

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1519 OF 2006

Bharat K. Dehade and ors. ... Petitioners.
V/s.

Purushottam Das Sharma and ors. ... Respondents.

Mr. Makarand Kale I/b M/s. M.P. Vashi and Associates for the
Petitioner.

Mr. Rahul Walia for Respondent No.1.

Mr. Suresh Kumar for Respondent No.3.

CORAM : A.S. OKA AND M.S. SONAK, JJ.

DATE OF RESERVING THE JUDGMENT : 6th September 2018.

DATE OF PRONOUNCING THE JUDGMENT : 26th September 2018.

JUDGMENT: (Per M.S. SONAK, J.)

1] Heard the learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 29.09.2005 made by the Central Administrative Tribunal (CAT), Mumbai dismissing O.A. No. 173 of 2005 instituted by the petitioners seeking *inter alia* the following substantive reliefs:

“(a) it be declared that the impugned order dated 30.12.2002 is not applicable to the applicants and the other selected candidates who were not party respondents to the Original Application No. 997 of 1999 filed by the respondents before this Hon'ble Tribunal.

(b) that the order dated 30.12.2002 passed by this Hon'ble Tribunal be quashed and set aside after reviewing / recalling the said order.”

3] There is a checkered history to the matter. Vide notification dated 17.12.1997, the Western Railways declared the General Departmental Competitive Examination (GDCE) will be held for filling-up 25% of Group -C direct recruitment vacancies for the post of Station Master/Assistant Station Master. Several employees including the petitioners and respondent Nos.1 and 2 appeared for the examination held on 20.12.1998. The results were declared on 1.6.1999 and the successful employees were sent for psychological tests. Final results were declared on 17.11.1999, empanelling about 112 employees for appointments as Station Master / Assistant Station Master. The respondent Nos.1 and 2, however, did not find any position in the 112 empanelled employees.

4] The respondent Nos.1 and 2, therefore, instituted O.A. No. 997 of 1999 before the CAT impugning the entire GDCE *inter alia* on the ground that the viva-voce test which was earlier prescribed, could not have been cancelled after the commencement of the selection process. To this O.A., none of the 112 empanelled employees were impleaded as party respondents. The CAT vide judgment and order dated 22.6.2001

allowed the O.A., setting aside the selection proceedings including empanellement of 112 employees. The Union of India instituted Writ Petition No. 2396 of 2001 before this Court, which was allowed vide order dated 21.12.2001. The CAT's judgment and order dated 22.6.2001 was set aside by consent and O.A. No. 997 of 1999 was restored to the file of the CAT for fresh and expedited hearing.

5] The respondent Nos.1 and 2, i.e., original applicants in O.A. No. 997 of 1999 took out M.P.No. 195 of 2002 seeking impleadment of 9 out of 112 empanelled employees. This was allowed and 9 out of 112 employees were impleaded as party to O.A. No. 997 of 1999. Admittedly, however, the principles of Order 1 Rule 8 of Code of Civil Procedure, 1908 (CPC) were never complied with. This is important because respondent Nos.1 and 2 now contend that 9 employees who were impleaded vide M.P. No. 195 of 2002 were impleaded in a representative capacity.

6] The CAT vide judgment and order dated 30.12.2002, once again allowed O.A. No. 997 of 1999 and set aside the entire

selection process and directed fresh selection process. In the meantime, those of empanelled employees who had already been promoted as Assistant Station Master were directed not to be reverted until the final panel, in pursuance of fresh selection was published. In order to comply with the CAT's judgment and order dated 30.12.2002, Deputy Regional Manager of the Railways issued a Circular dated 30.7.2003 proposing to conduct a viva-voce under the GDCE 1997-1998. This Circular made reference to the CAT's judgment and order dated 30.12.2002.

7] The petitioners, who had been appointed as Assistant Station Masters, in pursuance of GDCE 1997-1998 instituted Writ Petition No. 5640 of 2003 to challenge the CAT's judgment and order dated 30.12.2002, in terms of which, the empanellment and even the appointments of 112 employees came to be set aside. The main ground urged by the petitioners was that they were necessary parties to O.A. No. 997 of 1999 and without their impleadment, their empanellment and even appointments could not have been set aside. On 4.9.2003, the Division Bench of this Court issued Rule and even granted ad-interim relief to the petitioners. However, by order dated 25.2.2005, Writ Petition No.

