

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.3887 OF 2017

ORDER
(Per Sri Justice Sanjay Kumar)

The petitioner is the applicant in O.A/20/22/2017 on the file of the Central Administrative Tribunal, Hyderabad Bench (*for brevity*, 'the Tribunal'). He filed M.A.No.35 of 2017 in the said O.A. seeking stay of the operation of the order dated 10.01.2017 issued by the Senior Divisional Mechanical Engineer, East Coast Railway, Waltair Division, Visakhapatnam, the seventh respondent, whereby eleven staff members empanelled for promotion to the post of Junior Engineer (C&W) against 25% IAM quota of Mechanical (C&W) Department were directed to be sent for pre-promotional course training, fixed on 17.01.2017. By order dated 12.01.2017, the Tribunal dismissed M.A.No.35 of 2017. This order reads as under:

'Heard the learned counsel for the miscellaneous applicants and Mr. S.M. Patnaik, learned Standing Counsel for the respondents.

2. Learned counsel for the applicants has submitted copies of the judgments of the Hon'ble Supreme Court to the effect that the Railway Board should not effect promotions of SC candidates against UR vacancies. According to the applicants, the impugned order in which some SC candidates have been given promotion against UR vacancies and the impugned order which is in consequence to the provisional selection panel whereby the respondents are sending the said SC candidates for training on 17.1.2017 should be stayed.

3. The counter of the learned Standing Counsel for the Railways was that he is not in a position as of now to state whether the cited judgments of the Hon'ble Supreme Court are applicable to the present case and that he needs time to seek instructions from the Department.

4. As the issue in the OA is promotion, it is a Division Bench matter. Sending persons on training is consequential to their being qualified for the training. If at this stage a direction is given as requested by the applicants, then it would more or less tantamount to disposing of the case. Accordingly, the MA No.35/2017 is dismissed.

5. Learned counsel for the applicants raised objection to this order of the Court stating that the respondents did not disclose the marks in the provisional panel dated 30/12/2016 and it was in violation of the

Supreme Court judgment in Civil Appeal No.192/2014 (arising out of SLP (C) No.2008/2010), Office Memo No.36012/11/2016-Estt (Res) dated 30.9.2016 issued by the 1st Respondent, Circular No.2016-E (SCT) 1/25/8 dated 30.9.2016 passed by the 2nd respondent and also in violation of EPS 10/2008 dated 24.3.2008.

6. List the OA on 23.1.2017.'

Aggrieved by this order, the applicant in the O.A. filed the present writ petition on 03.02.2017. His prayer in this writ petition reads as under:

'For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Certiorari by calling for the records relating to order dated: 12.01.2017 in M.A. No. 35 of 2017 in O.A. No. 22 of 2017 passed by the Hon'ble Central Administrative Tribunal, Hyderabad Bench and set aside the same as illegal, arbitrary, violation of the directions of the Hon'ble Apex Court, order in 03.02.2015 passed in SLP (C) 30621 of 2011 & order, dated: 22.11.2016 passed in contempt petition (C) No.314 of 2016 in SLP (C) No. 4831 of 2012 and issue necessary directions to CBI-Probe into the irregularities and illegalities committed by Respondent Nos. 4 to 7 in awarding marks for Record of Service, evaluation of answer sheets of written examination, depriving the petitioners due consideration for promotion etc and pass such other order or orders may deem fit and proper in the circumstances of the case.'

As all the papers relating to the case were not filed, the matter underwent adjournments on 06.02.2017 and 21.02.2017. On 27.02.2017, this Court took note of the fact that though the petitioner-applicant was aggrieved by the direction of the seventh respondent to send eleven empanelled candidates for pre-promotional training, they were not made parties either to the O.A. or to this writ petition. Thereupon, WPMP No.8678 of 2017 was filed in the writ petition by the petitioner-applicant seeking to implead them. The application is still pending but in the meanwhile, this Court is informed that the pre-promotional training of the eleven empanelled candidates, as per the order dated 10.01.2017, has already concluded.

As the present writ petition arises out of the order dated 12.01.2017 passed by the Tribunal in M.A.No.35 of 2017 in O.A.No.22 of 2017 in relation to the order dated 10.01.2017 which has worked itself out and as the O.A. is still pending consideration before the Tribunal, we are of the opinion that

this writ petition does not deserve consideration on merits as to the other issues mentioned in the writ prayer with regard to irregularities and illegalities having been committed by respondents 4 to 7 in awarding marks for record of service and evaluation of answer sheets of the written examination, whereby the petitioner-applicant alleges that he was deprived of due consideration of his own case for promotion.

