

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

**Original Application No.020/00285/2014 &
MA No.21/713/2016**

Date of CAV: 21.08.2018

Date of Pronouncement: 24.08.2018

Between:

1. M. Raghava Prasad, S/o. M. Raghavendra Rao,
Aged 28 years, Occ: Assistant Points Man,
O/o. The Station Superintendent, Sri Venkateswara Palem RS,
Vijayawada Division, South Central Railway.
2. V. Srinivasulu, S/o. Jagadheesan,
Aged 43 years, Occ: Assistant Points Man,
O/o. The Station Superintendent, Singarayakonda RS,
Vijayawada Division, South Central Railway.
3. M. Vamsi Krishna, S/o. M. Subrahmanyam,
Aged 28 years, Occ: Assistant Points Man,
O/o. The Station Superintendent, Kodavaluru RS,
Vijayawada Division, South Central Railway.

... Applicants

And

1. Union of India, Represented by
The Chairman, Railway Board,
Rail Bhavan, New Delhi.
2. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
3. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
4. The Senior Divisional Personnel Officer,
Vijayawada Division,
South Central Railway, Vijayawada.
5. The Director General/ Psycho Technical,
Research Designs & Standard Organization,
Manaknagar, Lucknow – 226 011, UP.

... Respondents

Counsel for the Applicant ... Mr. KRKV Prasad, Advocate

Counsel for the Respondents ... Mr. N. Srinatha Rao, SC for Railways.

CORAM:

Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)
Hon'ble Mr. Swarup Kumar Mishra ... Member (Judl.)

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

The O.A is filed challenging the action of the respondents in denying 2nd chance for appearing the Aptitude Test vide letter No. SCR/P-HQ/ET/14/MISC dated 29.10.2013 r/w letter No. B/P.563/VI/1/ASM/AT, dated 25.11.2013 after the applicants qualifying in the written examination in the selection held against 25% LDCE quota for promotion to the post Assistant Station Master in Vijayawada division covered under Notification No.B/P.608/VI/1/ASM/LDCE/Vol.I, dated 06.03.2013, inter alia, mentioning the Railway Board's clarification conveyed through Serial Circular No. 27 of 2008 resulting in the applicants not being selected in terms of the Memorandum No. No.B/P.608/VI/1/ASM/LDCE/Vol.I, dated 23.08.2013.

2. The issue in short is when under the same Zonal Railways, in one Division second chance of aptitude test has been permitted but in respect of the other Division, it has been denied, whether the act on the part of the SC Railways in declining the same concession to the other is legal.

3. An outline of the facts of the case is as hereinafter narrated. The applicants while working as Assistant Pointsman in Vijayawada Division of South central Railway came out successful, in the written exam held for filing up 45 vacancies of Assistant Station Master (ASM), against 15 % LDCE quota. They were then subjected to the prescribed aptitude test, as per the selection process, which they could not clear. The 3rd respondent took up with the 2nd and the 4th respondents for allowing the applicants a second chance to appear for the

aptitude test in view of a large number of ASM vacancies remaining unfilled. The 2nd respondent in turn took up with the 5th respondent for permission to allow a second chance to the applicants and in response the later pointed out the deviation adopted by 2nd respondent in allowing second chance for Guntakal Division vide letter dt 20.1.2011 and not for Vijayawada Division vide Letter dt. 11.7.13. In turn, the 2nd respondent vide impugned order dt 29.10.2013, cited the attention of the Railway Board circular dated 5.4.2007 and advised the 5th respondent to clarify accordingly. The 5th respondent thereon advised the Vijayawada division that as per Railway Board circular circulated vide S.C.No.27/2008, a candidate who fails to qualify the aptitude test can reappear in the Aptitude test on qualifying for the next selection /suitability test, which has to be a fresh selection conducted after a time gap of 6 months or more, and thus there is no possibility to give another chance to failed candidates to qualify in the Aptitude test in the same selection. The Railway staff unions have also taken up the issue with the 2nd respondent but there was no respite and hence the present O.A.

4. The contention of the applicants is that when employees working in Guntakal Division were afforded a second chance the same ought to have been afforded to those in Vijayawada Division. More so, when both the Divisions operate under the same Zone viz., South Central Railway, headed by 2nd respondent. They feel that such an action is patently discriminative.

5. The contention of the Respondents is that they have to abide by the Railway Board circular circulated vide SC No 27/2008 and therefore the applicants cannot be given a second chance to appear for the aptitude test for the same selection, notwithstanding the fact that another Division under the same Zonal Railway had allowed the concession.

