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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3064 OF 2001

Union of India through
G.M.Central Railway ...Petitioner
vs.
Ms Uma Shankar Mahajan & Ors. ...Respondents

WITH
WRIT PETITION NO.3065 OF 2001

Union of India through
G.M.Central Railway ...Petitioner
vs.
Ms Urmila VasudeoLad & Ors. ...Respondents

Mr.Suresh Kumar for the Petitioner in both petitions
Mr.Sandeep Marne for the intervenor in both
petitions

CORAM : A.S.OKA, &
M.S.SONAK,JJ.
DATE : OCTOBER 4, 2018

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 Heard the learned counsel for the petitioner and the learned counsel for the intervenors. By common impugned Judgment and Order dated 8th August 2001 passed by the Central Administrative Tribunal (for short 'the Tribunal'). Two Original Applications preferred by the contesting private respondents have been allowed by the Tribunal. In both the Original Applications filed before the Tribunal, the challenge was essentially to the selection process undertaken by the Central Railways

by virtue of notification dated 31st January 1997 for filling up 97 vacancies in the post of Office Superintendent Grade II. The promotion to the post of Office Superintendent is by way of selection. About 291 employees were appeared for the written test. The applicants in the Original Application appeared for the test, but they could not qualify. They were working as Head Clerks. By the impugned Judgment and order, the Tribunal proceeded to quash and set aside the selection process as well as the result of the selection process announced on 30th June 1997. The respondents in the Original Application (the petitioners herein) were directed to undertake a fresh process in terms of the directions issued in the Judgment and order. However, the Tribunal did not pass an order of reversion of those who were promoted in the process. But they were ordered to be continued on the promotional post on purely ad-hoc basis till such new selection as directed was completed.

2 Apart from the merits, the main submission of the learned counsel for the petitioner is that neither the selected candidates were impleaded as party respondents/opponents in the Original Application nor the procedure analogous to Rule 8 of Order I of the Code of Civil Procedure, 1908 (for short "the said Code of 1908") was followed. He invited our attention to the findings recorded in paragraph 13 of the impugned Judgment and contended that though this objection was raised, it was

brushed aside by the Tribunal. He relied upon the Judgment and Order dated 26th September 2018 passed by this Bench in Writ Petition No.1519 of 2006 in the case of Bharat K. Dehade and others Vs. Purushottam Das Sharma and others in support of his case. The learned counsel for the intervenor has supported the petitioner. None appeared for the contesting respondents (applicants in the Original Applications)

3 The question before us is whether all the persons who were selected/promoted on the basis of the selection process subject matter of challenge in the Original Applications can be said to be the necessary parties and whether their non joinder is fatal.

4 Though the contention based on non-joinder was specifically raised, the same has been rejected by the Tribunal by recording reasons in paragraph 13 of the impugned Judgment. Paragraph 13 reads thus:

"13 The first objection raised by the respondents that the applicant's claim is liable to be dismissed on account of non-joinder of necessary parties cannot be accepted. It is found that the OA No.448/97 has been filed on 15.5.1997 and OA No.537/97 on 10.6.97. The list of successful candidates was published only on 30.6.1997 and therefore, the applicants

could not have issued any notice to those candidates. Even otherwise it is found that in both the Oas, an order has been passed by the Tribunal on 11.7.1997 that any promotion made will be subject to the outcome of the Oas. Therefore, the concerned parties have been put on notice and the objection relating to non-joinder of parties has ceased to be of any relevance. It is accordingly rejected."

5 Thus, in the facts of the case, it is clear that the candidates whose names appeared in the list published on 30th June 1997 were neither impleaded as parties nor any notice in any form was served to any of them. The objection regarding non-joinder was overruled on two grounds. The first ground is that the list of successful candidates was published on 30th June 1997 during the pendency of both the Original Applications. The second ground was that an interim order was passed on 11th July 1997 by observing that the promotions will be subject to final outcome of the Original Applications.

