

02.08.2024
SL No.174 & 175
Court No.24
Ali

WPA 1215 of 2018

**Sanjay Prasad Gupta & Ors.
Versus
Union of India & Ors.
With**

WPA 1216 of 2018

**Raj Kumar Yadav
Versus
Union of India & Ors.**

Mr.Arindam Chattopadhyay,
Ms. Lipika Chatterjee

.....for the petitioners
in (WPA 1215 of 2018).

Mr.Soumik Dey,
Ms. Tapati Saha

.....for the petitioner
in (WPA 1216 of 2018).

Mr. Ajit Kumar Mishra,
Mr. Abhishek Dey,
Mr. Supravat Banerjee,
Mr.Kushagra Maskara

...for the respondent/(RPF).

This is the second time of litigation between
the parties.

The preset petitioners had undergone initial
training at RPSF/TC/, Gorakhpur in 31st batch and
appeared in the final examination held in 2004, but
failed to qualify in written test as per rule 65.2 &
65.3 of The Railway Protection Force Rules, 1987
thereby they were discharged from their initial
training by the concerned authority; against the said
order of discharge they preferred two writ petitions
before this Court vide WP No. 7646 (W) of 2005 as
well as WP No. 5134 (W) of 2007. The operative

portion of the judgment of the Co-ordinate Bench of this Court is as follows:-

“Be that as it may this Court neither in the earlier order dated 5th August, 2015 nor hereby makes any finding or observation regarding denial of second attempt to the petitioners in that and in this case. They were not allowed to take second attempt by applying the provisions of the then Rule. However, as in that case, so in this case the respondent Authorities might consider the claim of the petitioners for taking second attempt in passing those subjects provided the respondent Authorities find that the petitioners made the criteria specified by the Director General or the Chief Security Commissioner concerned, in the matter of allowing second attempt to the petitioners under the said substituted Rule. The respondent Authorities well consider the case of the petitioners as expeditiously as possible”.

In pursuance to the direction of this Court the concerned Authority has considered the case of the petitioners and is of opinion that:-

“These Rules have now been amended vide GSR No. 556(E) in which there is a provision for granting 2nd attempt to failed candidates. However these rules have come into force on the date of their publication in the Special Gazette. “The Gazette notification was published on 16th August 2013”. “These rules do not have retrospective effect”.

In view of the fact that the petitioners failed to qualify in the final examination The petitioners cannot be allowed to appear in 2nd

attempt as per rules in force at that time, and the rule framed later on cannot be applied retrospectively. As such, request/appeal of the petitioners, Shri Sanjay Prasad Gupta and Shri Babaloo Kumar cannot be accepted, and the same is thus rejected”.

As the prayer of the petitioners were rejected. The instant writ petitions were preferred.

Learned counsel for the petitioners submits that the concerned Authority has not considered the earlier direction of this Court in its true purpose meaning. The case of the present petitioners were directed by this Court to be considered according to the amended rule but the concerned Authority has denied the prayer of second chance of examination of the petitioner on the pretext that amended rule has no retrospective effect. He further submits that the similarly situated persons are given opportunity for second chance.

In support of his contention the petitioner has annexed some documents with affidavit-in-reply. In such documents he placed some circumstances wherein some candidatures of the same batch was considered for second chance and allowed second time examination.

Learned counsel further submits that the case of the present petitioner was arbitrarily not considered by the concerned Authority, from the documents annexed with the reply it would be

revealed that some persons who adopted unfair means during the examination, were also given opportunity to sit in the second attempt; but, the petitioners were not allowed in spite of specific direction of this Court.

In support of his contention he cited Division Bench of Delhi High Court in ***Sh. Hansraj Versus Union of India & Ors*** wherein the second attempt was given to the candidate in the post of Sub Inspector to the batch of 2005.

Learned counsel further submits that the present petitioners are similarly situated person as of the case before the Hon'ble Delhi High Court in ***Sh. Hansraj Versus Union of India & Ors*** so they may be given opportunity so that they may sit in written examination for second time.

