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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

AT HYDERABAD

C.P.104/96 in
OA 67/96

Date of Decision: 6.3.1997

BETWEEN:

P. Seshagiri Rao

.. Petitioner

AND

1. Sri C.L. Kaw,
Chairman, Railway Board,
New Delhi.

2. Sri Bala Karasi,
Secretary, Ministry of Railways,
Railway Bhavan,
New Delhi.

3. Sri P.C. Hota,
Secretary,
Department of Personnel,
Administrative Reforms,
Ministry of Home Affairs,
North Block, New Delhi

.. Respondents

Counsel for the Petitioner: Mr. L. Narasimha Reddy

Counsel for the respondents: Mr. K.T.S. Tulsi, Sr. Counsel
with Mr. Vikas Pahwa, Advocate
and Mr. V. Rajeshwar Rao, Addl.
Standing Counsel for respondents.

CORAM:

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI: VICE CHAIRMAN

THE HON'BLE SRI H. RAJENDRA PRASAD: MEMBER (ADMN.)

ORDER

(PER HON'BLE MR. JUSTICE M.G. CHAUDHARI: VICE CHAIRMAN)

This petition for taking action against the respondents 1 to 3 for committing contempt of this Tribunal has been filed by the applicant in OA No.67/96 with the allegation that the respondents have disobeyed the order passed by the Tribunal in the said OA.

The OA was filed by the petitioner seeking directions to Ist respondent to reckon his seniority in the Transportation, Traffic and commercial Department of the Indian Railways from 9.7.1962 in the Indian Railway Traffic service and to assign him correct ranking and position in the list of eligible officers who are fit to be appointed as General Managers or equivalent posts in Indian Railways and forward such a revised list for consideration and approval by the Appointments Committee of the Union Cabinet, Government of India, with all attendant benefits. In short he aspired for appointment as General Manager in Indian Railways claiming that on reassignment of seniority correctly he would be eligible to the appointment.

The application was resisted by the respondents.

After examining the various aspects of the question and consistently with the findings arrived at in the judgement following order was passed on 26.4.96 in the OA.

" As and when the appointment of eligible officers to the post of General Manager/equivalent is considered during the currency of the panel for 1995-96, including the vacancy as on 31.1.1996, which is stated by both the parties not to have been so far filled up,

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the Selection Committee shall consider the date of entry of the applicant in the Time-Scale as 9.7.1962 and reckon his seniority with reference to that date treating him within the age limit as on 1.7.1995. "

The respondents have stated in the counter (to the CP) that in keeping with the abovementioned directions the DITS of the petitioner for the panel of 1995-96 has been taken on 9.7.1962 and he was considered for empanelment for the post of GM/equivalent for the year 1995-96 but he could not be recommended for the same as he has been left with less than 2 years of residual service from the date of occurrence of vacancy falling to his turn.

The petitioner alleges that ^{not} ~~in not~~ recommending the name of the petitioner for appointment as GM/equivalent on the aforesaid ground amounts to committing a breach of the directions given by the Tribunal in its order dated 26.4.96 in the OA.

The narrow question that arises for consideration is as to whether the respondents have acted in breach of the order in the OA in not recommending the petitioner for appointment as GM/equivalent on the ground that he does not fulfil the requirement of residual service of 2 years from the date of occurrence of vacancy falling to his turn.

In order to answer the above question it is necessary in the first instance to understand the exact nature of the order in the OA which has been quoted above for instant reference.

The order contemplated as follows:

- (i) The date of entry of the applicant in the time scale was to be taken as 9.7.1962.
- (ii) The seniority of the applicant was to be reckoned with reference to the above mentioned date.
- (iii) The applicant was to be treated as being within age limit as on 1.7.1995.
- (iv) On the basis of the above the applicant, treating him to be within age limit was to be considered as and when appointment of eligible officers to the post of General Manager/equivalent will be considered during the currency of the panel for 1995-96 including the vacancy available as on 31.1.1996.

Subsequently it has been clarified in the order dated 21.8.1996 on MA No.611/96 that the vacancy referred to above in the order as of 31.1.1996 in fact arose on 21.3.1996 and therefore it is that vacancy which is required to be taken into account for the purpose of the directions contained in the original order. It is only if the petitioner shows that the respondents have not complied with any of the above components of the original order that he can maintain ~~in~~ the petition for contempt. The scope of the instant petition which is for initiating action in contempt on the ground that original order has not been complied with cannot be expanded beyond determining whether there has been compliance or not with the original directions.