In this regard, reference may be made to the prayer of the petitioner-applicant in the pending O.A.:

'Hence, it is prayed that this Hon'ble Tribunal in the interest of justice be pleased to grant appropriate relief:

- a) declaring the action of the Respondents in not implementing the directions of the Hon'ble Apex Court order, dated: 03.02.2015 passed in SLP (C) 30621 of 2011 & order, dated: 22.11.2016 passed in Contempt Petition (C) No. 314 of 2016 in SLP (C) No. 4831 of 2012, Office Memorandum vide No: 36012/11/2016-Estt(Res), dated: 30.09.2016 issued by Respondent No. 1 and circular vide No. 2016-E (SCT) 1/25/8, Dated: 30.09.2016 issued by the Respondent No. 2 for the provisional panel, dated: 30.12.2016 as illegal, arbitrary, against rule of law, natural justice and violation of article 14, article 21 of Constitution of India
- b) directing the Respondents to amend the Provisional Panel, dated: 30.12.2016 in terms of the directions of the Hon'ble Apex Court order, dated: 03.02.2015 passed in SLP (C) 30621 of 2011 & order, dated: 22.11.2016 passed in Contempt Petition (C) No. 314 of 2016 in SLP (C) No. 4831 of 2012, Office Memorandum vide No: 36012/11/2016-Estt(Res), dated: 30.09.2016 issued by Respondent No. 1 and circular vide No. 2016-E (SCT) 1/25/8, Dated: 30.09.2016 issued by the Respondent No. 2 and pass such other and further order or orders as are deemed fit and proper by this Hon'ble Tribunal in the circumstances of the case.'

Be it noted that a CBI probe was not even sought in the O.A. and to that extent, the prayer in the present writ petition is in excess.

Be that as it may.

His prayer for interim relief in the O.A. reads as follows:

'Pending disposal of the above Original Application it is prayed that this Hon'ble Tribunal in the interest of justice be passed to suspend the provisional panel, dated: 30.12.2016 which is prepared

by violating the directions of the Hon'ble Apex Court order, dated: 03.02.2015 passed in SLP (C) 30621 of 2011 & order, dated: 22.11.2016 passed in Contempt Petition (C) No. 314 of 2016 in SLP (C) No. 4831 of 2012, Office Memorandum vide No: 36012/11/2016-Estt(Res), dated: 30.09.2016 issued by Respondent No. 1 and circular vide No. 2016-E (SCT) 1/25/8, Dated: 30.09.2016 issued by the Respondent No. 2, until further orders of this Hon'ble Tribunal on such terms and conditions as this Hon'ble Tribunal may deem it fit in the circumstances of the case and pass such other and further order or orders as are deemed fit and proper in the circumstances of the case.'

Admittedly, the O.A. is still pending consideration before the Tribunal.

When the scope of this writ petition was limited, having arisen out of the order dated 12.01.2017 passed by the Tribunal dismissing M.A.No.35 of 2017 filed in the O.A., this Court would have no jurisdiction to enter into the merits of the issues raised in the O.A., which are yet to be adjudicated upon by the Tribunal. Reference in this regard may be made to the observations of the Constitution Bench in *L.CHANDRA KUMAR V/ s. UNION OF INDIA*¹.

'93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to see as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

(emphasis is ours)

¹ (1997) 3 SCC 261

Sri D.V.Rao, learned counsel for the petitioner-applicant, would contend that as this writ petition was filed as long back as in February, 2017 and was kept pending all along, this Court should adjudicate upon the issues raised in the writ petition on merits, notwithstanding the fact that the training of the eleven empanelled candidates has already concluded. He would assert that the petitioner-applicant cannot be non-suited at this stage.

However, we may point out that the petitioner-applicant is not being non-suited on the ground of availability of an alternative remedy but because this Court inherently lacks jurisdiction to consider the issues sought to be raised by the petitioner-applicant which fall for consideration in the pending O.A. on the file of the Tribunal. As pointed out in L.CHANDRA KUMAR¹, the Tribunal is the Court of the first instance. In the present case, the petitioner-applicant would seek adjudication of the issues arising in the O.A. and beyond by this Court without the Tribunal having rendered a decision. The same is impermissible in the light of the aforestated binding edict.

It may also be noted that the Tribunal is yet to consider the prayer of the petitioner-applicant for interim relief pending disposal of the O.A. It is for the petitioner-applicant to pursue the same in the O.A. instead of seeking adjudication by this Court.

The writ petition is accordingly dismissed leaving all issues open. Pending miscellaneous petitions shall also stand dismissed. No costs.

SANJAY KUMAR,J

M.GANGA RAO,J

16th NOVEMBER, 2018
PGS