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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

MA No. 350/00502/2015
OA No. 350/01680/2015

Reserved on: 15.03.2016
Dated of order: 17.03.2016

Present:

The Hon'ble Mr. Justice V.C.Gupta, Judicial Member
The Hon'ble Ms. Jaya Das Gupta, Administrative Member

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SUBENDU DEB & ORS
V/S
R.K.GUPTA & ORS (E.RLY)

For the Applicants: Mr.J.R.Das,
Mr.I.N.Mitra,
Counsel

For the Respondents: Mr.A.K.Guha
Mr.S.Banerjee,
Mr.L.K.Chatterjee,
Counsel

ORDER

JUSTICE V.C.GUPTA, JM:

Heard on all concerned on MA No. 350/00502/2015,
arising out of OA No. 350/01680/2015 and perused the records.

2. This Miscellaneous Application has been filed by some of the selected candidates against Employment Notice No.0112 of 2012. They have not only been selected but also appointment letters were issued to them but they were not permitted to join obviously for the reason that this Tribunal passed an interim order


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dated 14th October, 2015 in the aforesaid OA staying the implementation of the final select list. As against the order of stay of this Tribunal dated 14th October, 2015, the applicants in the MA of this Tribunal dated 14th October, 2015, the applicants in the MA as well as the Respondents filed WPCT No. 12 of 2016 and others before the Hon'ble High Court of Calcutta and, the Hon'ble High Court of Calcutta disposed of the aforesaid Writ Petitions, in a common order dated 21.01.2016. The full text of the order of the Hon'ble High Court of Calcutta is quoted hereunder:

"We have heard the learned Counsel for the parties.

W.P.C.T. 224 of 2015 and W.P.C.T. 225 of 2015 have been filed by the Railways whereas W.P.C.T. 12 of 2016 has been filed by one group of candidates who seek recruitment to the posts of Group D with the Railways.

The main contention of both the Union of India and these candidates is that the interim order has been passed without considering earlier orders passed by the Administrative Tribunal in other similar applications. We have been informed that the Petitioner in W.P.C.T 12 of 2016 has filed MA 502 of 2015 for vacating the stay granted in OA No. 350/01680 of 2015. That application has not been decided as yet.

We do not think that there is any need to interfere with the impugned order in view of the pendency of the application for vacating the stay. We request the Tribunal to decide the application for vacating the stay within a month from today. Our order does not reflect on the merit on the case at all.

Accordingly, all the applications are dismissed. No order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties upon compliance of all necessary formalities."

Hence, by filing the present Miscellaneous Application, the successful candidates and petitioners before the Hon'ble High

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Court of Calcutta in WPCT 12 of 2016 have prayed for vacating the ad interim order dated 14th October, 2015 passed by this Tribunal in OA No. 1680 of 2015; mainly on the grounds (i) that the interim order was passed by this Tribunal on 14th October, 2015 whereas, offers of appointment were issued to them prior to that date and, as such, they ought not to have been prevented from joining the posts (ii) that the interim order dated 14th October, 2015 cannot stand in the way of their joining especially when they were not arraigned, by the applicants in the OA, as private respondents; and (iii) that the interim order was obtained by concealing the material facts by the applicants in the OA.

3. A reply to the aforesaid MA has been filed by the Applicants in the OA hereinafter referred to as 'Petitioners' who have been arraigned as Respondents in this MA.

4. One of the objections taken by the Petitioners is that this MA is not maintainable as the applicants in the MA were not the parties to the OA and no application has been filed on their behalf seeking to be added as parties in the OA and, thus, on their application, the interim order passed by this Tribunal in the OA cannot be vacated. It has been contended that virtually the order passed on 1st September, 2015 in OA No. 926 of 2015 was not complied with while publishing the final select list. Hence, in OA No. 1680 of 2015, on 14th October, 2015, this Tribunal has rightly granted the interim protection directing the authorities not to



implement the final select list; especially because the final select list has been issued in gross violation of the R.B.E. No. 121 of 2005. It has further been contended that the remedy available to the applicants in the OA is to file a fresh OA ventilating their grievance and they cannot be permitted to move this MA seeking vacation of the interim order which was rightly passed by this Tribunal on 14th October, 2015.

