

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

Original Application No.203/01125/2018

Bilaspur, this Tuesday, the 19th day of November, 2019

HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MR. B V SUDHAKAR, ADMINISTRATIVE MEMBER

P. Gopal Naidu, S/o Late Shri P. Prakash Naidu, A/o 30 years,
R/o House No.2, Om Vihar, Rwapura Colony, Mathpurena,
Dist – Raipur, C.G, Mob.9303005063 **-Applicant**

(By Advocate – Smt. Surya Kawalkar Dangi)

V e r s u s

1. South Eastern Central Railways through Principal Chief
Personnel Officer, Headquarter Personnel Department, Ist
Floor, General Manager, Bilaspur, C.G. 495004.

2. Director, Estt. (N)-II, Railway Board, Rail Bhawan, New
Delhi 110001.

3. General Manager (P), South East Central Railway, Bilaspur,
C.G 495004.

4. Chief Personnel Officer, SEC Railway, Bilaspur, C.G
495004.

5. Divisional Personal Officer, SEC Railway, Raipur, C.G
490042.

6. Sr. Personnel Officer (HRD), Headquarter Personnel
Department, Ist Floor, General Manager, Bilaspur, C.G.
495001. **-Respondents**

(By Advocate – Shri Arun Soni)

ORDER (O R A L)**By Ramesh Singh Thakur, JM.**

This Original Application has been filed by the applicant against the orders dated 11.08.2018 and 22.10.2018 (Annexure A-1 colly.), passed by the respondent No.5, in rejecting the candidature of the applicant for the post under Scouts & Guides quota.

2. Applicant has, therefore, sought for the following reliefs:

“8.1 To call for the entire material record pertaining to the instant controversy from the respondents for its kind perusal;

8.2 To quash and set aside the impugned order dated 11.08.2018 and 22.10.2018 (Annexure A/1) being illegal and bad in law.

8.3 To grant the applicant appointment on the vacant post of PB-1 (Rs.5200-20200) against which the applicant was declared successful.

8.4 Grant any other relief/s, which this Hon’ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant;

8.5 Award the cost of the petition to applicant.”

3. Brief facts of the case are that in pursuance to the advertisement dated 08.08.2015 (Annexure A-2) for filling up the posts in PB-1 with Grade Pay Rs.1800/- (Level-1) against Scouts & Guides quota, the applicant submitted his candidature

for the aforesaid post. He was declared successful in the written examination as well as in viva voice and got selected vide final result declared on 31.03.2016. However, a complaint was made against the applicant that he has participated in different organisations, i.e. Chhattisgarh State Scouts Organisation and Railway Scout Organisation. On receiving the complaint, the respondent No.5 sought clarification vide letter dated 31.05.2016 (Annexure A-3) from the DRM as to whether the candidate having active memberships of Chhattisgarh State Scout Organisation (i.e. other than railway scouts organisation) is also eligible for recruitment in Railways through scouts & guide quota. Pursuant to the clarification, the respondent No.4 vide letter dated 31.05.2017 after a period of one year, further sought clarification from Railway Board (respondent No.2) on the subject. Thereafter, the respondent No.2, vide his letter dated 14.06.2018 (Annexure A-5) has stated that no one can be a member of two State Associations at the same time or simultaneously and the matter was referred to the concerned department to take necessary action. Accordingly, the respondents have passed the orders dated 11.08.2018 and 22.10.2018 (Annexure A-1 collectively), whereby the candidate of the applicant has been rejected.

4. The respondents have filed their reply, wherein it has been submitted that as per Rule 9 of Aims Policy Rules & Organisation-I issued by the Bharat Scouts & Guides National Headquarters (Annexure R-1), no member of a District association can participate or represent in any other District's event without prior sanction of the home district. Since the applicant was member of two different Scouts & Guides Organisation, namely: Chhattisgarh State Scouts Organisation and South East Central Railway Scouts & Guides Organisation, therefore, his candidature has been rejected in terms of the aforesaid rule.

5. We have heard the learned counsel for the parties and perused the pleadings and the documents available on record.

6. Learned counsel for the applicant contended that the applicant was declared successful and his name was included in the final select list. The candidature of the applicant was rejected for the reason that the applicant was an active member of two scouts organization, whereas, no such condition was mentioned in the advertisement. Hence, the impugned order in rejecting the candidature of the applicant is bad in law. On the other hand, learned counsel for the respondents submitted that

the amendment and the clarification is different thing. The rules were clear even prior to issuance of the advertisement and there is no question of applicability of the clarification whether retrospective or perspective.

