

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

C.P.No.14/2016 in O.A.No.551/2014

Date of C.A.V. : 27.11.2017

Date of Order : 22. 12.2017

Between :

S.Jayanisha, W/o S.M.Shareef,
Aged about 60 years, Occ : Track Woman (Retd.)
in the O/o the Dy.C.E., Khazipet,
R/o TRT 7, Industrial Colony,
Narasampet Road,
Warangal.

... Applicant

And

1. The Secretary, Railway Board,
Rail Bhavan, New Delhi.

2. The General Manager,
South Central Railways,
Rail Nilayam,
Secunderabad.

3. The Chief Administrative Officer,
(Construction), South Central Railways,
Secunderabad.

4. The Senior Divisional Personnel Officer,
South Central Railways, Secunderabad Division,
Secunderabad.

... Respondents

Counsel for the Applicant	...	Mr. K.Siva Reddy, Advocate
Counsel for the Respondents	...	Mr. V.V.Narasimham, S.C.for Rlys

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... *Member (Judl.)*
Hon'ble Mrs.Minnie Mathew ... *Member (Admn.)*

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The applicant filed the OA.551 of 2014 to set aside the clarification dated 11.03.2013 where under the request for appointment of her daughter Ms.Haseena SK in Group 'D' category under LARSGESS Scheme was rejected and to direct the respondents to appoint the ward of the applicant as per the notification dated 30.12.2011 treating that the applicant had 20 years of qualifying service.

2. The claim of the applicant was opposed by the respondents on the ground that the applicant worked as Gang Women for some time and thereafter deputed to work as an Office Mate and thus she had no qualifying service under the safety category. It is also the contention of the respondents that as the applicant had attained the age of superannuation, while the application for appointment under LARSGESS Scheme was pending consideration, her ward is not eligible for appointment under the said Scheme.

3. Having gone through the rival contentions, the Tribunal took the view that though the applicant was working as Office Mate on deputation, her parent post was lying with Construction Organization as Gang Women and lien granted by the parent department was not cancelled, the applicant was deemed to have

been working for a continuous period of 20 years in a safety category. Holding as such the Tribunal passed the following order on 18.11.2014 :

“Admittedly as on today, the respondents have not taken any decision in respect of selection of the ward of the applicant. As such, it is a fit case to issue a direction to the respondents to finalize the selection of the daughter of the applicant Ms.Haseena SK under LARSGESS Scheme as she was declared successful in the written as well as medical examinations, granting eight weeks time from the date of receipt of copy of the order.”

4. After passing of the said order by the Tribunal, the respondents passed a rejection order dated 21.09.2015 stating therein that it has been recorded in the service register of the applicant that she has rendered service as Office Mate which does not fall under the specified safety category list issued by the Railway Board vide letter dated 11.09.2010. In the said order the observations of the High Court of Madras in connection with LARSGESS Scheme were also quoted. As per the observations, the employees have not chosen to go on voluntary retirement and pursue the claim of appointment to their wards and those who served till the age of 60 years i.e. till the date of attaining superannuation cannot claim that their wards should be given appointment at a later stage. They also quoted the Railway Board circular dated 27.11.2014 which was issued on the same lines of the above observations of the High Court of Madras. Thus on the ground that the applicant did not render continuous service of 20 years in safety category and also as she attained the age of superannuation while the application for appointment of her ward under LARSGESS Scheme was under consideration, her ward is not entitled for appointment under LARSGESS

Scheme on account of non-fulfillment of the requisite conditions laid down under the said Scheme.

5. After the rejection order, the applicant filed the present Contempt Petition alleging that the respondents willfully and deliberately disobeyed the orders of the Tribunal and are liable for punishment under the relevant provisions of Administrative Tribunals Act, 1985 and also under the provisions of Contempt of Courts Act.

6. The question therefore requires for determination in the instant Contempt Petition is whether the respondents are guilty of contempt of the order dated 18.11.2014 in O.A.551/2014.

7. The learned counsel appearing for the petitioner submits that against the order passed by the Tribunal in OA.551/2014 the respondents filed Writ Petition No.18705/2016 which was disposed of by the Division Bench of Hon'ble High Court on 16.06.2016 and in the said Writ Petition the Division Bench upheld the findings recorded by the Tribunal as to the continuous service of 20 years of the applicant in the safety category. Thus according to the learned counsel it is not open for the respondents to reagitate the same issue in the Contempt Petition.

8. However, it has to be seen that the Division Bench passed the order in the Writ Petition on 16.06.2016, whereas the respondents passed the rejection order on 21.09.2015. Therefore, on the date of passing of the said rejection order the Writ Petition filed by the respondents was not disposed of by the Division

Bench of the Hon'ble High Court.

9. In any event in their rejection order the respondents took the additional ground basing on the observations of the Hon'ble High Court of Madras and also the Railway Board's letter dated 27.11.2014 which mandate that an employee who continues in the Railways beyond 57 years of age and till the age of superannuation earned full salary and other benefits shall not claim appointment to his / her ward under LARSGESS Scheme.

10. To make a party liable for contempt, the violation or disobedience of the order must be willful and deliberate. Therefore, the respondents cannot be held guilty of contempt even if the rejection order passed by them is wrong. Further the order sought to be complied with shall be clear and unambiguous.

11. In this context it could be necessary to refer to a judgement of the Division Bench of the Hon'ble High Court of A.P. in **2003 (2) ALD 460 {A.Santhi Kumari IAS, Secretary A.P.Social Welfare Residential Educational Institutions Society, Hyderabad Vs. K.Ravi and another }**, which reads as follows :

“.....The necessity of determining whether there has been a factual breach of an order on the part of the person brought before the Court clearly demands that the terms of the order itself be expressed in clear and unambiguous language. The persons accused of contumacious conduct should know with complete precision what it is he is required to do or to abstain from doing.....”

12. Now turning to the order passed by the Tribunal in the OA, strictly speaking there is no specific direction to the respondents to appoint the ward of the applicant under LARSGESS Scheme. The Tribunal only said that it is a fit case

to issue a direction to the respondents to finalize the selection of the daughter of the applicant under LARSGESS Scheme as she was declared successful in written as well as medical examination granting eight weeks time from the date of receipt of a copy of the order. The order is only to the effect that the respondents have to finalize the selection within eight weeks. If the respondents considered the case under the LARSGESS Scheme and rejected the same by a speaking order they cannot be held liable on the ground that the order is erroneous. In such an event a fresh cause of action arises for the applicant to challenge in appropriate forum. In their rejection order the respondents mentioned the grounds for rejection. Therefore, it cannot be said that they have not passed the order on the basis of the directions issued by the Tribunal. The contingency of punishing the respondents would arise only where there is a clear, deliberate and willful attempt on their part to breach the order of the Tribunal. Apart from the issue of 20 years continuous service under safety category, the respondents also relied on some other ground under the Scheme. More over except a direction to finalize the selection under the Scheme, there is no specific direction of imperative nature in the order passed by the Tribunal.

13. For the foregoing reasons, the Contempt Petition is dismissed.

There shall be no order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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