5. No reply has been filed by the Railway administration so far and the Learned Advocates appearing for the Railway Administration orally submitted that the interim order staying the implementation of the final select list is against the principles of natural justice as well as against the public interest. It has been contended by them that all the procedures prescribed under the RBEs were followed in letter and spirit and there was nothing wrong in the selection process. The Applicants in the MA are the successful candidates. Therefore, the Petitioners are stopped to challenge the process of selection when they have already participated in the process of selection and declared unsuccessful.

6. We have carefully considered the rival submissions of the respective parties and perused the records of the MA vis-a-vis the OA No. 1680 of 2015.

7. The undisputed facts in between the parties are that a select list has been published by the Railway in pursuance of the Employment Notice No. 0112 of 2012. The list of selected

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candidates containing 30 pages and names of 5709 successful candidates. This list has been published prior to passing of the interim order dated 14th October, 2015. This is also not denied that names of the Petitioners do not find place in the aforesaid select list. It is also not in dispute that offers of appointment were issued to the applicants in the MA prior to passing of the interim order dated 14th October, 2015. It is also not in dispute that none of the successful candidates were arraigned as party-respondents in OA No. 1680 of 2015. It is also a fact that the Hon'ble High Court of Calcutta by its order dated 21.01.2016 in WPCT No. 12 of 2016 and others, cited supra, requested that the MA which was pending prior to filing of the Writ Petition should be disposed of by this Tribunal within a month from the date of the order. It is also not denied that the applicants in the MA are suffering adversely, due to the interim order dated 14th October, 2015.

8. In view of the above, before proceeding further in the matter, it would be appropriate to re-produce the interim order dated 14th October, 2015 of this Tribunal in OA No. 1680 of 2015 which has been sought to be vacated is quoted hereunder:

"OA No.350/01680/2015 Date of order 14.10.2015
xxxxx xxxxxx

Heard.

2. Ld. Counsel for the applicant would submit that the order of this Court dated 1.9.2015 passed in OA No. 350/00926/2015 was violated by the respondent authority in issuing the final list without subjecting the petitioners referred to in the previous OAs as per order dated 25.6.2015 for medical

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examination. Accordingly, he would pray for staying the operation of the final list published.

3. Whereas the Ld. Counsel for the respondents would submit that the final list was published on 5.10.2015 before subjecting the candidates to medical examination based on their earlier merit in the written examination as well as PET. He would express his difficulty by stating that one other wing of the Railways is dealing with actual implementation of such final list and he is not fully aware whether the selected persons were given appointment after completion of medical examination.

4. Be that as it may, what we understand from the submissions made before us is that the respondent authorities blatantly and glaringly violated CAT's common order dated 1.9.2015. That order was clearly to the effect that all those who passed the written test and trade test should be subjected to medical examination and thereafter according to in this case that was not done so.

5. Therefore, interim order is passed. Let the final list be stayed pending disposal of this OA."

9. In so far as the *locus standi* of the applicants in MA is concerned, we are of the view that the applicants in the MA have seriously been prejudiced due to the existence of the interim order dated 14th October, 2015. Admittedly, none of them, though selected, have been arraigned as respondents in the OA by the applicants and, obviously, therefore, they were not being heard when such interim order was issued. Therefore, they being the affected persons have a legal right to challenge that order and ask for vacation of the same. Law permits them to move an application for vacation of the order even without impleading as respondents in the OA No. 1680 of 2015. It was incumbent upon the Petitioners



to immediately move an application for impleading the successful candidates as respondents in the OA especially when the applicants in the MA moved application for vacating the interim order being the successful candidates against the Employment Notice No. 0112 of 2012. They did not do so. So the present applicants in the MA cannot be blamed that they without being party to the OA cannot have any right to seek vacation of the interim order passed against them without affording opportunity of being heard. Hence, we are of the firm view that this argument of the learned counsel for the Petitioners who are also respondents in the MA has no legs to stand and is accordingly overruled.