7. We have also considered the rival submissions made by the parties.

8. From the pleadings, it is an admitted fact that vide advertisement (Annexure A-2), the applicant has applied for the relevant post and after passing the written examination and interview, his name appeared in the final select list. Learned counsel for the applicant has attracted our attention to Annexure A-7 Establishment No.191/2018 issued by the South East Central Railway, wherein clarification has been given by the Railway Board. The same reads as under:

“Vide this office letter dated 31.05.2017, clarification was sought from Board that whether there is any restriction to become member of more than one State of Scouts. It is not clear whether the candidate who is a member of more than one state of Scouts simultaneously is eligible for employment on Railways against Scouts & Guides quota.

Board vide letter above have clarified the issued that no one can be a member of two State Associations at the same time or simultaneously.

In view of the above, it is advised that in future, this clause should be clearly mentioned in the notification for recruitment against Scouts & Guides Quota and a declaration in this regard should be obtained from each applicant.”

If this Annexure is seen, it has been clearly stated that one can be a member of two State Associations at the same time or simultaneously and the same clause is to be incorporated in the notification for recruitment against Scouts & Guides Quota in future. It is pertinent to mention that the Annexure A-7 clarification has been issued on 03.07.2018, whereas the advertisement for the post in question, was issued on 08.08.2015 and no such condition was prescribed in the advertisement.

9. Learned counsel for the applicant relied upon the judgment passed by the Hon'ble Apex Court in the matters of **A.A. Calton vs. Director of Education and another**, (1983) 3 SCC 33, wherein it has been held that existing rights cannot be taken away by giving retrospective effect to a statutory provision unless it expressly or by necessary implication provides so. The relevant Para 5 of the judgment reads as under:

5. It is no doubt true that the Act was amended by U.P. Act 26 of 1975 which came into force on August 18, 1975 taking away the power of the Director to make an appointment under

Section 16-F(4) of the Act in the case of minority institutions. The amending Act did not, however, provide expressly that the amendment in question would apply to pending proceedings under Section 16-F of the Act. Nor do we find any words in it which by necessary intendment would affect such pending proceedings. The process of selection under Section 16-F of the Act commencing from the stage of calling for applications for a post up to the date on which the Director becomes entitled to make a selection under Section 16-F(4) (as it stood then) is an integrated one. At every stage in that process certain rights are created in favour of one or the other of the candidates. Section 16-F of the Act cannot, therefore, be construed as merely a procedural provision. It is true that the legislature may pass laws with retrospective effect subject to the recognised constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect. In the instant case admittedly the proceedings for the selection had commenced in the year 1973 and after the Deputy Director had disapproved the recommendations made by the Selection Committee twice the Director acquired the jurisdiction to make an appointment from amongst the qualified candidates who had applied for the vacancy in question. At the instance of the appellant himself in the earlier writ petition filed by him the High Court had directed the Director to exercise that power. Although the Director in the present case exercised that power subsequent to August 18, 1975 on which date the amendment came into force, it cannot be said that the selection made by him was illegal since the amending law had no retrospective effect. It did not have any effect on the proceedings which had commenced prior to August 18, 1975. Such proceedings had to be continued in accordance with the law as it stood at the commencement of the said proceedings. We do not, therefore, find any substance in the contention of the learned counsel for the appellant that the law as amended by the U.P. Act 26 of 1975 should have been followed in the present case.

9.1 Learned counsel for the applicant further relied upon the decision of Hon'ble Apex Court in the matters of **Tamil Nadu**

Computer Science BED Graduate Teachers Welfare Society

(1) vs. Higher Secondary School Computer Teachers

Association and others, (2009) 14 SCC 517, wherein the

Hon'ble Apex Court has held that changing rules of game

during selection process or afterwards is impermissible. The

relevant Para 32, 33 and 34 of the judgment reads as under:

32. Prior to holding of the said test guidelines were formulated through a policy decision laying down the criteria that the minimum qualifying marks in the said test would be at least 50%. The said guidelines of recruitment as laid down through a policy decision were sacrosanct and were required to be followed for all practical purposes even if we accept that the Government could have filled up the said posts of computer instructors by holding a special recruitment test of the aforesaid nature as one-time exception.

33. We, however, cannot hold that the subsequent decision of the Government thereby changing qualifying norms by reducing the minimum qualifying marks from 50% to 35% after the holding of the examination and at the time when the result of the examination was to be announced and thereby changing the said criteria at the verge of and towards the end of the game as justified, for we find the same as arbitrary and unjustified. This Court in Hemani Malhotra v. High Court of Delhi [(2008) 7 SCC 11 : (2008) 2 SCC (L&S) 203] has held that in recruitment process changing rules of the game during selection process or when it is over are not permissible.