5640 of 2003 was disposed of with direction to the petitioners to approach the CAT for reliefs claimed in the petition. The interim relief granted earlier was directed to continue for four additional weeks.

8] The petitioners, in compliance with the order dated 25.2.2005 in Writ Petition No. 5640 of 2003 instituted O.A. No. 173 of 2005 before the CAT seeking *inter alia* a declaration that the CAT's judgment and order dated 30.12.2002 is inapplicable to them or to other selected candidates, who were not made parties to O.A. No. 997 of 1999 and for review/recall of the judgment and order dated 30.12.2002. By the impugned judgment and order dated 29.9.2005, the CAT has dismissed O.A. No.173 of 2005, *inter alia*, holding that the CAT was bound by and agreed with its earlier judgment and order dated 30.12.2002 in O.A. No. 997 of 1999. Hence, the present petition.

9] This petition was admitted and the interim relief staying the operation of the judgment and order dated 30.12.2002 was granted on 1.3.2006. The petitioners have stated that in the meanwhile the petitioner No.1 has been promoted as the Chief

Law Assistant and petitioner Nos.2 to 6 as Station Masters.

10] Mr. Makarand Kale, learned counsel for the petitioners, has made the following submissions in support of this petition:

(a) That the CAT vide judgment and order dated 30.12.2002 in O.A. No. 997 of 1999 ought not to have set aside the empanellment and appointments of the petitioners or for that matter the other empanelled employees, without they being impleaded as party respondents to O.A. No. 997 of 1999. He submits that such setting aside is in violation of principles of natural justice;

(b) That there was neither any order granting respondent Nos.1 and 2 to sue only 9 empanelled employees as representatives for the others nor were the provisions or principles of Order 1 Rule 8 of CPC ever complied with. The CAT has committed an error apparent on the face of record in proceeding on the basis that 9 empanelled employees were sued in representative capacity in O.A. No. 997 of 1999, when clearly this was not at all case;

(c) The respondent Nos.1 and 2, i.e., the original applicants in O.A. No. 997 of 1999 had participated in the selection process and taken their chances. In such a situation, the CAT was duty bound to reject O.A. No. 997 of 1999 on the principle of *estoppel* and *acquiescence* as explained by the Apex Court in several cases;

(d) This was not at all a case of change of rules after the commencement of the selection process. In any case, the selection process was absolutely fair, transparent and operated equally. One of the respondents was infact placed on the wait-list and thereafter even secured the appointment on the basis of the very same selection process. O.A. No. 997 of 1999 deserves dismissal on this score as well.

11] Mr. Suresh Kumar, the learned counsel for the Union of India/Railways, supported the contentions of Mr. Kale and in fact cited some decisions in support of the contentions raised. He submitted that the impugned judgment and order dated 29.9.2005 deserves to be set aside.

12] Mr. Rahul Walia, learned counsel for respondent No.1, i.e., one of the original applicant in O.A. No. 997 of 1999 defended the impugned judgment and order by reiterating the contentions raised before the CAT. He submitted that this was a clear case where the rules of selection were sought to be varied after the selection process had already commenced. He submitted that since this was clearly not permissible, the CAT, vide its judgment and order dated 30.12.2002 quite rightly set aside the selection process. He submits that the decision to eliminate the viva-voce in terms of Circular dated 7.5.1999 would be applied only prospectively and there was no basis for any retrospective application. He submits that the view taken by the CAT both in its judgment and orders dated 30.12.2002 and 29.9.2005 is quite consistent with the rulings of the Apex Court in ***Maharashtra State Road Transport Corporation vs. Rajendra Bhimrao Mandve and ors - 2002 (1) SCSLJ 17***, and therefore, there is no case made out to warrant interference.

13] Mr. Walia submits that 9 of the empanlled employees had been made as parties to O.A. No. 997 of 1999 in representative

capacity. In such circumstances, he submitted that this was not a case of violation of principles of natural justice.

14] The rival contentions now fall for our determination.

15] There is no dispute that the selection process which was impugned by respondent Nos.1 and 2 in O.A. No. 997 of 1999 culminated in the empanellement of 112 employees, several of whom were actually appointed as Assistant Station Masters. Despite this being the position, the respondent Nos.1 and 2 chose, initially, not to implead even a single empanelled/appointed employee as a party respondent to O.A. No. 997 of 1999. The CAT also chose to set aside the entire selection process and consequently the empanellement/appointment of the 112 employees by its judgment and order dated 22.6.2001, notwithstanding the fact that none of these 112 empanelled/appointed employees were party respondents to O.A. No. 997 of 1999.

