

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.15461 of 2018

J.Vignesh

... Petitioner

Vs

1. The General Manager,
Southern Railway,
1st Floor, NGO Main Building,
Park Town, Chennai-3.
2. The Chief Personnel Officer
(Recruitment Division),
Southern Railway, Park Town,
Chennai-3.
3. The Workshop Personnel Officer,
GOC, Golder Rock, Central Workshop,
Trichy.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in respect of the order of the Central Administrative Tribunal, Madras Bench in Contempt Petition No.CP/310/00110/2017 in OA/310/00455/2017 dated 4.4.2018, quash the same and to direct the respondents 1 and 2 to appoint the petitioner in anyone of the posts of Group 'C'/NTPC Category of Southern Railway within the time limit fixed by this Court.

For Petitioner :: Mr.R.Rajendran

For Respondents :: Mr.P.T.Ramkumar

ORDER

(Order of the Court was made by HULUVADI G.RAMESH, J.)

Challenging the correctness of the order passed in Contempt Petition No.CP/310/00110/2017 in OA/310/00455/2017 dated

4.4.2018, by the Central Administrative Tribunal, the unsuccessful petitioner has preferred the present Writ Petition.

2. The Contempt Petition was filed seeking to punish the contemnor in accordance with law and direct the contemnor to comply with the orders of the Tribunal in O.A.310/00455/2017 dated 20.3.2017 immediately in the interest of justice. The same Contempt Petition was dismissed by order dated 04.04.2018. Aggrieved over the same, the petitioner is before this Court with this Writ Petition.

3. The Writ Petition is listed today under the caption, 'for admission'.

4. Learned Counsel appearing for the petitioner submitted that the Tribunal by order dated 20.3.2017 directed the respondents to reconsider the candidature of the applicant for Group 'C' post in view of the directions given in OA 486/2016 and also in the light of the Circular No.E(NG)II-84/RC1/1-74 dated 25.6.1985 within a period of two months from the date of that order. In pursuance thereof, the respondents passed an order dated 28.6.2017 rejecting the claim of the petitioner for compassionate appointment to Group 'C' Post. Therefore, according to the learned Counsel for the writ petitioner, without considering the Circular dated 25.6.1985 in which it has been stated that for compassionate appointment, the standards need not be rigid, the respondents have violated the specific order of the Tribunal and the petitioner may be accommodated in anyone of the clerical posts.

5. In reply, the learned Counsel appearing for the respondents 1 to 3 submitted that in the qualifying test for Group 'C' posts, the petitioner has secured only 49 marks, but the prescribed mark to be scored to declare pass in the written examination for Group 'C' post is 60 as per the Circular of the Southern Railway in No.PB/CS/30/Policy/Vol.VI dated 3.8.1995. As such, being not qualified to the Group 'C' post, he was offered only Group 'D' post for which he is not ready to accept the same. The learned Counsel further submitted that as far as the Circular dated 25.6.1985 is concerned, the minimum qualifying marks of 60% prescribed for the purpose of compassionate appointment was not rigid inasmuch as a selection strictly on merits would have entailed even higher minimum qualifying marks. Therefore, the writ petition does not lie on the dismissal of the Contempt Petition.

6. Considered the rival submissions made on either side. We have also perused the materials available on record carefully including the order of the Central Administrative Tribunal.

7. Initially, it appears that O.A.No.310/00455/2017 has been filed by the petitioner herein seeking the following reliefs:

'i. To call for the records of the 3rd respondent pertaining to his letter in No.GPB (CS) 8 Policy Corres/Vol.IX dated 12.9.2016 and to set aside the same; and

ii. To issue a direction to the respondents 1 to 3 to appoint the petitioner in any one of the clerical posts of Group 'C'/NTPC or in anyone of the clerical posts in any other category in accordance with the instruction contained in the Circular of the Ministry of Railways in No.E(NG)II-84/RCI/I-74 dated 25.6.1985.'

Further, it appears that the petitioner has already filed O.A.No.486/2016 before the Tribunal in which the Tribunal had directed the respondents to reconsider the candidature of the applicant for the post of Group C in the light of para 512 (1) (C) of the Indian Railway Medical Manual within a period of two months. Thereafter, the applicant appeared for the written test held on 29.7.2016 and the 3rd respondent communicated by his letter dated 12.9.2016 that the applicant would be considered only for 'C2' category posts, which would include peon and sweeper as he had not secured the qualifying marks of 60%.

8. However, according to the learned Counsel for the petitioner, petitioner is a B.E. Graduate and he possesses normal vision only in his left eye and further no mark was prescribed as qualifying marks in the Circular dated 25.6.1985, the order passed by the Tribunal in O.A.468/2016 dated 30.3.2016 is in violation of the said Circular. The Tribunal, after hearing both sides, by order dated 20.03.2017 disposed of the said Original Application in O.A.No.310/00455/2017 by setting aside the impugned order dated 12.9.2016 and directed the respondents to reconsider the candidature of the petitioner. Since the same has not been complied with the petitioner served a Contempt Notice dated 19.6.2017 on the respondents. In reply, the 3rd respondent by letter dated 28.6.2017 rejected in the claim of the petitioner. It is relevant to extract the paragraph No.24 hereunder :

'24. As deliberated above, it is informed that appointment on compassionate ground in a Group 'C' post is not automatic just because a candidate possesses the requisite qualifications. When the candidate possesses the required qualification prescribed for Group 'C' post and is also adjudged suitable for the post. The minimum qualifying marks in the suitability test for appointment on compassionate ground is 60%. You have not secured the minimum qualifying marks of 60% in both the occasions and you are not found suitable for appointment in Group 'C' posts. Moreover you could not be subjected to suitability test for Skilled Artisan Category, since a higher medical fitness is required for that posts. Hence you could not be considered for appointment on compassionate ground in Group 'C' posts. As your medical classification is CEE TWO, the competent authority has approved your appointment in erstwhile Group 'D' post in Peon Category in GOC Workshop.'

9. The petitioner has filed a Contempt Petition No.310/110/2017 against the same before the Central Administrative Tribunal. The Central Administrative Tribunal by an order dated 4.4.2018 dismissed the said Contempt Petition holding that the order of the Tribunal dated 20.3.2017 was conspicuously silent on the Circular of the Southern Railway dated 03.08.1995 which would override the Railway Board Circular dated 25.6.1985. Against the said order, the present Writ Petition has been filed.

10. On the above facts and circumstances of the matter, we do not find any merit for consideration in the case of the writ petitioner.

11. At this stage, the learned Counsel for the petitioner insisted that a direction may be issued to reconsider the case of the petitioner sympathetically.

12. We are unable to explain what sympathy could be extended to the petitioner, when he has not passed the written examination for Group C Test. Be that as it may, we are of the view that the respondents may permit the petitioner to undergo the written examination once again and also the medical examination and on the basis of the said results, it is open to the respondents to consider the candidature of the petitioner either for Group 'C' post or for Group 'D' post. However, we will leave it to the discretion of the respondent department to reconsider the issue.

12. With the above observation, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The General Manager,
Southern Railway,
1st Floor, NGO Main Building,
Park Town, Chennai-3.
2. The Chief Personnel Officer
(Recruitment Division),
Southern Railway, Park Town,
Chennai-3.
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GOC, Golder Rock, Central Workshop,
Trichy.

+1cc to Mr.P.T.Ramkumar, Advocate in sr.no.39877

W.P.No.15461/2018

nr 05/07/2018

सत्यमेव जयते
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