application, the applicant has set out several steps taken for compliance of the directions made on 22nd April, 2013. Further time of one year was sought to fully comply with the order dated 22nd April, 2013 in view of the practical difficulties being faced to complete the recruitment.

8. On 17th December, 2013, noting that the respondents were in continuous default of compliance with the orders which reflected sheer apathy and lack of concern with the interest of the organization and public interest, one last opportunity was given to the respondents to place on record compliance with the order made on 22nd April, 2013 subject to payment of costs.

9. It is noteworthy that in compliance with the said directions passed by us on 17th December, 2013 regarding completion of recruitment, the respondents issued the requisite advertisement which was published on 21st of December 2013 by CPRO Northern Railway, Employment News.

10. It is also admitted by the applicants before us that so far as the petitioners are concerned, they have undergone the selection process and have been duly selected.

11. The petitioners have placed before us an order dated 9th of February 2015 in this regard which was passed with the approval of the competent authority which reads as follows :

“GOVERNMENT OF INDIA
MINISTRY OF RAILWAY
RAILWAY BOARD

No.2014/Sec.(ABE)/PM/8/2 Part-III

New Delhi, dt.09.02.2015

ORDER

In compliance to the order of Hon’ble Delhi High Court ***vide order dated 22.04.2013*** in WP No.5554/2012 & WP No.876/2013 as a ***result of screening held under Directive 14 dated : 30.06.2005*** for ***change of category from ancillary to Constable/Executive*** in RPSF w.e.f.: 29.11.2014 to 30.11.2014 at 10BN/RPSF/DHN, at

Budgam (J & K) and at No. 3rd BN/RPSF/LKO, ***a total of 82 ancillary staff (list enclosed as Annexure-A) are hereby brought provisionally on the panel for change of category as Constable/Exe in RPSF.***

They will have to successfully undergo initial training for the post of constables for which they will be sent only after they are otherwise eligible from disciplinary/vigilance/criminal/medical angle.

The result is also subject to outcome of proceedings in the Hon'ble High Court of Delhi/Supreme Court of India in the instant case.

Sr. Commanding Officers/Commanding Officers should personally ensure that none of the staff (list attached) is undergoing punishment or facing charge sheet for major penalty or vigilance case, etc. In such an event, the matter may be intimated to this office for further necessary action.

This has the approval of competent authority.

Necessary action may accordingly be taken.

Sr. Commandants/Commandants,
All RPSF Battalions.

Sd/-
(Sheela Verma)
Director Security/ABE
Railway Board"

(Emphasis by us)

The respondents have thus prepared a panel of 82 candidates who have been duly selected for being sent for training for the post of Constable (Executive) and largely complied with the order dated 22nd April, 2013.

12. In this background, the present applications filed on 14th of July 2015 seeking recall and modification of the order dated 22nd April, 2013 are hopelessly misconceived.

13. The whole basis of these applications lies in the withdrawal

of their Direction 14 on which the order dated 22nd April, 2013 was premised. This withdrawal had been effected after the respondents had taken substantial steps including the selection of the petitioners pursuant to our orders dated 22nd April, 2013. The withdrawal cannot be permitted to take effect and operate retrospectively.

14. It is submitted by Mr. Joydeep Mazumdar, learned counsel for the respondents that the directive suffered from certain anomalies. This submission is not available to the respondents at this highly belated stage of the entire matter, noted above. More so when, as noted above, the applicants were themselves clearing all anomalies.

15. The parties shall abide by the orders dated 9th of February, 2015 passed by the respondents. The appropriate orders with regard to the training of the petitioners shall be passed forthwith by the respondents.

16. There is therefore, no merit in the applications seeking recall of the order dated 22nd April, 2013. These applications are dismissed with the above directions.

Dasti to parties.

GITA MITTAL, J

DEEPA SHARMA, J

APRIL 01, 2016

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