16] The CAT's judgment and order dated 22.6.2001 was set aside by this Court vide order dated 21.12.2001 in Writ Petition

No. 2396 of 2001 with the consent of the parties, i.e., respondent Nos.1 and 2 herein and UOI/Railways with directions to the CAT to hear and decide O.A. No. 997 of 1999 afresh. Upon remand as well, the respondent Nos.1 and 2 chose to implead only 9 empanelled/appointed employees.

17] Apart from the assertion of Mr. Walia that such 9 empanelled/appointed employees had been impleaded in a representative capacity, there is no order or record to sustain this position. Admittedly, neither the provisions nor the principles of Order 1 Rule 8 of CPC were ever complied with in order to be able to assert that 9 employees were sued in a representative capacity and therefore, the judgment and order dated 30.12.2002 binds the left out empanelled/appointed employees, even though, they may not have been impleaded as party respondents to O.A. No.997 of 1999.

18] Mr. Walia did not contend and perhaps could not have contended that 112 empanelled/appointed employees were not necessary parties to O.A. No. 997 of 1999. The very empanellement/appointment of these 112 employees was

squarely challenged in O.A. No. 997 of 1999 *inter alia* on the ground that the selection process which culminated in their empanellement/appointment was vitiated. In such circumstances, it is obvious that the empanelled/appointed employees were necessary parties and their empanellement/appointments could not have been set aside in the absence of their impleadment as party respondents to O.A. No. 997 of 1999.

19] In ***A.M.S. Sushanth and ors vs. M.Sujatha and ors - (2000) 10 SCC 197***, the Apex Court has held that the principles of natural justice demanded that any person who was likely to be adversely affected ought to have been given an opportunity of being heard.

20] In ***Ishwar Singh vs. Kuldip Singh and ors. -1995 Supp (1) SCC 179***, the Apex Court has held that a writ petition impugning selection and appointments, without impleading and serving all the selected candidates was not maintainable.

21] In ***Arun Tewari and ors vs. Zila Mansavi Shikshak***

Sangh and ors - (1998) 2 SCC 332, the Apex Court has held that where the validity of statutory provision under which recruitment was made, was challenged but selected/appointed candidates who would be directly affected were not made parties, the decision of the Administrative Tribunal which had affected of setting aside the selection/appointment was vitiated and was itself required to be set aside.

22] The aforesaid three rulings of the Apex Court, which according to us, were directly on the point, were in fact cited and taken note of by the CAT at paragraph 17 of the impugned judgment and order dated 29.9.2005. However, the impact of such binding precedents has not been considered. The CAT, without there being any material on record, has only proceeded on the basis that 9 empanelled/appointed employees had been impleaded as party respondents in representative capacity and therefore, there was no infirmity in its earlier judgment and order dated 30.12.2002.

23] Since, there is and there can be no serious dispute that all 112 empanelled/appointed employees were necessary parties to

O.A. No. 997 of 1999, the CAT was neither right nor justified in proceeding to set aside their empanellement/appointments, even without they being impleaded as parties to O.A. No. 997 of 1999. The judgment and order dated 30.12.2002 in O.A. No. 997 of 1999 was indeed made in violation of principles of natural justice.

24] As noted earlier, there is no order available or produced before us to indicate that empanellement of 9 empanelled /appointed employees as the respondents in pursuance of M.P. No.195 of 2002 taken out by the original applicants was in some representative capacity. Admittedly, neither the provisions nor the principles as set out in Order 1 Rule 8 of CPC were ever complied with in the present case. In such circumstances, the CAT was not at all justified in brushing aside binding precedents emanating from the Apex Court on the premise that at least 9 empanelled/appointed employees had been impleaded in some representative capacity.

