IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 08-07-2020

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.13684 OF 2017

1.The Union of India,
represented by the General Manager,
Southern Railway,
Park Town,
Chennai-600 003.

2.The Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai-600 003. .... Petitioners

-vs-

1.B.Sundaramoorthy

2.M.Syed Sirajuddin

3.K.Srinivasulu

4.P.Ramachandran

5.G.Balasubramanian

6.Venkataraman

7.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai. .... Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari to call for

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the records of the seventh respondent in O.A.No.846 of 2013 and quash the order passed therein, dated 23.11.2016.

For Petitioners : Mr.C.V.Ramachandramurthy,
Standing Panel Counsel.

For Respondent 1 : Mr.L.Chandrakumar
For Respondents 2 to 4 & 6 : No Appearance

ORDER

Krishnan Ramasamy,J.

This Writ Petition has been filed challenging the order passed by the Central Administrative Tribunal, Madras Bench, in O.A.No.846 of 2013, dated 23.11.2016.

2. The Central Administrative Tribunal, in short, ''the Tribunal'' passed an order in favour of the first respondent, directing the petitioner Department to examine whether the first respondent has indeed lost out due to the admitted incorrect evaluation of answer to Question No.2 in Fill Up Blanks Section and if it turns out that indeed was the case, then the only course open to the petitioner Department is to include the name of the first respondent at the bottom of the panel for that year without disturbing the other selected candidates included already and also to consider him for other consequential benefits thereon. Further, the Tribunal directed the Department to carry out the above exercise within a period of three months. Aggrieved over the said order, the Union of India, represented by Southern Railway, has preferred the present Writ Petition, praying to set aside the order.

3. The case of the first respondent before the Tribunal was that on 13.09.2011, the Railways, vide Notification No.P(GS) 268/XII/S&WI/LDCE/2011, has called for applications from eligible employees for five unreserved posts of Chief Staff & Welfare Inspector by conducting Limited Departmental Competitive Examination on 29.12.2011. The first respondent applied for the same and attended the examination. There were 14 employees, including the first respondent, who obtained 60% qualifying marks and the list of the qualified candidates was also published. On 09.02.2012, Selection List was published. As per the said list, Respondents 2 to 6, who secured higher marks, were selected by the Departmental Promotion Committee, after considering their services.

4. The first respondent, on 18.06.2012, sent a

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representation for revaluation of his Answer Sheet and his request for revaluation was rejected by the Department on 13.02.2013, as there was no rule to reevaluate the Answer Sheet. The first respondent made a further representation on 08.05.2013 and the same was also rejected by the Department, stating that rules do not provide for revaluation. However, by way of reply on 30.05.2013, the Department has stated that Question No.2 alone can be considered for awarding 0.85 extra mark and the said extra mark will not alter the eligibility to include the first respondent in the panel. The fifth candidate, who secured 71.50 marks, was selected and all other candidates, who secured 71.50 marks and above, were selected. However, in the present case, the first respondent secured only 70.40 marks. Even if any mark is to be provided for Question No.2, only 0.85 mark can be added and by adding 0.85 mark to 70.40 marks, the total marks of the first respondent would come to 71.25.

5. Therefore, learned Standing Counsel for the petitioner Department would contend that even after adding mark to Question No.2, the first respondent is not eligible to get any post, as he does not come within the five candidates, who secured 71.50 marks and above. According to the learned counsel, if at all, the first respondent can claim only sixth position. He would further submit that examination was conducted only for five posts and hence no post can be reserved for the first respondent. However, the Tribunal, without considering all these issues, wrongly interpreted that if candidates 1 to 5 provided wrong answer to Question No 2, the mark provided to them should be reduced and if that is reduced, the first respondent is entitled for one post, since he would come within the zone of five candidates. The learned counsel also contended that the Tribunal ought not to have come to such an imaginary conclusion against the persons, who are not parties before the Tribunal, and also when there was no dispute over the mark provided to five candidates selected by the Department. Therefore, learned counsel for the petitioner Department would submit that the order passed by the Tribunal is liable to be set aside.