Learned counsel appearing on behalf of the Union of India raised strong objection and submits that the direction of the Co-ordinate Bench of this Court on the earlier occasion is very specific. The Co-ordinate Bench has not gone into the merits of this matter only directed the concerned Director General or Chief Security Commissioner to allow second attempt of the petitioner if the criteria specified in the amended rule is applicable to the petitioner.

The Union of India also used Affidavit-in-opposition and placed the numbers scored by the present petitioner. He submits that as per Rule 65.2 of RPF Rules, 1987, the present petitioners being recruitee constable have failed to obtain at least 50% marks in each subject and 60% marks in the aggregate. One candidate has failed in three subjects and others in two subjects. He also pointed out that the Rule of 1987 was amended by Special Gazette Notification on 16th August, 2013. The said Notification has given no retrospective effect so the present petitioners who are for the batch of 2003 cannot have any relief under the said amended provisions of Rule 65.3. He further argued that when legislature has specially make a law there has specific direction whether it would be retrospective or not, in absence of such statutory direction, all notifications are prospective in operation. There is no direction that the said amendment shall be effected retrospectively. Thus the prayer of the present petitioner cannot be considered. He further argued that the concerned Authority is the special force of the Union of India and are obedience a set of rule which is required for the purpose of the proper maintenance of discipline of the force itself.

In support of his contentions he cited a decision of Hon'ble Supreme Court in ***Bharat***

Sanchar Nigam Ltd. and Others Versus Tata Communications Ltd. reported in (2022) SCC OnLine SC 1280.

“29. It is a settled principle of law that it is the Union Parliament and State Legislatures that have plenary powers of legislation within the fields assigned to them, and subject to certain constitutional and judicially recognized restrictions, they can legislate prospectively as well as retrospectively. Competence to make a law for a past period on a subject depends upon present competence to legislate on that subject. By a retrospective legislation, the Legislature may make a law which is operative for a limited period prior to the date of its coming into force and is not operative either on that date or in future.

30. The power to make retrospective legislations enables the Legislature to obliterate an amending Act completely and restore the law as it existed before the amending Act, but at the same time, administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence cannot be made applicable with retrospective effect. Only law could be made retrospectively if it was expressly provided by the Legislature in the Statute. Keeping in mind the afore-stated principles of law on the subject, we are of the view that applicability of the circular dated 12th June, 2012 to be effective retrospectively from 1st April 2009, in revising the infrastructure charges, is not legally sustainable and to this extent, we are in agreement with the view

expressed by the Tribunal under the impugned judgment”.

Having heard the parties. After considering the earlier direction of this Court and also considering the affidavit and counter affidavit of the parties and relevant documents it appears to me that the present petitioners are recruited Constable who undergone training under the Railway Protection Special Force. As per the norms of the recruitment they had initially undergone the training thereafter that appeared in the written examination. Rule 65.2 & 65.3 of Railway Protection Force Rules, 1987 enumerates the guidelines for pass mark of candidates who appeared written examination after completion of training.

The Railway Protection Force Rules, 1987 be read as follows:

“65.2 Pass marks: In order to pass the examination, the candidates would be required to obtain a minimum of 50 per cent marks in each subject and 60 per cent marks in the aggregate.

65.3 Second attempt: Any candidate who fails the examination shall be allowed a second attempt to appear for that subject or course in such manner as may be specified by the Director General or the Principal Chief Security Commissioner concerned, without any stipend or any other remuneration.

Provided that the candidates belonging to the Scheduled Castes/Scheduled Tribes

categories shall be given a second attempt with stipend or remuneration and a third attempt, without any stipend or any other remuneration”.