25] In ***Ranjan Kumar and ors vs. State of Bihar and ors. - (2014) 16 SCC 187***, the Apex Court after digesting its several

earlier rulings held that the writ petition which had questioned the selection procedure and consequently the appointments made in pursuance of such selection procedure without the appointees being impleaded, was a defective writ petition and hence, no relief could have been granted to the writ petitioners therein. The Apex Court ruled that the selection/appointed candidates were necessary party and in their absence the petition ought to have been dismissed. The Apex Court held that more so, the proviso to Order 1 Rule 9 of Code of Civil Procedure, 1908 provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of the Code of Civil Procedure are not applicable in the writ jurisdiction by virtue of the provisions of Section 141 of the CPC, but the principles enshrined therein are applicable. (***Vide Gulabchand Chhotalal Parikh vs. State of Gujarat - AIR 1965 SC 1153, Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot- (1974) 2 SCC 706 and Sarguja Transport Service vs. STAT - (1987) 1 SCC 5***).

26] In ***Tridip Kumar Dingal vs. State of W.B. - (2009) 1 SCC 768***, the Apex Court approved the view taken by the Tribunal that in absence of selected/appointed candidates and

without affording an opportunity of hearing to them, the selection could not be set aside.

27] In ***Udit Narain Singh Malpaharia vs. Board of Revenue - AIR 1963 SC 786***, the Apex Court explained distinction between the necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the Court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice.

28] In ***Rashmi Mishra vs. M.P. Public Service Commission and ors. - (2006) 12 SCC 724***, the Apex Court held that in a writ petition to impugning the selection and appointment of 17 candidates, the petitioner impleaded only 2 out of 17 candidates as party respondents '*purportedly in their representative capacity*'. However, no steps were taken in terms of Order 1 Rule 8 of the CPC or principles analogous thereto. In such circumstances, the Apex Court held that all 17 selected candidates were necessary parties as the result affected them. Without all 17 candidates being impleaded as parties, no relief

could have been granted in the writ petition.

29] It is true that Section 22 of the Administrative Tribunals Act, 1985 provides that a Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure 1908 but the same provision provides that the Tribunal shall be guided by the principles of natural justice and subject to other provisions of the Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure. Section 22(3) (a) provides that the Tribunal shall have, for the purposes of discharging its functions under the Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure while trying to a suit, in respect of summoning and enforcing the attendance of any person and examining him on oath.

30] Rule 11 (8) of the Central Administrative Tribunal (Procedure) Rules, 1987 provides that notwithstanding anything contained in sub-rules (1) to (4), if the Tribunal is satisfied that it is not reasonably practicable to serve notice of application upon all the respondents, it may, for reasons to be recorded in writing, direct that the application shall be heard notwithstanding that

some of the respondents have not been served with notice of the application. Provided that no application shall be heard unless:

- (i) notice of the application has been served on the Central Government or the State Government, if such Government is a respondent;
- (ii) notice of the application has been served on the authority which passed the order against which the application has been filed; and
- (iii) the Tribunal is satisfied that the interests of the respondents on whom notice of the application has not been served are adequately and sufficiently represented by the respondents on whom notice of the application has been served.

31] In terms of Section 22 of the Administrative Tribunals Act although, the Tribunal is not bound by the procedure laid down in the Code of Civil Procedure, nevertheless, it is a mandate that the Tribunal shall be guided by the principles of natural justice. These principles, in turn mandate the selection or appointment

of any candidate is not set aside unless such selectee or appointee is impleaded as a party and has opportunity to defend his selection/appointment. Even if the provisions of Order 1 Rule 8 of the CPC may not *ipso facto* apply to the proceedings before the CAT, nevertheless, the principles analogous thereto were required to be followed, in case, the original applicants were serious of the proceedings against only some of the selected/appointed employees as representatives for the others. In fact, in the present case the number empanelled/appointed employees was not so large as to render their impleadment totally impracticable. In any case, at least the principles analogous to Order 1 Rule 8 of CPC could have been followed in case, the original applicants were serious to proceed against all the empanelled/appointed employees in a representative capacity.

32] Rule 11(8) of the Central Administrative Tribunal (Procedure), 1987 applies to a case where parties have in fact been impleaded as respondents but it is not reasonably practicable to serve the notice of the application on all such

respondents. In the present case, the original applicants did not even bother to implead of the necessary party as respondents. Further, even for the provisions of Rule 11(8) to apply, the Tribunal has to record a satisfaction that it is not reasonably practicable to serve notice of application upon all the respondents and only thereafter, the Tribunal may, for reasons to be recorded in writing direct that the application shall be heard notwithstanding that some of the respondents have not been served with the notice of the application. Before the Tribunal proceeds in this manner, the Tribunal has to also ensure that the notice of application has been served on the Central Government or the State Government if such Government is a respondent, notice of the application has been served on the authority which passed the order against which the application has been filed, and the Tribunal must be satisfied that the interests of the respondents on whom notice of the application has not been served are adequately and sufficiently represented by the respondents on whom notice of the application has been served.