6 In the case of Bharat K. Dehade and others (supra), this very issue came up for consideration of this Court. The question was when on an Original Application, the Administrative Tribunal sets aside the entire selection process, whether the selected candidates are necessary parties. In paragraph 24,

the Division Bench held thus:

"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 Apex Court on the premise that at least 9 empanelled/appointed employees had been impleaded in some representative capacity."

7 Thereafter, this Court proceeded to discuss section 22 of the Administrative Tribunal Act, 1995 as well as various Rules under the Central Administrative Tribunal (Procedure) Rules, 1987 and in particular Rule 11 thereof. After considering the said provision in the context of applicability of the procedure in the said Code of 1908, in paragraphs 32 to 35, the Division Bench held thus:

"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 parties 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 the 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.

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."

(emphasis added)

8 Coming back to the facts of the present case, the Tribunal was conscious of the fact that the promotions have been granted on the basis of the selection process which was the subject matter of challenge in the Original Applications. The Tribunal passed a drastic order of quashing and setting aside the entire selection process and the results pronounced on 30th June 1997. Moreover, it was directed that the promoted candidates will continue to hold their posts only on ad-hoc basis and that also till the new process is completed.

9 In our view, following the law laid down in the case of Bharat K. Dehade and Others (supra), it was mandatory for the Tribunal to ensure that either affected promoted employees are made parties or at least some of them are made parties and the procedure analogous to the procedure laid down under Rule 8 of Order I of the said Code of 1908 is followed.

10 The Tribunal is duty bound to follow the principles of natural justice especially in view of section 22 of the Administrative Tribunal Act, 1985 and Rule 11 of the Rules framed therein. In fact, in case of Bharat K. Dehade and others (supra), this Court has held in paragraph 35 that though the provisions of the said Code of 1908 may apply to the proceedings under Article 226 of the Constitution of India, in view of the provisions of sections 141 of the said Code of 1908, nevertheless, the principles analogous thereto would certainly apply to the Tribunal and will have to be followed.

11 Therefore, in our considered view, the reasons recorded by the Tribunal in paragraph 13 are completely erroneous and only on this ground, we are inclined to set aside the impugned order.

12 The learned counsel for the petitioner submitted that even on merits, the view taken by the Tribunal is wrong. He relied upon the decision of

the Apex Court in the case of Prabhat Ranjan Singh vs. R.K.Kushwaha¹ in support his submissions.

13 We find from the Farad Sheet that the impugned Judgment and Order dated 8th August 2001 was stayed by the order dated 14th January 2002 by grant ad-interim relief. While admitting the petition by issuing Rule, the said ad-interim relief was continued by the order dated 5th March 2002. Thus, the persons who were promoted in the impugned selection process have continued to hold their posts. We are not sure whether the applicants in the Original Applications are interested in prosecuting their Original Applications any further. However, with a view to give them an opportunity of prosecuting the Original Applications by impleading necessary parties or by adopting the procedure analogous to Rule 8 of Order I of the said Code of 1908, we propose to remand the Original Applications to the Tribunal. Therefore, it is not necessary for us to deal with the findings recorded in the impugned Judgment and Order on merits.

14 Accordingly, we pass the following order:

(I) Impugned Judgment and Order dated 8th August 2001 in Original Application Nos.448 of 1997 and 537 of 1997 is quashed and set aside and both the Original Applications are remanded to the Central Administrative Tribunal, Bench at Mumbai;

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(ii) We direct that remanded Original Applications shall be listed before the Tribunal on 29th November 2018 at 11.00 a.m so that the Tribunal can issue notice to the applicants in both the Original Applications;

(iii) If the applicants appear on the basis of notice and are interested in prosecuting their Original Applications, the Tribunal shall permit them either to implead selected employees as necessary parties and/or to follow the procedure analogous Rule 8 of Order I of the said Code of 1908;

(iv) Needless to add that if the applicants are no more interested in prosecuting their Original Applications, even after service of notice, the Tribunal is free to dispose of the Original Applications for want of prosecution;

(v) We make it clear that we have made no adjudication on the merits of the challenge to the selection process;

(vi) Rule is made partly absolute on above terms with no order as to costs.

(M.S.SONAK,J.)

(A.S.OKA,J.)