Rule 65.3 was amended vide Notification dated 16th August, 2013 as follows:-

“65.3 Second attempt: Any candidate who fails the examination shall be allowed a second attempt to appear for that subject or course in such manner as may be specified by the Director General or the Chief Security Commissioner concerned , without any stipend or any other remuneration:

Provided that candidates belonging to the Scheduled Castes/Scheduled Tribes categories shall be given a second attempt with stipend or remuneration and a third attempt, without any stipend or any other remuneration”.

Thus it is true that prior to 16th August, 2013 if a candidate fails to score the marks according to the rule 65.2 they could not be allowed the second attempt subject to Rule 65.3 of RPF Rules, 1987, where specific criteria was made for second attempt. Admittedly, the present petitioners are not come under the purview of rule 65.3. Thus, logically the decision of the concerned Authority is not incorrect with the view that the Notification dated 16th August, 2013 which was not given a specific retrospective effect cannot be applicable for the present candidates.

However, in considering the argument made on behalf of the petitioners that whether the present petitioners can be come under the purview of the principle that the similarly situated persons were allowed by the said Authority to sit in a second attempt. Some documents were placed with the affidavit-in-reply wherein it was submitted that one Mohd. Sajjad, one trainee/recruitee was allowed to continue the training in the next batch. On perusing the case of Mohd. Sajjad it appears that he was absent from the training for quite few days. Thus, he was allowed to conduct training with the next batch. One document was placed in respect of one Kabi Nani Jha who was also absent from the training, and, subsequently who was discharged but his matter was considered by the Authority and was allowed to perform the training in the next batch; in case of one Jitender Kumar of the same 31st batch was sent for the training along the next batch on different circumstances. One confidential memo was placed, though illegible but it appears that in such memo three persons were allowed as a repeater when they were caught while using unfair means during the examination.

Learned counsel for the petitioners pressed heard that though the three candidates committed cheating over by the recruitment authority, still they

were allowed to sit examination for the second attempt as repeater.

Learned counsel for the respondent denied the existence and correctness of the document. It is not placed before this Court how the case of those three candidates were allowed by the Authority, what was the merit of their case before Authority, but at this stage, the merit of instant writ petition cannot solely based upon those facts which was specifically denied by respondent. However the confidential memo itself declared that rule 65.3 of RPF Rule 1987 has been followed.

Thus, in my view, the present petitioners are not the similarly situated person who were referred by the petitioners along with their affidavit-in-reply.

In considering the observation of Hon'ble Delhi High Court in ***Sh. Hansraj Versus Union of India & Ors*** it appears that ***Sh. Hansraj*** was initially posted as Sub Inspector in the RPF/RPSF under OBC category. He was given second chance to sit in the examination on the ground that during his training he was sick, as there were no specific medical facilities, he was allowed to undergone the medical treatment outside the training centre wherein he was allowed to take bed rest. In the case of ***Sh. Hansraj (supra)*** the concerned authority has allowed 33 repeater to appear the supplementary

examination. The Hon'ble Delhi High Court after considering the case of the repeaters alongwith the case of **Sh. Hansraj** considers it necessary that they are the similarly situated person. I am of the view that the case of the **Sh. Hansraj** is not at all applicable in this case.

In considering the direction of this Court on the earlier occasion it appears to me that the Coordinate Bench of this Court on the earlier occasion has directed the concerned Director General or the Chief Security Commissioner concerned to consider the prayer of the petitioners for second attempt provided that, the petitioners come under the criteria specified in the amended rules. The amended rules specified for second attempt without any rider like the earlier RPF Rules, 1987. This Court on the earlier occasion has not specifically directed the concerned Authority to allow the present petitioners had sit in the examination for second time. The concerned Authority had to act upon the prevalent rules. At this juncture, I find no illegality in the observation of the concerned Authority who did not allow the present petitioners according to the Railway Protection Amended Rules as it has no retrospective effect.

Considering the all circumstances, I find no merit in the instant writ petitions.

Accordingly, the applications being **WPA 1215 of 2018 and WPA 1216 of 2018** are disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)