10. It is well settled principle of law that a person cannot be deprived of his legal right without being given an opportunity of being heard. In this context, the decision of the Hon'ble Apex Court in the case of Ranjan Kumar and Others v. State of Bihar and Others reported in (2014) 16 SCC 187 is very much relevant. Paragraph 4 of the aforesaid decision is quoted hereunder for ready reference:

"4. On a perusal of the orders impugned, we find that only 40 persons were made respondents before the High Court and hardly a few appointees filed applications for intervention. It is well settled in law that no adverse order can be passed against persons who were not made parties to the litigation. In this context, we may refer with profit to the authority in Prabodh Verma and others v. State of Uttar Pradesh and others (1984) 4 SCC 251, wherein a three-Judge Bench was dealing with the constitutional validity of two Uttar Pradesh Ordinances which had been struck down by the Division Bench of the Allahabad High

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Court on the ground that the provisions therein were violative of Articles 14 and 16(1) of the Constitution of India. In that context, a question arose whether the termination of the services of the appellants and the petitioners therein as secondary school teachers and intermediate college lecturers following upon the High Court judgment was valid without making the said appointees as parties. Learned Judges observed that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects; the core defect was that of non-joinder of necessary parties, for respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers and those who were vitally concerned, namely, the reserve pool teachers, were not made parties - not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. Thereafter the Court ruled thus: (Prabodh Verma case, SCC pp. 273-74, para 28) -

"28.....The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties."

11. The impugned order was also assailed on the ground that the same has been passed in a cursory manner without examining the facts of that particular case (OA No. 926 of 2015) which has been referred to while passing the interim order dated

14th October, 2015.

(S. B.)

12. During the course of argument, the learned counsel for the Petitioners has submitted that the successful candidates in whose favour offers of appointment were issued prior to the passing of the impugned order dated 14th October, 2015, their joining have not specifically been stayed and they have no objection if they are permitted to join. It is the respondent railway which is not permitting to join them under the garb of order passed by this Tribunal on 14.10.2015. It has fairly been submitted by him that he has no objection if the applicants in the MA are permitted to join their duty. Keeping the aforesaid submission of the Learned Counsel for the Petitioners, the Applicants in the OA and Respondents in the MA, we are going to decide the MA.

13. First of all, we find that the order of non implementation of the final select list drawn after the due process of selection against the Employment Notice No. 0112 of 2012 has been stayed on 14th October, 2015 admittedly passed behind the back of all the successful candidates whose names find place in the final select list. Therefore, we are of the view that the said interim order dated 14th October, 2015 staying implementation of the final select list pending disposal of the OA needs to be modified/recalled. Hence without going further into the merit of the matter, we confine ourselves as to whether the order dated 14th October, 2015 should be vacated/modified on the basis of the discussions made herein above, we are of the view that the order

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dated 14.10.2015 requires modification. Consequently, we modify the interim order dated 14th October, 2015 in the following manner:

- (a) The Petitioners, the applicants in OA No. 1680 of 2015 are directed to implead the present applicants in the MA as private respondents in the OA by moving an application within a period of 10 (ten) days from the date of this order;
- (b) Since the offers of appointments were issued to the present applicants in the MA prior to the issuance of the interim order dated 14th October, 2015, the Railway Respondents ought not to have withheld their joining on the pretext of the interim order dated 14th October, 2015. Be that as it may, the Railway Respondents are directed if they are otherwise entitled to join the service in pursuance of the offers of appointment issued to them prior to passing the impugned order, they shall be permitted to join;
- (c) However, to safe guard the interest of the Applicants, we made it clear that anything happen during the pendency of the OA No. 1680 of 2015 shall be subject to final outcome in the aforesaid OA.

14. Last but not the least, we would like to observe that all other points which have been raised in the MA as well as during the course of the arguments and have not been discussed in this



order will be considered while deciding the Original Application No. 1680 of 2015.

15. MA No. 350/00502/2015 is accordingly disposed of.

No costs.

(Jaya Das Gupta)
Admn. Member


(Justice V.C. Gupta)
Judicial Member

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