

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-4500-CAT-2017

Date of Decision: March 06, 2017

Sh.Anil Kumar and others

.....Petitioners

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR. JUSTICE SUDIP AHLUWALIA

- | | | |
|----|---|---------|
| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

.....

Present: Mr.Rohit Seth, Advocate
for the petitioners.

.....

SURYA KANT, J.

The petitioners have laid challenge to the order dated 04.04.2016 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity, 'the Tribunal') whereby their challenge to the selection of private respondent Nos.6 to 12 for promotion to the post of Loco Inspectors has been turned down.

[2] The plea taken by the petitioners was that the private respondents did not fulfil the requisite criteria of having driving experience of 75000 kms Footplate, hence they were ineligible for promotion to the post of Loco Inspectors as per the criteria approved by the Railway Board vide Memo dated 26.03.2009 and reiterated vide subsequent Circular dated 27.11.2012.

[3] The Tribunal has dismissed the Original Application (O.A.) on the grounds that (i) the second Original Application filed by the petitioners

(except petitioner No.1) was barred by *res judicata*; (ii) the O.A. was

hopelessly barred by limitation; (iii) the petitioners have not approached the Tribunal with clean hands; and (iv) the first petitioner was ineligible to appear in the written test for selection to the post of Loco Inspector, hence he has no *locus standi* to file the O.A..

[4] As regard to the plea of *res judicata*, it is the conceded fact that petitioner Nos.2 to 5 had earlier approached the Tribunal by way of O.A. No.459/HR/2010 challenging the selection list of Loco Inspectors notified on 27.04.2010. In that O.A. also, respondent Nos.6 to 12 were impleaded as party-respondents. However, the same was dismissed by the Tribunal on 13.07.2011 and the said order has attained finality.

[5] On the question of maintainability of the second O.A. in respect of same cause of action, the petitioners have attempted to justify the same on two counts, namely, (i) the Vigilance Cell of the Railways has found the private respondents to be ineligible vide letter dated 07.10.2013 which is a subsequent event; and (ii) the plea that private respondents are ineligible for want of 75000 kms driving experience Footplate was not taken in the earlier O.A..

[6] Both these explanations have not found favour with the Tribunal and rightly so for the reasons that Vigilance Cell letter dated 07.10.2013 has been already withdrawn and in the previous O.A. also the ground of ineligibility of private respondents for want of driving experience of 75000 kms was specifically pleaded by them. The Tribunal in this regard has held as follows:-

“18. The applicants are also liable to be non-suited on the ground that they have not come to the Tribunal with clean

hands. They have falsely pleaded that in the previous O.A., they had not taken the ground of ineligibility of the private respondents for want of experience of 75000 kilometers. However, in fact, this ground has been specifically pleaded in the previous O.A. Thus, the applicants have not come with clean hands to the Tribunal by filing this O.A. with false averments.”

[7] As regard to limitation, it is an admitted fact that the Select Panel was notified on 27.04.2010 whereas the second O.A. was filed in the year 2014, i.e. after about four years. The petitioners asserted that a fresh cause of action has arisen in their favour on the basis of Vigilance Cell letter dated 27.10.2017, but that cause of action, if any, also extinguished once the said letter was withdrawn. In this view of the matter, the O.A. has rightly been held to be time barred. Needless to say that the grounds taken by the petitioners in the second O.A. were either taken and/or were available to them at the time of filing the first O.A.. They cannot be permitted to keep on making fishing enquiries through Right to Information Act, 2005 etc.; obtain some new information and then slap a new case on the private respondents.

[8] For the reasons aforestated, we do not find any ground to interfere with the impugned order.

[9] Dismissed.

(SURYA KANT)
JUDGE

March 06, 2017
meenuss

(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking/reasoned ?
2. Whether reportable ?

Yes/No
Yes/No