

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE SIDE
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE BIBEK CHAUDHURI

CPAN 1258 of 2019
Lakshman Chandra Bhandary & Ors.
Vs.
Sunit Sharma & Ors.
in
WPCT 74 of 2016
Union of India & Ors.
Vs.
Lakshman Chandra Bhandary
With
CAN 3 Of 2021
CAN 4 Of 2022
CAN 5 Of 2022
And
CPAN 1235 of 2019
Kazi Ebadul Karim & Ors.
Vs.
S. Bhattacharya & Anr.

Appearance:

For the Appellants : Mr. Surasjit Samanta, Adv.
(in CAN 4 & 5 of 2022)

For the Applicants : Mr. Rabilal Moitra, Adv.
(In CAN 3 of 2021) Mr. Alauddin Mondal, Adv.

For the Eastern Railway : Mr. Indrajeet Dasgupta, Adv.

Judgment On : **19.10.2023**

Harish Tandon, J.:

The aforesaid applications are filed by the petitioner seeking for an initiation of the contempt proceedings for alleged violation of an order dated 08.02.2019 passed in WPCT 74 of 2016 and for filing a criminal contempt under Section 195 read with Section 340 of the Code of Criminal Procedure in the Criminal Court of competent jurisdiction and for quashing and/or setting aside the document dated 24.05.2021 by which they claim, all the applicants therein, for grant of railway service in the land loser category was rejected.

A prelude to the aforesaid litigations can be traced when the land was acquired for railway project of the applicants and in terms of the scheme in vogue at the relevant point of time, the applicants sought for their job in the railways. Their applications were taken out before the competent authority but the same was not being moved further which constrained the applicant to move before the Tribunal. The Tribunal disposed of the same directing the authorities to consider and decide the representations filed by the applicants in accordance with law taking into consideration the Railway Board Circular dated 16.07.2010. In compliance of the said direction, the order was passed by the Chief Personnel Officer, Eastern Railway on July 15, 2014 declining to offer the appointment to the Applicant no. 1 as he was found not to have submitted the relevant document/paper so that the matter can be put up before the Screening Committee. The Applicant no. 1 thereafter moved a contempt application before the Tribunal and the Tribunal observed that its order has not been complied with in true letter

and spirit and, therefore, directed the alleged contemnors therein to appear *in personem* to show-cause why an action should not be taken against him. In addition to the same, the Tribunal further directed the alleged contemnor therein to file a compliance report. Pursuant to the same, a letter was caused on December 12, 2014 by Chief Personnel Officer that in terms of the provision indicated in Paragraph 5 of the Railway Boards Letter dated 16.07.2010 the General Manager has not considered to offer the appointment in railways as the applicants have crossed the prescribed upper age limit fixed for the direct recruitment quota from open market. The letter was produced before the Tribunal who taking note the same observed that it is clear from the stand of the respondent authorities that they have simply avoided the prayer for giving the appointment upon relaxation of the age standard and further directed the Assistant Personnel Officer to appear before the Tribunal. Ultimately, the Tribunal did not accept the ground taken by the respondent authorities that because of the upper age limit the case under the land loser category cannot be accepted and directed the authorities to consider redress the said default. Obviously, the Tribunal was of the view that in some cases the Railways have relaxed the upper age limit. Ultimately, the matter came up before this Court in WPCT 74 of 2016 and the Division Bench observed that it is evident from the materials on record that even the land losers who were 47 years old were offered appointment and the applicant no. 1 at the relevant point of time was below such age and, therefore, the rejection on such ground does not appear to be proper. Ultimately, the writ petition was disposed of with the following directions:

“21. We, therefore, propose to pass the following further directions to close the breach:

- (i) within a period of seven days from date of receipt of a copy of this judgment and order, the Chief Personnel Officer shall intimate the respondent no.1, which of the documents are required from his end for ensuring placement of his claim before the screening committee;***
- (ii) within a month of receipt of such intimation, the respondent no. 1 shall produce the necessary documents/papers before the Chief Personnel Officer and upon receipt of such document/papers, the claim of the respondent no. 1 shall be placed before the screening committee for an appropriate decision;***
- (iii) bearing in mind the fact that other land losers have been offered appointment even upon attaining 47 years of age, we hope and trust that the screening committee shall not cite age-bar as a ground for not considering the claim of the respondent no. 1 and if a power of relaxation is indeed available to consider invocation of such power if the merits of the case so warrants; and***
- (iv) the entire exercise shall be completed as early as possible but not beyond June 30, 2019.”***

Pursuant to the aforesaid direction the case of the applicant was further taken up and it is evident from the conduct of the railway authorities that they were adamant in rejecting the prayer for appointment under the land loser categories as this time they took a plea that the petitioners does not possess the minimum educational qualification at the time of acquisition of the land. The contempt was admitted and the notices were directed to be issued and ultimately when the matter came up before this Bench this Court finds that the point of unsuitability of the candidates which were never taken is prima facie an act of disobedience of the order passed by the Division Bench. The Court further noticed that 17 persons were given appointment upon relaxation of the educational qualification and there is further act of discrimination evident in this regard and directed the Chief Personnel Officer to explain the decision that was taken. The aforesaid applications came to be filed not only for initiation of proceeding under

Section 340 of the Code of Criminal Procedure but also a further contemptuous act having been done in projecting the act of discrimination.