In the counter filed to the instant petition the respondents have stated in paragraph 7 & 8 as follows:

- (i) The DITS of the applicant for the panel of 1995 has been taken as 9.7.1962.
- (ii) The said date is also in line with the instructions of assigning inter-se seniority to officers of various railway services and the applicant was accordingly considered for empanelment as GM/equivalent for the year 1995-96.

Thus the petition^{er} was considered for appointment as GM. That also implies that he was treated within age limit.

Thus all the 4 directions contained in the original order have been complied with and therefore there does not arise any question of the respondents not having complied with the original order.

The petitioner contends that the respondents have not complied with the directions in the original order in the true sense and have not acted consistently with the spirit of the order. They have sought to maintain an artificial distinction between empanelment and appointment. Although he was ranking high amongst the empanelled candidates owing to his seniority the respondents have denied the petitioner appointment relying on the clause of residuary service which is against the spirit of the order. The action of the respondents is therefore contrary to and violative of directions given by the tribunal and without any justification and constitutes a deliberate contempt of the court.

The substratum of the grievance of the petitioner is his grievance relating to his not being recommended for appointment despite his empanelment. That, however, is an aspect ^{lying} ~~outside~~ the scope of the original order. The original order never directed that the petitioner should be appointed notwithstanding ^{the fact} that he ~~did~~ not fulfill the prescribed conditions under the scheme for such appointment once he was empaneled. That position also was clarified in the order Dt.21.8.1996 on MA 611/96. In paragraph 6 of the order it has been clearly said as follows:

" The order does not contain any direction as to the steps that would be followed after the case of the applicant is so considered. The question as to what should be the tests to be applied at the time of making the appointment against a particular vacancy as may occur during the currency of the panel had not been the subject matter of decision in the order as that question had not been raised by the parties. "

Mr. K.T.S. ~~Tulsi~~ the learned Sr. Advocate appearing for the respondents placed emphasis on ~~this~~ clarifications. He submitted that before the said clarification was issued the Union of India had filed SLP (Civil) No.22131/96 in the Honourable Supreme Court against the original order. But in view of the clarification given by this Tribunal on 21.8.1996 that SLP was withdrawn on 13.1.97. He also submitted that even the petitioner who had filed SLP(C) 23940/1996 against the original order ~~withdrew the same~~ him stating to the Honourable Supreme Court that he will ~~the~~ SLP and move the Tribunal for enforcement of the order. That SLP was also withdrawn on ~~13.1.1997~~. Mr. ~~Tulsi~~

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submitted that it is not, therefore, now open to the petitioner to raise any argument as regards the true import of the original order so as to read in it a direction to appoint him.

The learned counsel for the petitioner Mr. L.N. Reddy submitted that SLP No.23940/96 was not filed from the order in the OA 67/96 but another OA which had been filed by the petitioner. However from the original writ received by this tribunal from the Supreme Court it is clearly seen that the said SLP was filed against the order Dt.26.4.1996 in OA No.67/96. In view of the same the statement of Mr. Reddy cannot be accepted. Thus it is not possible to hold that by not recommending the name of the petitioner for appointment to the post of GM/equivalent the respondents have disobeyed the original order.

The grievance of the petitioner relating to denial of appointment to him is a subsequent event and does not arise from the order in the OA though it may flow therefrom. If any remedy is to be pursued in respect of a grievance arising out of subsequent and distinct cause of action it is open to an aggrieved person to adopt substantive proceedings as may be available to him in accordance with the law. A contempt action which is based on the ground of disobedience of an order cannot be a proceeding relating to such a distinct cause of action arising after the passing of the original order and when such an event does not form part of any direction contained in the original order. We are, therefore, not called upon in this petition to express any opinion as to whether non-recommendation of the petitioner for appointment is according to law or contrary to law. Mr. Tulsi submitted that the respondents have acted in accordance with Para-7.3 of the "Scheme for making appointment to posts of GMs and equivalent in the

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Railways ". Para-7.3 is in following terms " Only such of the empanelled officers would normally be appointed to posts of GMs and equivalent as will be able to serve for atleast 2 years on such or higher post(s)." The learned counsel explained that having regard to the language of the said clause the respondents were earlier uniformly following the method of counting the residual period of 2 years from the date of appointment, but after the decision of the Allahabad Bench of the CAT in the case A.P.S. Sinha Vs Union of India and others OA No.1698/94 Dt. 29.9.95 the respondents have been counting the period from the date of occurrence of the vacancy to which the eligibility of the official would be considered. It is submitted that in keeping with this principle the residual period of 2 years in respect of the petitioner was counted from the occurrence of the earliest vacancy relevant to the panel for 95-96 which had occurred on 21.3.1996 and which was the vacancy contemplated by the order in the OA. It is submitted that although from that date till the date of superannuation of the applicant a period of 2 years residual service would be available yet the petitioner could not be appointed to that post since there was one person senior to him. (The date of superannuation of the applicant would be 30.4.1998). The learned counsel produced a copy of the list of officers approved for empanelment in the 1995-96 panel dated 16.10.1996. That shows that one Shri. N.C. Sinha with DITS 2.5.1962 is at Sl.No.1 whereas the petitioner with DITS 9.7.1962 is at Sl.No.4. Mr. Sinha is IRSME and the applicant is IRIS. The learned counsel stated that the persons at Sl.No.2 & 3 could not be appointed for some reasons and therefore the position was that the petitioner

