

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No.1726 of 2017

1. Union of India through the General Manager, East Central Railway, Hazipur
2. Divisional Railway Manager, East Central Railway, Dhanbad
3. Sr. Divisional Personnel Officer, East Central Railway, Dhanbad.

.... Petitioners

Versus

1. Ram Anuj Sharma
2. Hari Kirtan Prasad
3. Md. Irfan
4. Narayan Chandra Acharjee
5. Tilak Dhari Prasad
6. Gokul Mandal
7. Kuldeep Ram

.. Respondents

CORAM : HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE B.B.MANGALMURTI

For the Petitioners : Mr. Md. Jalisur Rahman, Advocate

For the Respondents : Mr. M.A. Khan, Advocate.

06/29.11.2017

Heard learned counsel for the parties.

The respondents-Railway are aggrieved by the direction passed by the learned Central Administrative Tribunal (C.A.T.), Patna Bench Circuit Sitting at Ranchi in OA No.051/00044/2015 dated 11th November 2016 whereunder learned C.A.T. has directed the respondents-Railway to consider the case of the applicants in the light of their own circular dated 30th August 2013 as their aptitude test were held in the month of September 2013 i.e. after coming into force of the new circular. The respondents were directed to give the applicants second chance as expeditiously as possible and preferably within a period of four months.

The applicants had sought appointment of their wards under the Liberalised Accelerated Retirement Scheme for Guaranteed Employment for Safety Category Staff (LARSGESS in short). The applicants were aggrieved as the respondents had not given chance to their wards to appear in the second aptitude test, though allegedly similar benefits were accorded to the wards of other employees. As per the undisputed facts, the wards of the applicants were candidates under the recruitment cycle of the year 2012 cut-off dates 1.1.2012 and 1st July 2012; they have been treated to be applicants in the recruitment cycle July-December 2012. After appearing in the written test on 8th March 2013 they appeared in the aptitude test along with other successful candidates on 19th September 2013. Pursuant to the demand of the National Federation of

Indian Railwaymen (NFIR in short), the Railway Board vide its letter dated 30th August 2013 (Annexure-2) issued circular/executive instructions that the benefit of second chance for aptitude test for recruitment as Assistant Loco Pilots would be granted to those candidates who have passed the written test but could not clear the aptitude test under LARSGESS after a gap of three months, in exceptional cases based on merits of each case. The circular also quoted in the impugned order, made the instructions applicable from July-December 2013 retirement/recruitment cycle onwards only. The past cycles were to be governed by the earlier instructions. The other terms and conditions of the scheme remained the same. The railway have taken a consistent stand on the basis of the affidavits on record that the benefit of appearing for second aptitude test was applicable only to those wards who were candidates in the recruitment cycle July-December 2013. According to the railway, these applicants/private respondents were candidates to the recruitment cycle of 2012 and could not have been the beneficiaries of the circular/executive instructions dated 30th August 2013. Learned Tribunal has fallen in error in extending the benefit of circular dated 30th August 2013 to the applicants by re-writing the same.

Learned counsel for the petitioners-railways has also tried to explain that the circular dated 30th August 2013 is a conscious decision of the Railway Board to restrict the benefit of the 2nd chance for aptitude test to the candidates of July-December 2013 recruitment cycle onwards only as retirement/recruitment cycles for different years were underway and the demand could be acceded to the current cycle July-December 2013 only prospectively. The impugned order, therefore, deserves to be interfered with.

Learned counsel for the applicants/private respondents have defended the impugned directions.

The thrust of the arguments of the learned counsel representing them is that a beneficial construction has been accorded to the circular dated 30th August 2013 keeping into mind that the aptitude test for the wards of the applicants even under the recruitment cycle of 2012 were held after coming into force of the circular dated 19th September 2013. The circular therefore should have been read uniformly to the case of the candidates appearing in either of the cycles, otherwise it would amount to discriminatory treatment to

similarly situated persons. The impugned directions are justified and do not need any interference.

