

**Central Administrative Tribunal
Madras Bench**

CP/310/00110/2017 in OA/310/00455/2017

Dated Wednesday the 04th day of April Two Thousand Eighteen

P R E S E N T

Hon'ble Mr. R.Ramanujam, Member(A)

Mr.J.Vignesh,
S/o (late) G.Janarthanam,
No.1, Gokulam Colony, RPF Road,
Kajamalai,
Tiruchy 620 023. .. Applicant

By Advocate **Mr.R.Rajendran**

Vs.

1. Shri Vashishta Johri,
General Manager,
Southern Railway,
1st Floor, NGO Main Building,
Southern Railway, Park Town,
Chennai 600003.
2. Smt. Sunita Vedantam
The Chief Personnel Officer,
(Recruitment Division),
Southern Railway, Park Town,
Chennai 600003.
3. N.Shanmugarajan
The Workshop Personnel Officer,
GOC, Golder Rock,
Central Workshop,
Trichy. .. Respondents

By Advocte **Mr.P.Srinivasan**

ORAL ORDER

Pronounced by Hon'ble Mr.R.Ramanujam, Member(A)

Heard. This CA has been filed by the applicant in OA 455/2017 against the respondents alleging wilful disobedience of the order passed by this Tribunal in OA 455/2017 dated 20.3.2017. Notice was issued to the respondents.

2. Learned counsel for the contempt petitioner submits that this Tribunal by order dated 20.3.2017 directed the respondents to reconsider the candidature of the applicant for a Group C post in view of the directions given by this Tribunal in OA 486/2016 and also in the light of the Circular No.E(NG)II-84/RCI/1-74 dated 25.6.1985 within a period of two months from the date of receipt of copy of the order. In pursuance thereof, the respondents passed an order dated 28.6.2017 rejecting the claim of the applicant for compassionate appointment to a Group C post. It is submitted that the said order violated the specific direction of this Tribunal to consider the applicant's case in the light of the Circular dated 25.6.1985 which stated that for compassionate appointment, the standards need not be rigid. As such, the authority concerned committed wilful disobedience of the order, it is alleged.

3. Learned counsel for the respondents would, however, draw attention to the detailed order passed by the respondents clearly explaining how the applicant had failed to make out a case for appointment to a Group C post. It is pointed out that the applicant ought to secure 60% marks in the written test to be eligible for viva-

voce in which again a minimum of 60% had to be scored. The applicant secured 49 marks only in the written test and as such there was no need to conduct any viva-voce. Accordingly, his candidature had rightly been rejected in terms of Southern Railway Circular No.PB/CS/30/Policy/Vol.VI dated 3.8.1995. As for the Circular dated 25.6.1985, it is submitted that the minimum qualifying marks of 60% prescribed for the purpose of compassionate appointment was not rigid in as much as a selection strictly on merits would have entailed even higher minimum qualifying marks. The minimum qualifying marks of 60% each in both written test and viva-voce was prescribed in Circular No.PB/CS/30/Policy/Vol.VI dated 3.8.1995 after taking into account all previous circulars on the subject including the one dated 25.6.1985. It is submitted that the applicant having failed to secure the minimum marks could not allege wilful disobedience by the respondents.

4. Learned counsel for the contempt petitioner would, however, argue that the prescription of minimum 60% qualifying marks for compassionate appointment itself was a violation of the Railway Board Circular dated 25.6.1985. Further, even assuming that such prescription of minimum qualifying marks was valid, the applicant had secured 49% in the written test alone and if granted opportunity of an interview, he would have scored such high marks in the viva-voce that the average of the two tests would have exceeded 60%. Having denied the applicant an opportunity to appear for viva-voce and thereby violating the order of this Tribunal, the respondents could not escape the charge of contempt, it is contended.

5. I have carefully considered the submissions by the rival counsel. The issue to be decided is whether there was any wilful disobedience by the respondents in complying with the order of the Tribunal dated 20.3.2017. The respondents have passed a detailed speaking order with regard to how they found the applicant ineligible/unqualified for a Group C post. It is not in dispute that the Southern Railway by a Circular dated 03.8.1995 had prescribed 60% as the minimum qualifying marks for compassionate appointment to a Group C post both in written test and viva-voce which means that to be eligible for compassionate appointment, the candidate had to obtain 60% each in both the tests. As for the allegation that the said order of the Southern Railway violated the Railway Board's order dated 25.6.1985, it is for the latter to take cognisance thereof for which the applicant could move the competent authority in the Railway Board in an appropriate manner. Even assuming that the applicant could agitate his grievance in the Tribunal in the light of the previous circular of the Railway Board dated 25.6.1985, it cannot be done in a contempt petition. As long as there is a circular issued by a competent authority such as the one dated 03.8.1995 of the Southern Railway which has not been set aside by a superior authority or a judicial forum, a person complying with the provisions thereof could not be accused of malafide or wilful disobedience of the court order especially when the direction by this Tribunal was only to reconsider the candidature of the applicant in the light of the circular dated 25.6.1985 and there is no specific observation or order of the

Tribunal that the circular of Southern Railway dated 03.8.1995 would be inoperative in the light of the Railway Board's circular dated 25.6.1985. There is no evidence of the matter having been heard by the Tribunal on these lines as the bone of contention appears to have been more on the point of medical fitness of the applicant and not so much on the alleged contradiction between the Railway Board and the Southern Railway orders.

6. As the order of this Tribunal dated 20.3.2017 was conspicuously silent on this issue and no reference was made therein to the circular dated 03.8.1995 much less an observation to the effect that the Railway Board circular dated 25.6.1985 would override the same, no contempt is made out against the respondents. The grievance expressed by the applicant against the order dated 28.6.2017 could not be agitated in a contempt petition. The CP is accordingly dismissed. Notices of contempt are discharged.

(R.Ramanujam)
Member(A)
04.04.2018

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