✓ Stood at Sl. No.2. However the said vacancy which arose
✓ on 21.3.1996 had to be filled up by the candidate at Sl.No.1
✓ namely Sri N.C. Sinha. Further vacancy thereafter arose on
✓ 30.6.1996. Counted from that date ^{since} the residual service of
✓ the applicant ~~since~~ would be less than 2 years, he was not
✓ recommended having regard to para-7.3 of the Scheme. According
✓ to the learned counsel that is the purport of para-9 of the
reply to the petition wherein the respondents have stated
that the applicant was left with less than 2 years of residual
service from the date of occurrence of vacancy falling to
his turn.

Mr. L.N. Reddy on the other hand vehemently argued
that since in the original order it was directed that the
applicant was to be treated within ^{age} ~~se~~ limit as on 1.7.1995
that should be taken as the date for counting the residual
service for the purpose of para-7.3 of the Scheme and the basis
adopted by the respondents is therefore not correct. He
sought to rely on decisions of the Central Administrative
Tribunal rendered in B.S. Agrawal Vs Chairman, Railway
Board etc. OA 2122/95 decided on 29.10.96 by the Principal
Bench and Kamal Raj Vs Union of India and another OA No.184/95
decided by Bombay Bench on 23.8.1996. The learned counsel
tried to build up an argument on as to how the word "normally"
occurring in para-7.3 of the scheme has to be interpreted.
The learned counsel submitted that therefore it is clear that
the respondents have acted contrary to the spirit of the original
order by denying the petitioner the appointment by literally
reading the provisions of the scheme and thus have frustrated
the success achieved by the applicant by the original order in
the OA and this is nothing but an act of defiance of the
original order.

As stated earlier whether the provisions of para-7.3 of the scheme have been correctly applied or not and what should be the interpretation to be placed on the expression "normally" and what should be the correct date to be reckoned for the purpose of counting the residual period are matters relating to the question of appointment which however is not permissible to be gone into in the present proceeding which is merely for taking action in contempt. Although this may form the subject matter of an independent substantive proceeding we have referred to the submissions in that behalf only to demonstrate that the grounds on which the respondents have purported to treat the petitioner as not eligible to be appointed do not relate to the original order and thus there arises no question of respondents disobeying the said order. The scope of the original order cannot be widened so as to examine the validity of the subsequent action.

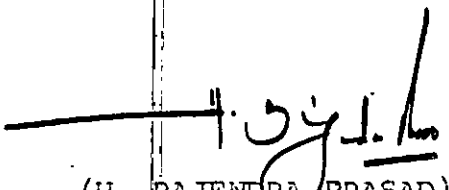
The learned counsel for the petitioner also submitted that even assuming that the method of reckoning the residual period of service as adopted by the respondents is correct, yet having regard to the spirit of the order in the OA, the respondents should have relaxed that condition and treated him eligible to be appointed against the vacancy which occurred on 30.6.1996. It is not possible to imply a direction for relaxation to be given in the original order. Moreover under para-10 of the Scheme the relaxation can be given in the public interest by the Government in the manner indicated. Neither there was any request made by the petitioner for the same nor the respondents can be compelled to give the relaxation which is a matter purely for the Government to consider. Mr. Tulsi stated in this connection that the Government have not granted such relaxation to any one and there is no such instance because they are applying para - 7.3 of the scheme uniformly and it is


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being strictly adhered to.

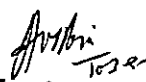
In the light of the foregoing discussion we hold that since the petitioner has not been able to show that the directions contained in the original order have not been complied with by the respondents the allegation made by him that the respondents have acted in breach of the said order and are therefore liable to be punished for committing contempt of this tribunal must fail. The petition seeking initiation of action against the respondents for committing contempt thus is liable to be dismissed.

In the result the CP is dismissed. No order as to costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)


(M.G. CHAUDHARY)
VICE CHAIRMAN

Date 6th March 1997


Deputy Registrar (DCC)

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