The respondents through their counter affidavit have enclosed a communication dated 17th December 2014 (Annexure-R2) addressed to the General Secretary, NFIR and to the General Manager, Northern Railway, New Delhi. The instant letter is an instruction on the LARSGESS to the General Manager, Northern Railway to conclude all the retirement/ recruitment cycle up to July-December 2014 immediately under intimation to the Railway Board. Delay in finalisation of the retirement/ recruitment cycle results in appointment becoming illegal ab-initio and also leading to various implications in the form of termination of service, consideration of reinstatement of the ineligible employee, prolonged litigation, etc.

There is no quarrel with the aforesaid direction as the railway authorities are bound to follow the time line in completing the recruitment cycle.

We have considered the submissions of the learned counsel for the parties and the relevant materials on record. We have also gone through the circular dated 30th August 2013.

The circular dated 30th August 2013 is usefully quoted hereunder as well :-

“Sub: Extension of second chance for Aptitude Test for recruitment as Assistant Loco Pilots to those wards who have passed the written test but could not clear the Aptitude Test under LARSGESS-PNM/AIRF Item No.8/2012 and a reference received from NFIR.

AIRF had raised a demand in the PNM Forum for extending second chance for appearing in Aptitude Test to those wards who have passed the written test for the post of Assistant Loco Pilots but could not clear the Aptitude Test under LARSGESS. This issue has also been raised by NFIR vide their reference dated 22.08.2012.

2. The matter has been considered by the Board. It has been decided to extend second chance for Aptitude Test for recruitment as Assistant Loco Pilots to those words, who have passed the written test but could not clear the Aptitude Test under LARSGESS, after a gap of three months, in exceptional cases based on merits of each case.

3. These instructions are applicable from July-December 2013 retirement/recruitment cycle onwards only. The past cycles will be governed by the earlier instructions.

4. The other terms and conditions of the Scheme will remain the same.

5. Kindly acknowledge receipt.”

A plain reading of the circular does not leave any room of doubt that the Railway Board upon consideration of the demand of AIRF has chosen to extend second chance for Aptitude Test for recruitment as Assistant Loco Pilots to those wards, who had passed the written test but could not clear the Aptitude Test under LARSGESS, in exceptional cases based on merits of each case applicable from July-December 2013 retirement / recruitment cycle onwards only. The circular also clarifies that past cycles would be governed by the earlier instructions. The instant circular was not under challenge before the learned Tribunal. The learned Tribunal could not have re-written the language of the circular as it lies within the domain of the employer. Explicitly it applied to the candidates for July-December 2013 retirement /recruitment cycle onwards only. A mere fact that the date of the aptitude test of the candidates of recruitment cycle 2012, fell after the issuance of the circular dated 30th August 2013, could not govern the interpretation of the language of the circular. The learned Tribunal therefore fell in error in giving a beneficial construction to the explicit language of the circular by applying it to the case of the candidates who were covered under the recruitment cycle of 2012. Not much light has been thrown on the part of the parties as to the mischief which the circular tried to overcome on the demand of the AIRF while granting second chance for aptitude test to the candidates covered under the July-December 2013 retirement/ recruitment cycle and onwards. The circular not being under challenge and there being no ambiguity in the language of the circular, the rule of literal construction ought to have been followed by the learned Tribunal. It would be apposite to extract the opinion of the Hon'ble Supreme Court as held in the case of ***Bhakra Beas Management Board v. Krishan Kumar Vij, reported in (2010) 8 SCC 701 at paragraph 36 :***

“36. A statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable. In our considered opinion, the 1990 Order cannot be logically interpreted in any other manner than what we have done. It is also too well settled that when the words of the statute are clear, plain or unambiguous and are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning only which serves the cause and purpose irrespective of the consequences.”

We are, therefore, of the considered view that the impugned

direction passed by the learned Tribunal is not in consonance with the settled principles of interpretation of statutory instructions/circulars. The circular itself is not ambiguous to warrant any other construction. In these circumstances, the impugned directions cannot be upheld in the eyes of law. Accordingly, it is set aside. The instant petition deserves to be allowed. Accordingly it is allowed.

(Aparesh Kumar Singh, J.)

(B.B. Mangalmurti, J.)

Shamim/