

South Eastern Central Railway And Ors Vs P. Gopal Naidu Krishna

Court: Chhattisgarh High Court

Date of Decision: Feb. 18, 2021

Acts Referred: Constitution Of India, 1950 " Article 227

Hon'ble Judges: P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench: Division Bench

Advocate: Raj Kumar Gupta, Surya Kawalkar Dangi

Final Decision: Dismissed

Judgement

P. R. Ramachandra Menon, CJ

1. Whether Annexure P/1 order passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur in the Original Application

No.203/01125/2018 interdicting the impugned order (whereby the candidature of the applicant was cancelled after completing the process of selection,

for a reason not revealed earlier) requires any interference at the hands of this Court, in exercise of the supervisory jurisdiction under Article 227 of

the Constitution of India; is the question to be answered in this writ petition.

2. The Petitioner has approached this Court with the following prayers:

“10.1 This Hon'ble Court may kindly be pleased to call for the entire record of O.A. No.203/01125/2018 for its kind perusal.

10.2 This Hon'ble Court may kindly be pleased to set aside the order dated 19.11.2019 (Annexure P/1) of the Tribunal.

10.3 Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case along with costs of the petition be awarded.”

3. The sequence of events reveals that way back on 08.08.2015 Annexure P/2 advertisement (Annexure A/2 in the OA) was issued by the

Petitioners-Railways for filling up the posts in question, subject to the satisfaction of the eligibility norms. Annexure P/2 (Annexure A/2 in the OA)

was a centralized notification issued by the Railways for recruitment against the 'Scouts and Guides quota' for the year 2015-16. Paragraph-4 deals

with the 'Scouting and Guiding Qualification', which is to the following effect :

“4. SCOUTING/GUIDING QUALIFICATION {APPLICABLE FOR BOTH POSTS in PB-1 Rs.5200-20200/- with corresponding

Grade Pay Rs.1900/2000/- and POSTS in PB-1 Rs.5200-20200/- with corresponding Grade Pay Rs.1800/-.

i. Candidate should be Rashtrapati (President's) Scout/Guide/Rover/Ranger

OR

Himalayan Wood Badge holders.

OR

A Pre-HWB Trained Scout Leader/Advanced Trained Guide Leader/Captain.

ii. Should have been active member of Scout Organization for at least three years in the recent past and should continue to be active.

iii. Should have attended at least one event at National Level and/or two events at State Level OR should have good record of participation in

Scouts/Guides activities at Unit/District Level.

4. Paragraph-5 of the notification dealing with 'how to apply' stipulates the nature and manner of production of the certificates in proof, which is also

extracted below :

5. HOW TO APPLY.

iii) All copies of certificates in support of age, caste, educational qualification, scouting qualification, other qualifications if any should be self attested

and enclosed along with the application form.

iv) Copies of certificates in proof of participating in Scouts/Guides activities should be countersigned by Dist. Commissioner/ Scouts or by Dist.

Commissioner/Guides. Membership certificate for the last three years in the recent past and Continuation Certificate as Active Member (Annex. 'C')

should be signed by the State/District Commissioner (Scouts) for Scout wing and State/District Commissioner/Guides for Guide wing and enclosed

along with the application form.

5. The 'mode of selection' is envisaged as given under paragraph-7, which stipulates a 'three tier' process, as noted below :

7. MODE OF SELECTION.

(7.1) Performance of candidates who apply in response to this notification and are found eligible for consideration against Scouts & Guides quota will

be assessed on the following basis:-

(i) Written Test : 50 Marks

(ii) Scouts & Guides qualifications : 35 Marks over and above the minimum prescribed eligibility condition

(iii) Personality Test/Interview : 15 Marks

Total : 100 Marks

(Note : The written examination will consist of objective type questions.)

6. The Respondent-Applicant came out successful in the process of selection and was shortlisted as one among the candidates to be appointed to the

posts in question. In the meanwhile, some complaint was preferred by somebody, pointing out that the Respondent-Applicant was an active member of

the Scouts and Guides in two different State Associations and hence was not liable to be considered for selection. Clarification was sought for by the

4th Respondent vide letter 31.05.2017 (Annexure A/4 in the OA) i.e. after a period of about one year and as per Annexure A/5 reply dated

14.06.2018, it was clarified that no one can be a member of two State Associations at the same time or simultaneously. The Railway Administration

was advised to take necessary action at their end. Thereafter, the Railway Board issued a further clarification on 03.07.2018 as discernible from

Annexure A/7, which is to the following effect :

“Vide this office letter dated 31.05.2017 clarification was sought from board that whether there is any restriction to become member of more than

one state of Scouts. It is not clear whether the candidate who is a member of more than one state of scouts simultaneously is eligible for employment

on Railways against Scouts and Guides quota.

