

27.11.2024
(D/L-15)
Ct. No.4
(B.K.N.)

W.P.C.T. 76 of 2021

**Union of India & Ors.
Vs.
Swapan Sarkar and Ors.**

Mr. Sanajit Kumar Ghosh
...for the Petitioners

Mr. Ujjal Ray,
Mr. Arpa Chakraborty
...for the Respondents

1. The petitioner before this Court was the respondent in the proceedings arising out of O.A. No. 196 of 2013 filed by the respondent (applicant).
2. The very brief background is noted, as follows:
3. The applicants participated in the process of recruitment to “Group D” post under Employment Notification No. 110 being conducted by the Regional Recruitment Cell (R.R.C.), Eastern Railway by a notification dated 14th December, 2010.
4. It is not in dispute that the respondents before this Court today are the Orthopaedically Handicapped (O.H.) category candidates before

the Tribunal, as applicants in O.A. No. 196 of 2013.

5. The relief claimed in the Tribunal by the petitioners was as follows:

“8. RELIEFS SOUGHT FOR:

In view of the facts mentioned in para 4 above, the applicants pray for the following relief (s):

(a) The provisional Part Panel published by the respondents for appointment in Group ‘D’ post cannot be tenable in the eye of law as the same violates the selection procedure and as such the Provisional part panel may be quashed/or may not be acted upon.

(b) An order do issue directing the respondents not to proceed with the provisional part panel as published by the respondents and to publish a final panel for appointment in Group ‘D’ post;

(c) An order do issue directing the respondents to call the applicants to appear in the medical test for appointment in Group ‘D’ post before preparation of the final panel as they were declared suitable in the written test.

(d) Leave may be granted to file this Original Application jointly under Rule 4(5) (a) of the CAT procedure Rules, 1987.

(e) An order do issue directing the respondents to prepare waiting list of the applicants since they have qualified in written test and document verification have been conducted.”

6. In the proceedings before the Tribunal, the applicants also sought implementation of Master Circular No. 13 issued by the railways. Relevant extract of the Master circular issued by the railways contemplated as follows:

“The reservation of vacancies is to be made separately for each category. Candidates belonging to a category of persons are not available, persons the other categories may be taken. In that case, the reservation would seemed to have been utilised in pursuance of the principle of inter se change.

In any year, if vacancies reserved are not filled, the reservation should be carried forward in the

subsequent three recruitment years at the end of which the reservation should be deemed to have lapsed.

[No. E(NG)II/85/RC-2/74 dated 26.6.1986 and D.O.P's O.M. No. 36035/17/86-Estt. (SCT) dated 1.4.1986]

7. After considering the matter the Tribunal passed the following order in the original application:

“Hence we direct that the respondents shall publish the entire list of selected candidates strictly according to merit after completion of their medical tests including those who have already figured in the provisional part panel, within three months from the date of communication of this order before proceeding with further appointment.

The respondents shall then fill up the notified vacancies under EN 2010 strictly in terms of the merit list so published and in accordance with law.

The respondents shall also follow their Master Circular 13 to fill up one category of PH quota vacancies where shortfall lies, by the other category, in accordance with their instructions, to consider the case of applicants in OA 196/13 and similar OAs referred to hereinabove, suitably.

With regard to reserved quota vacancies under SC, ST, OBC categories, the respondents are directly to act in accordance with law and vacancy notified in each category in the notification EN 2010 and proceed as aforesaid.

16. All the OAs are accordingly disposed of. No order is passed as to costs.”

8. The order stands affirmed up to the High Court in the proceedings arising out of W.P.C.T. No. 148 of 2015 order dated 10th December, 2015.

9. Alleging noncompliance of the directions passed by the Tribunal in so far as application of the Master Circular No. 13 is concerned a contempt application bearing C.P.C. 91 of

2015 was filed by the private respondents before the Central Administrative Tribunal. In the proceedings the respondent railway has filed a compliance report which was not found to be showing substantial compliance with the directions of the Central Administrative Tribunal with respect to application of Master Circular No. 13. Several orders have been passed by the Tribunal in the contempt proceedings. From the orders passed therein it appears that the respondent railway was trying to convince or satisfy the Tribunal that the order has substantially been complied.

10. The contentious issue in the contempt proceedings was as to the number of vacancies available against which the applicants therein may be adjusted by interchange of category between two category of disability, on account of the vacancy in another P.H. category not being filled up.

11. The learned counsel for the railway submits that the Tribunal in exercise of contempt jurisdiction was required to confine itself to the issue of compliance of the order passed in O.A. No. 196 of 2013.

12. It is submitted that the law is very well settled by now in this regard that in a contempt

proceeding the scope cannot be enlarged and directions cannot be passed in addition to what has already been decided in the original application. Referring to the order passed in the course of contempt proceedings dated 7th September, 2021 it is submitted that the Tribunal itself was also conscious that it could not venture into such area not covered by its order which fact it has recorded in paragraph 9 of the impugned order.

13. Having recorded as such, the Tribunal in the very next paragraph (paragraph 10) has proceeded to record findings which reads as follows:

“10. The respondents/alleged contemnors were directed to place the merit list of all the PWD candidates who qualified in the selection/examination against EN 0110.

The have placed a list of 635 candidates all of whom qualified in the written exam and were thus called for document verification, against EN No. 0110. Out of the said 635 who have qualified as such, all of them ought to have been adjusted against the available 660 vacancies under PWD categories, as their rightful entitlement, instead the respondents have fixed an arbitrary cut off to deprive these physically handicapped candidates of their right to eke out a livelihood.”

14. It is submitted that such findings could not have been recorded in a contempt proceedings and if such findings were allowed to stand then filing of any compliance report thereafter would be an exercise in futility. Though the

respondents are not averse to filing a compliance report to satisfy the Tribunal that they have substantially complied with the order but if such findings are allowed to remain then the compliance report filed thereafter would have no meaning whatsoever.

15. In view of the nature of submissions being advanced today, and considering paragraph 10 of the impugned order passed by the Tribunal, in the light of the submissions advanced, we are of the opinion that such findings at this juncture when the respondents are yet to file a compliance report are uncalled for and unsustainable.

16. The observations made in paragraph 10 as well as in paragraph 11 to the extent it records that the right to be appointed to the post has been illegally taken away, at this juncture are unsustainable. To this limited extent we interfere with the impugned order and leave it to the petitioner to file their compliance report before the Tribunal, which we expect will proceed within the well defined contours of contempt jurisdiction.

17. Any observations made in the proceedings today will not inure to the benefit of either of the parties in the future proceedings, as we

have not expressed any opinion on the issue whether contempt has, or has not been committed.

18. The writ petition stands disposed of.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)