

17.05.2024
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WPCT 235 of 2023
Union of India & Others
– *Versus* –
Shri Saurav Das & Others

Mr. Asok Kumar Chakrabarti, Ld. ASG,
Ms. Amrita Pandey,
Ms. Sneha Singh
... for the Petitioners.

Mr. Phatick Chandra Das,
Ms. Tithi Paul
... for the Respondent no.1.

Mr. Sanajit Kumar Ghosh
... for the Respondent no.2

The present writ petition has been preferred by the Union of India and its functionaries challenging an order dated 4th July, 2023 passed by the learned Tribunal in the original application, being O.A. 350/01483/2022.

Mr. Chakraborty, learned Additional Solicitor General appearing for the petitioners, duly assisted by Ms. Pandey, learned advocate, submits that the learned Tribunal erred in law in observing that there is no provision towards grant of weightage to the seniority of the eligible candidates and failed to appreciate the overriding effect of the provisions of the Indian Railway Establishment Manual (hereinafter referred to as IREM) over the Railways Deputy Chief Law Officer, Senior Law Officer and Law Officer (Group 'A' and Group – 'B' posts) Recruitment Rules, 2017 (hereinafter referred to as the 2017 Recruitment Rules) promulgated *vide* notification dated 22nd December, 2017. The IREM had been issued in exercise of the powers conferred by the proviso to Article

309 of the Constitution of India and in supersession of the 2017 Recruitment Rules. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court.

Placing reliance upon an unreported judgment delivered by the Hon'ble Supreme Court in the case of *Prabhat Ranjan Singh & An r. Vs. R. K. Kushwaha & Ors.*, Mr. Chakraborty argues that in the said *lis* it was held that IREM has been issued in exercise of the powers conferred by the proviso to Article 309 of the Constitution and the said Rules are statutory Rules. The issue that the IREM has statutory force was also answered by a co-ordinate Bench of this Court in a writ petition, being W.P.C.T. 34 of 2016 [*Baidya Nand Thakur Vs. Union of India & Ors.*]. In view of the said judgments, the order impugned in the present writ petition is not sustainable in law.

He contends that as per the IREM, employees securing the gradation 'outstanding' will be placed on top followed by those securing the gradation 'good', maintaining the inter-se seniority. The original applicant/respondent no.1 did not secure the gradation 'outstanding' and being at the bottom of the seniority position, he did not come within the zone of consideration. The private respondents are admittedly senior to the original applicant/ respondent no.1.

Mr. Ghosh, learned advocate appearing for the private respondent no.2 adopts the submissions of Mr.

Chakraborty and submits that the order impugned in the present writ petition is violative of the principles of natural justice since the same was passed without completion of service of a copy of the original application upon the said respondent. Aggrieved thereby, the said respondent had already filed a recalling application before the learned Tribunal which is still pending.

He argues that there was no contradiction between the provisions the 2017 Recruitment Rules and the IREM. The panel of Law Officer (Group – B) was prepared considering the marks obtained by the contestants and their inter- se seniority. There had been no infirmity in the selection process warranting interference of the learned Tribunal. The operating rules ought to have been considered together and not in isolation.

Per contra, Mr. Das, learned advocate appearing for the respondent no.1/original applicant submits that in the selection notification, which was published on 9th November, 2021, there was no reference that the process would be exclusively guided by the provisions of the IREM or that the said provisions would have an overriding effect.

Drawing our attention to the 2017 Recruitment Rules, Mr. Das submits that in the same it has been categorically stated that vacancies pertaining to the post of Law Officer shall be filled up by promotion through selection (which shall include a written test and *viva voce*). The petitioners themselves initiated the selection process on the basis of the 2017 Recruitment Rules but the

original applicant/respondent no.1 was subsequently ousted from the zone of consideration on a purported plea of inter-se seniority in application of the provisions of the IREM though admittedly the original applicant secured more marks than the private respondents.

We have heard the learned advocates appearing for the respective parties at length and we have given our anxious consideration to the facts and circumstances of the case.

It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. Plentitude of pronouncements leaves cleavage in the opinions formed in the respective cases. In the case of *Prabhat Ranjan Singh (supra)*, the Hon'ble Supreme Court was deciding the issue as to whether the Railways is bound by the rules framed by the Department of Personnel and Training or it can frame its own Rules and whether the IREM has statutory force. In the present case, however, the petitioners have argued that the provisions of IREM would override the provisions of the Recruitment Rules framed by the Railways. In the case of *Baidya Nand Thakur (supra)* the applicant himself pleaded that the selection had been conducted as per the IREM. An amendment application

was also filed subsequently by the applicant therein seeking a declaration that Para 204.9 of IREM was ultra vires but the same was rejected and in the said conspectus the Court observed that having taken a calculated chance of selection, knowing that the IREM would be followed, it was too late for the applicant to succeed. The said judgments are thus distinguishable.

Indisputably, the selection process was initiated *vide* memo dated 9th November, 2021. In terms of the 2017 Recruitment Rules and having secured more marks than the private respondents, the respondent no.1/original applicant came within the zone of consideration for promotion. It is subsequent thereto, the petitioners sought to exclude the original applicant/respondent no.1 on a purported ground of inter-se seniority placing reliance upon the provisions of the IREM. In the notification dated 9th November, 2021 there was no mention as regards applicability of *inter se* seniority. Having proceeded applying the provisions of the 2017 Recruitment Rules by holding written test and *viva-voci*, the petitioners could not have altered the rules of selection after the selection process had commenced. No material was placed to show that the provisions of IREM would have an overriding effect upon the 2017 Recruitment Rules and accordingly, such argument was rightly discounted.

The learned Tribunal, upon dealing with all the factual issues, arrived at specific findings and we do not find any error, least to say any patent error of law in the

order impugned. The scope of judicial review is limited and such jurisdiction is exercised not when the order impugned is not right but only when it is clearly wrong. The impugned order does not suffer from any jurisdictional error or any substantial failure of justice or any manifest injustice warranting interference of this Court.

Accordingly, the writ petition, being WPCT 235 of 2023 is dismissed.

There shall, however, no order as to the costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)