6. Per contra, learned counsel for the first/contesting respondent would submit that after providing mark to Question No.2, the first respondent would get total marks of 71.25 and, therefore, the Tribunal has rightly held that if under Question No.2 the mark provided to candidates 1 to 5 is deducted, the first respondent would have come within the zone of 5 candidates. Under these circumstances only, the Tribunal has directed the Department, without disturbing the candidates 1 to 5 selected, to consider the case of the first respondent for the

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sixth position within a period of three months. Accordingly, the learned counsel would contend that when the Department has categorically stated that there is no rule for revaluation of the Answer Sheet, they should not have filed an affidavit to the effect that for Question No.2 mark can be provided to the first respondent and when the Department has filed an Affidavit to the said effect, they are bound to provide at least sixth position to the first respondent, by creating one more post.

7. On the other hand, by way of a Rejoinder, learned Standing Counsel for the petitioner Department would contend that at no point of time the petitioners ever stated that mark will be provided to the first respondent and if at all any additional mark is provided to any question, the total marks to be awarded to the first respondent would come to 71.25 alone and, therefore, the submission of the learned counsel for the first respondent that the Department has filed an affidavit for providing additional mark for Question No.2 to the first respondent is not correct.

8. We have heard the learned counsel for the petitioner and the first respondent and also perused the material available on record.

9. Concedingly, the first respondent participated in the examination conducted by the petitioner Department on 29.12.2011 for filling up of 5 posts of Chief Staff & Welfare Inspector. As per the Notification, examination was conducted only for 5 posts. There were 14 employees, including the first respondent, who secured qualifying marks of 60% and the list of names of qualified candidates was published on 18.01.2012. On 09.02.2012, Respondents 2 to 6, who secured higher marks, were selected by the Departmental Promotion Committee, after considering their services. Respondents 2 to 6, who secured marks up to 71.50, were selected for the five unreserved posts of Chief Staff & Welfare Inspector by the petitioner Department. The reason given by the Department for non-selection of the first respondent by the Departmental Promotion Committee is that he secured only 70.40 marks.

10. The first respondent gave a representation for revaluation of his Answer Sheet by letter, dated 18.06.2012, but the same was rejected by the Department vide its letter, dated 13.02.2013, stating that there was no rule for revaluation of Answer Sheets. Once again, he made a representation on 08.05.2013, which was also rejected by the Department on 30.05.2013, on the ground that rules do not provide for revaluation. However, in the said letter, the Department stated

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that for Question No.2, only 0.85 mark can be provided and even if it is provided, the total marks of the first respondent would come to 71.25 and with the said marks also, there is no possibility for the first respondent to come within top 5 ranks. Therefore, the Department rejected the representation of the first respondent.

11. However, the Tribunal, on conjectures and surmises, has gone to the extent of holding that if no mark was provided for Question No.2 to the five qualified candidates, there was a possibility for the first respondent to come within top 5 ranks. Accordingly, the Tribunal directed the Department to include the name of the first respondent at the bottom of the panel and also to consider him for sixth position and other consequential benefits thereon, without disturbing the five candidates already selected by the Committee.

12. In our view, the Tribunal should not have come to such an erroneous conclusion without there being any dispute over the mark provided for Question No.2 to candidates 1 to 5, who are already selected, to deduct the mark to the five candidates already selected. Now that the five candidates have already been selected, the Tribunal directed the Department to place the first respondent at the bottom of the panel, without disturbing the selected candidates, and consider him for the post and other consequential benefits thereon.

13. We do not endorse the view of the Tribunal, because, the Tribunal has no authority to reduce the mark to the already selected candidates, without there being any dispute over the mark provided to them. The Tribunal should have looked into only the marks obtained and the marks to be awarded, as stated by the petitioner Department. Even as stated by the Department if any mark is provided for Question No.2, the total marks of the first respondent would come only to 71.25.

14. In this case, Notification was issued only for 5 posts, as the postitions available with the petitioner Department were only 5. When such being the case, we cannot direct the petitioner Department to create one additional post to the first respondent he being the sixth person, which is totally contrary to the Notification issued by the Department, dated 13.09.2011.

15. Therefore, we are of the considered opinion that the Tribunal has committed an error in passing the impugned order, directing the petitioner Department to include the name of the first respondent at the bottom of the panel for that year

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without disturbing the other selected candidates and consider him for other consequential benefits thereon. Accordingly, we set aside the order passed by the Tribunal.

16. Writ Petition is allowed. No costs. Consequently, the connected W.M.P.No.14861 of 2017 is closed.

Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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To
The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

W.P.No.13684 OF 2017

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