33] Order 1 Rule 8 (1) of the CPC provides that where there are numerous persons having the same interest in one suit, then one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested. The Court may, in such a situation direct that one or more of such persons may sue or be sued or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

34] Order 1 Rule 8(2) in terms provides that the Court shall in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all the persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct. Thereafter, any person on whose behalf, or for whose benefit, a suit is instituted, or defended under sub-rule (1), may apply to the Court to be made a party to such suit. Only after all such safeguards are adopted that it can be said that a decree passed

in such a suit under this Rule shall be binding on all persons on whose behalf or for whose benefit, the suit was instituted, or defended, as the case may be.

35] True, as noticed earlier, the provisions of Order 1 Rule 8 of CPC may not apply with all their rigor to the proceedings before the CAT in view of the provisions of Section 22 of the Administrative Tribunals Act, 1985. Nevertheless, as was held by the Apex Court that even though the provisions of CPC may not apply to the proceedings under Article 226 of the Constitution of India in view of the provisions of Section 141 of the CPC, nevertheless, the principles analogous thereto would certainly apply and will have to be followed. This is more so since Section 22 of the Administrative Tribunals Act, 1985, in terms provides that the Tribunal in regulating its own procedure shall be guided by the principles of natural justice.

36] If the reliefs prayed for by the petitioners in their O.A. No. 173 of 2005 are considered, then, it is quite clear that the petitioners had applied for a declaration that the CAT's judgment and order dated 30.12.2002 in O.A. No. 997 of 1999 was not

binding on them or on other selected candidates, who were not impleaded as parties to O.A. No. 997 of 1999. The petitioners had also applied for a review/recall of the order dated 30.12.2002 in O.A. No. 997 of 1999 *inter alia* on the ground that such a judgment and order could not have been made in the absence of impleadment of necessary party, i.e., empanelled/appointed employees.

37] The CAT has virtually not considered these prayers, but rather proceeded to reiterate its view in the judgment and order dated 30.12.2002 on merits. Such an exercise was clearly in excess of jurisdiction vested in the CAT. The CAT is required to consider whether a case was made out for review/recall of the judgment and order dated 30.12.2002 in O.A. No.997 of 1999.

38] In terms of the ruling of the Apex Court in ***K. Ajit Babu and others vs. Union of India and others - (1997) 6 SCC 473***, the petitioners had an option to institute a review petition or file a fresh application under Section 19 of the Administrative Tribunals Act, 1985 even though the petitioners were not parties to O.A. No. 997 of 1999. Even though the petitioner had chosen

to file an application under Section 19 of the Administrative Tribunals Act, 1985, from the tenor of the original application and the reliefs claimed, it was apparent that the petitioners were seeking recall/review of the judgment and order dated 30.12.2002 in O.A. No. 997 of 1999. This relief could not have been glossed over by virtually ignoring binding precedents of the Apex Court in the matters of impleadment of necessary parties and the effect of their non-impleadment on the final verdict.

39] Mr. Walia, learned counsel for respondent No.1, finally submitted that in case this Court was inclined to set aside the impugned judgment and order dated 29.9.2005, the matter may be remanded to the CAT with directions for time bound disposal. Taking into consideration the chequered history of the matter, there is no difficulty in acceding to such a request.

40] For all the aforesaid reasons, we set aside the impugned judgment and order dated 29.9.2005 made by the CAT in O.A. No. 173 of 2005 and restore the O.A. No. 173 of 2005 to the file

of CAT for fresh disposal in accordance with law and on its own merits. We also restore the interim order restraining the implementation of the judgment and order dated 30.12.2002 in O.A. NO. 997 of 1999, which shall operate during pendency of O.A. No. 173 of 2005.

41] The CAT is requested to dispose of O.A. No. 173 of 2005 within a period of six months from the date of production of an authenticated copy of this judgment and order. The parties to appear before the CAT on 15th October 2018 at 11.00 a.m. and produce authenticated copy of this order.

42] Rule is made absolute in the aforesaid terms. There shall, however, be no order as to costs.

43] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

(A.S.OKA, J.)

Dinesh
Sadanand
Sherla

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