34. Thus we hold and declare that those candidates who had secured more than 50% qualifying marks would be held to have qualified in the said test and the remaining candidates would be treated as unsuccessful/failed and therefore became ineligible to be permanently recruited and absorbed in government schools. However, we give liberty to the State Government to hold a fresh examination/recruitment test to fill up all the remaining posts of computer instructors as against the sanctioned and vacant posts of computer instructors, which we are told would be more than 1000, by

holding a recruitment test in terms of assurance given to the High Court.

9.2 Further reliance has been placed on a decision of Hon'ble Supreme Court in the matters of **P. Mahendran and others vs. State of Karnataka and others**, (1990) 1 SCC 411 to say that rules at the relevant time, which were in existence, are to be complied with. Para 5 of the judgment reads as under:

5. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the rule with retrospective effect. Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter.

9.3 Learned counsel for the applicant has also placed reliance on a decision of Hon'ble Supreme Court in the case of **United Air Travel Services through its Proprietor A.D.M. Anwar Khan vs. Union of India through Secretary (Ministry of External Affaris)**, wherein the Hon'ble Apex Court has held that the impugned order should be a reasoned and speaking one.

The relevant Para 9, 10 and 11 reads as under:

“9. A bare perusal of the aforesaid letter would show that the reason cited for disqualification was non-compliance with the very clauses of which exemption had been granted to the petitioners.

10. The learned Additional Solicitor General appearing for the respondents could not dispute the aforesaid position but sought to canvas that the reasons were wrongly communicated in the rejection letter, and there was actually, some other reason for the rejection. The aforesaid plea can hardly be countenanced in view of the reasons referred to and communicated.

11. The learned counsel for the petitioner has, thus, rightly drawn our attention to the Constitution Bench judgment of this Court in Mohinder Singh Gill v. Chief Election Commr. [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] to submit that such a plea cannot be accepted. We may note that this is a well-settled legal position in many judicial pronouncements of this Court, but it is not necessary to revert to the same. In para 8 of the aforesaid judgment, V.R. Krishna Iyer, J., in his inimitable style states as under:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to

the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police v. Gordhandas Bhanji, AIR 1952 SC 16] : (AIR p. 18, para 9)

'9. ...public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.'

Orders are not like old wine becoming better as they grow older."

From the aforesaid quoted judgments, relied upon by learned counsel for the applicant, it can safely be said that rules of the game cannot be changed in the midway. Subsequent decision of the respondent department thereby changing the conditions, which were not prescribed in the advertisement, at the verge of and towards the end of the game is arbitrary and unjustified.

10. In the instant case, the applicant applied for the post against the Scouts & Guides quota as per the advertisement issued on 08.08.2015 (Annexure A-2). He was duly selected for the said post after passing written examination and viva voce. Thereafter, some clarifications were sought by the respondent department as to whether the candidate who is a member of more than one state of Scouts simultaneously is eligible for employment on Railways against Scouts & Guides quota.

Thereafter, the matter was referred to the Railway Board, who has clarified that no one can be a member of two State Associations at the same time or simultaneously and ultimately vide impugned order at Annexure A-1, the candidature of the applicant has been rejected. The communications at Annexure A-4 to A-6, make it clear that no instructions were available with the respondent department regarding membership of a candidate with two State Associations at the same time or simultaneously. Moreover, no such conditions were prescribed in the advertisement at Annexure A-2. Further, as per Annexure A-7, the said clarification was to be incorporated in the future advertisement. Hence, the same cannot be applied retrospectively. The contention of learned counsel for the respondents that the advertisement was contrary to the rules, cannot be taken at this stage, as admittedly, no such rules were available with the respondent department, which prescribes that the candidate, who is member of more than one state of Scouts simultaneously is eligible for employment on Railways against Scouts & Guides quota. It is only after the clarification issued by the Railway Board on 14.06.2018, i.e. after almost three years from the date of issuance of advertisement, the respondent department have rejected the candidature of the applicant by

stating that no one can be a member of two state Associations at the same time or simultaneously.

11. In view of the aforesaid and the law on the subject, Annexure A-1 is quashed and set aside. The respondents are directed to reconsider the candidature of the applicant for the post against which he was declared successful as per our observations made hereinabove. The same shall be done within a period of 60 days from the receipt of certified copy of this order.

12. The Original Application is disposed of in the above terms. No costs.

(B V Sudhakar)
Administrative Member

(Ramesh Singh Thakur)
Judicial Member

am/-