

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No. 3723 of 2017
and
W.M.P. No. 3789 of 2017

1. Union of India
Rep. By the General Manager,
Southern Railway,
Park Town, Chennai - 600 003
2. The Divisional Railway Manager,
Southern Railway,
Madurai Division - 625 016.
3. The Divisional Personnel Officer,
Southern Railway,
Madurai Division - 625 016.Petitioners

Vs.

1. The Registrar,
Central Administrative Tribunal
Madras Bench
2. D. Ramalingam
3. N. KrishnaveniRespondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the first respondent tribunal relating to the impugned order of the first respondent tribunal in O.A. No. 24 of 2013 dated 27.09.2016 and quash the same.

For Petitioners : Ms. A. Sri Jayanthi,

For Respondents : R1 - Tribunal
R2 and R3 - No appearance

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

Heard the learned counsel appearing for the petitioners. Despite notice having been served and the names printed in the cause list, none appeared for respondents 2 and 3 on the last occasion and even today. Therefore, we are proceeding with the matter on merits.

2. The second respondent is working as Group D employee. He had qualified in the written examination for promotion as Commercial Clerk. He was declared to have qualified the written examination. However, his name was not included while nominating the qualified candidates for the prescribed training, since on merit, he was found to be ineligible. Thus, challenge was made to the letter dated 9.10.2012 issued by the third petitioner and a consequential direction was sought to quash the empanelment of the third respondent. The Tribunal was pleased to allow the application by placing reliance upon the judgment of the High Court of Kerala. In effect, the Tribunal was pleased to hold that the merit should not be considered as against the seniority. Challenging the same, the present writ petition has been filed.

3. As rightly submitted by the learned counsel appearing for the petitioners, the Railway Board's letter dated 19.06.2009 clearly speaks about the framing of final panel in the order of merit which is based on aggregate marks of 'Professional Ability' and 'Record of Service'. This was done pursuant to the decision of the Apex Court in SLP (C) No. 16774 of 2008, dated 05.01.2009, by which the judgment of the Division Bench of the Punjab and Haryana High Court was upheld.

4. There is no dispute on facts. Admittedly, the second respondent was not entitled to be promoted on merit. His entire claim is based upon the seniority. The letter of the Railway Board dated 19.06.2009 was perhaps not taken into account by the High Court of Kerala. This letter itself emanated from the judgment of the Punjab and Haryana High Court which was approved by the Apex Court. The issue before the Court was the consideration for promotion merely based upon seniority as against the merit. It was accordingly found that promotion should be based upon merit. Thus, the second respondent having found not been eligible on merit, the Tribunal has committed an error in allowing the application by placing reliance upon the judgment of Kerala High Court. The observation of the Tribunal that what was lacking is only the educational qualification was also not correct. The seniority of second respondent was taken

into consideration. This was done by a nominated committee. While doing so, weightage was also added to the educational qualifications of the employees. Therefore, we are not on the consideration of the qualification, but on the assessment of the committee in fixing the merit. Thus, looking from any perspective, we are of the view that the order of the Tribunal cannot be sustained in the eye of law and the same is set aside.

5. This writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ssm

To

1. The Registrar,
The Central Administrative Tribunal
Madras Bench
2. Union of India
Rep. By the General Manager,
Southern Railway,
Park Town, Chennai - 600 003
3. The Divisional Railway Manager,
Southern Railway,
Madurai Division - 625 016.
4. The Divisional Personnel Officer,
Southern Railway,
Madurai Division - 625 016.

SSI (CO)
GMY (27/12/2018)

W.P. No. 3723 of 2017

WEB COPY