We decided to take up all the applications including the contempt application having heard the respective Counsels in this regard. It is manifest from the record that the claim of the applicants were rejected by the Railway Authorities on each occasion citing one ground or another. At the first stage, the application filed by the Applicant no. 1 was rejected as he did not find the relevant documents and upon setting aside the said order, a further plea was taken that the petitioner is over aged. The Division Bench categorically observed having found from the material on record that the Railway Authorities have adopted pick and choose policy i.e., offering the appointment in a land loser category to a person who have crossed the upper age limit by exercising the power of relaxation but refused to exercise such power in case of the applicants. The Division Bench decided to make an extensive direction upon the Railway Authorities to process the said application in the manner as quoted in a preceding paragraph and having sensed that the plea of crossing an upper age limit cannot be sustained because of the discrimination having been shown as some of the candidates who were over aged were offered the appointment. A new plea is sought to be taken that the applicants did not possess the requisite educational qualification at the time of acquisition of the land. There is an apparent prevarication of the stand taken by the authorities at every stage when a direction is passed by the Tribunal or the Court to consider the applications/representations filed by the applicants and the intention is

laudable and apparent that authorities do not intend to offer the appointment to the applicants despite having found eligible at par with the other similarly circumstance persons. Even the plea is taken that the offer for appointment cannot be made unless the land losers have a requisite educational qualification which is one of the conditions fixed for a direct recruit candidates. On the other hand, the applicants have produced the document showing that 17 persons were offered appointment upon relaxation of their educational qualification meaning thereby that those similarly circumstance persons did not have the requisite educational qualification at the time of acquisition of the land. Such act of discrimination is apparent and manifest from the record and the shelter is sought to be taken that the mistake cannot confer any legally enforceable right into the applicants. The fact remains that till date no steps have been taken against the aforesaid 17 persons and they are merrily continuing in service. It is sought to be contended that once they attempted to interfere with the carriage of justice or in administration of justice it is not only contumacious act liable to be punished under the Contempt of Courts act but a criminal proceeding should be initiated under Section 340 of the Code of Criminal Procedure. It is submitted by the applicants that a false and fabricated document have been used in a Court proceeding and, therefore, a criminal offence has been committed. At the very outset we must record that initiation of proceeding under Section 340 and the ingredients required to be proved before this Court does not appear to be evident from the same. The authority was directed to comply the direction passed by the Court to take a decision and if such decision is taken and filed before the Court it cannot be

said to be a false and fabricated document as same is required to be seen in the perspective of a contempt jurisdiction. It cannot be said that the said document is false and fabricated but a conscious decision is taken which may or may not withstand on the parameters of law.

We, thus, do not find that it is a fit case where the Court should exercise the jurisdiction under Section 340 of the Code of Criminal Procedure and, therefore, the application in this regard is rejected.

However, we cannot overlook that the Railway Authorities are changing their stand at every stage of the proceeding and citing one ground or other to thwart the applications filed by the applicants. The ground which has been taken in rejecting the application was available to the Railway Authorities even when the direction was passed upon it to take a decision thereupon. It is an act of defiance and the adamency is manifest from the stand of the Railway authorities in taking all such recourses to defeat the applications of the applicants as the direction was passed to take a decision which the authorities consider to be an inchoate and unfettered right to take a decision citing any ground be it legally sustainable or not to reject the same. We would have ventured to proceed further treating the same as a wilful and deliberate act of contempt yet taking into account that the applicants have been knocking the door for a pretty long time, we intended to pass an order that would render a complete justice. There is no denial that 17 persons were offered appointment upon relaxation of the educational qualification; on the other hand, the applicants have been denied though stands on same footing that of the aforesaid persons. The authorities cannot

adopt a cherry picking by exercising the power of relaxation vested upon it in case of some persons and avoiding the uniformity in the decision by rejecting the applications of the other applicants.

We therefore, direct the respondent authorities to process the application in terms of the order dated 08.02.2013 without taking any other plea relating to the upper age limit or the educational qualification and the entire exercise shall be done within 6 weeks from the date of the communication of this order. We have keeping in the contempt application pending though all other applications are disposed of by the impugned order in order to ascertain the act of the Railway Authorities in this regard. Liberty is granted to the parties to pray for listing of the matter if the circumstances so warrant.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Bibek Chaudhuri, J.)