6. The Learned counsel for the applicants strongly contented that the same administrative head issuing tangentially different instructions, one favouring Guntakal Division employees and the other denying the same favour to Vijayawada Division employees is unfair and discriminatory. In support of his contention, the counsel has also cited the decision of the Hon'ble Supreme court (Writ petition (Civil) No. 939 to 945 of 1983 decided on July 20th 1988) wherein the staff of Eastern Railways Zone sought parity in granting running allowance, as was granted to staff of Northern Zone and accepted by the Railway Administration, in accordance with the judgment delivered by the Hon'ble High Court of Allahabad on the subject. The Railway administration did not prefer any special leave petition before the Hon' Supreme Court. The Hon'ble Supreme Court allowed the plea of the employees of the Eastern Railways for granting running allowance on par with the Northern Railways.

7. *Per contra*, the counsel for the Respondents aggressively argued that it was indeed a folly committed by the respondents in allowing the employees of Guntakal division who passed the written test, to appear for the second time in the aptitude test way back in 2011 and that the wrong cannot be perpetuated again in 2013 by extending the same concession to the applicants hailing from Vijayawada division. They have also stated that the officer who was at the helm of affairs of South central Railway made an error of taking a wrong decision in 2011. The counsel has also argued that the Railway Board circular is binding. Even then, they have taken up the matter with the 5th respondent who reiterated that applicants cannot be given a second chance in view of the Railway Board circular cited. In support of his contention, the counsel for the respondent cited para 14 of the Supreme Court Judgment dt 9.7.2007 in Civil Appeal (Civil) 2913 of 2007- State of Kerala &ors and K. Prasad & Anr, which reads as under:

“14. Dealing with such pleas at some length, this Court in Chandigarh Administration & Anr. Vs. Jagjit Singh & Anr. , has held that if the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the authority to repeat the illegality or to pass another unwarranted order. The extra-ordinary and discretionary power of the High Court under Article 226 cannot be exercised for such a purpose. This position in law is well settled by a catena of decisions of this Court. [See: Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain & Ors. and Ekta Shakti Foundation Vs. Govt. of NCT of Delhi]. It would, thus, suffice to say that an order made in favour of a person in violation of the prescribed procedure cannot form a legal premise for any other person to claim parity with the said illegal or irregular order. A judicial forum cannot be used to perpetuate the illegalities.”

8. The respondents counsel also apprehends that if such a relaxation is extended there would a tsunami of such demands not only against the circular in question, but also against other Railway Board circulars. Such a move would lead to chaos and would defile the sanctity of an administrative instruction.

9. Arguments were heard and documents perused. Undoubtedly there cannot be two different and diagonally opposite orders in respect of two Divisions of the same Zonal Railway. The Apex Court in the case of **Abid Hussain v. Union of India, (1987) 1 SCC 532**, held as under:-

“It is not disputed that the Air-conditioned Coach-In-Charges-Attendants are being paid overtime allowances for extra duty hours exceeding 96 hours in two weeks in the Western Railway, Central Railway and Eastern Railway. There is no justification for denying overtime allowances on the same basis to the Air-conditioned Coach-In-Charges-Attendants in the Northern Railway. We accordingly direct the Union of India and the Railway Administration to pay with effect from July 1, 1984 the overtime allowances to the Air-conditioned Coach-In-Charges-Attendants working in the Northern Railway on the same basis on which the Air-conditioned Coach-In-Charges-Attendants in the other three Railways, referred to above, are paid.”

But at the same time, it is to be kept in mind that the very Apex Court while considering a case where equality is sought on the basis of an erroneous order had held in the case of *Faridabad CT Scan Centre Vs D.G. Health Services* (1997) 7 SCC 752 as under:

“3. We fail to see how Article 14 can be attracted in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article 14 on the basis that such wrong orders were earlier passed in favour of some other persons and, therefore, there will be discrimination against others if correct orders are passed against them. In fact, in the case of *Union of India (Rly. Board) v. J.V. Subbaiah* the same learned Judge in his judgment has observed in para 21 that the principle of equality enshrined under Article 14 does not apply when the order relied upon is unsustainable in law and is illegal. Such an order cannot form the basis for holding that other employees are discriminated against under Article 14.”

The Supreme Court observation in the following cases as stated below also aptly covers the predicament of the respondents as stated below.

(a) VSNL v. Ajit Kumar Kar,(2008) 11 SCC 591

46. It is well settled that a bona fide mistake does not confer any right on any party and it can be corrected.

(b) State of U.P. v. Rajkumar Sharma,(2006) 3 SCC 330, wherein the Apex Court has stated, “*Even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake*

10. In the case on hand, the reiteration of the correct rule position by the Railway Board that no second chance is admissible in respect of aptitude test has to be followed, as the same confirms that the earlier concession given to the Guntakal Division was erroneous. There is no provision for negative equality under the Constitution of India.

11. Thus, the arguments of the respondents find favour with this Tribunal as they are judiciously justifiable as explained at length in the preceding paragraphs. Any intervention on behalf of the applicants would put the Railways off track and jeopardize the administrative apparatus.

12. Thus, the OA lacking in merits, and hence merits only dismissal and accordingly ordered. MA 713/2016 is also disposed. No order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 24th day of August, 2018

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