Board vide letter above have clarified the issue that no one can be a member of two state associations at the same time or simultaneously.

In view of above, it is advised that in future, this clause should be clearly mentioned in the notification for recruitment against Scouts & Guides quota

and a declaration in this regard should be obtained from each applicant.

However, without proper analysis, appreciation and undertaking of the clarification given by the Railway Board, Annexure A/1 orders dated

11.08.2018 and 22.10.2018 were issued by the Railways cancelling the candidature of the Respondent-Applicant, which was put to challenge in the

Original Application preferred before the Tribunal, contending that no opportunity of hearing was given to the Applicant before cancelling his

candidature.

7. The prayer was sought to be resisted from the part of the Petitioners-Railways, who were the Respondents therein, contending that as per the

relevant Rules, in particular Rule 9 under Chapter-7 of the Aims, Policy, Rules and Organization of The Bharat Scouts and Guides, India, Part-I,

General (hereafter referred to as 'the Rules'), there was a specific bar in representing two different State Associations simultaneously and hence, the

candidature of the Applicant was not liable to be considered. It was also contended that there was a clear instance of suppression of material facts,

which vitiated the process of selection and hence that cancellation of the candidature was not liable to be interdicted. A rejoinder was filed from the

part of the Applicant, which was followed by additional reply filed from the part of the Railways.

8. After threadbare analysis of the facts and figures and the relevant provisions of law, the Tribunal observed that the clarification by the Railway

Board, that no one can be a member of two State Associations simultaneously, was given only in the year 2018, which could not have been the basis

for rejection of the candidature pursuant to the advertisement issued in the year 2015; whereas the selection process had already been finalized in the

year 2016. More so, when such stipulation was never in the advertisement and that the course pursued by the Railways virtually amounted to changing

the Rules after commencement of the game. It was thus placing reliance on the verdict passed by the Apex Court in Tamil Nadu Computer Science

Bed Graduate Teachers Welfare Society (1) v. Higher Secondary School Computer Teachers Association and Others reported in (2009) 14 SCC 517

and P. Mahendran and Others v. State of Karnataka and Others reported in (1990) 1 SCC 411, that a finding was rendered in favour of the Applicant.

The impugned order was set aside and the Railways were directed to consider the candidature of the Applicant for appointment and to have the

proceedings finalized within 60 days; thus, allowing the Original Application, which is under challenge in this petition.

9. Shri Raj Kumar Gupta, the learned standing counsel appearing for the Petitioners-Railways submits that the Tribunal has gone totally wrong in

appreciating the factual and legal position. It is pointed out that even on the date of advertisement and the date of application, there was a bar under

Rule 9 of the Rules stated above, preventing a candidate from participating/representing in any other State's event. In the instant case, the

Respondent-Applicant had represented both the Raipur Railway Division as a member (which is deemed as a State Unit as per the relevant Rules)

and also the Chhattisgarh State Scouts and Guides Association. The certificates obtained by such participation have a bearing in the allocation of

marks, in respect of the traits in terms of Clause 7, particularly 7.1(ii) of Annexure P/2 advertisement (Annexure A/2 in the OA) carrying 35 marks

for Scouts & Guides qualifications over and above the minimum prescribed eligibility condition. The clarification issued by the Railway Board is only in

the light of the existing Rules and as such, the cancellation of the candidature of the Respondent-Applicant is perfectly in order and could not have

been assailed and set aside by the Tribunal.

10. Smt. Surya Kawalkar Dangi, the learned counsel representing the Respondent-Applicant submits that the Rule has been misread, misinterpreted

and misapplied by the Railways to cancel the candidature of the Applicant. The Rule only places a rider with regard to the inter-district, inter-state and

international participation 'without prior sanction'. Annexure P/2 advertisement (Annexure A/2 in the OA) never said that the persons who participated

or represented two different State Associations will not be permitted to participate in the selection. Further, the Rules do not envisage cancellation of

candidature in any such case. It was only on seeking clarification from the Railway Board, that the position was made clear by the 2nd Respondent,

vide Annexure A/7, whereby the Railways were instructed to incorporate such a 'specific clause' in the 'future' advertisements and to obtain a

'declaration' from the candidates in this regard. Hence, it was only for 'future' guidance and cause of action, consciously omitting to have retrospective

application, lest it should affect the vested rights of the Applicant in the matter of selection and appointment. The action is also contrary to the law

declared by the Apex Court that accrued rights cannot be taken away, as held in P. Mahendran (supra) and that it will amount to changing the Rules

after commencement of the game, as held in Tamil Nadu Computer Science BEd Graduate Teachers Welfare Society (1) (supra).

11. The submission made from the part of the Petitioners-Railways is mainly based on Rule 9 of the Rules, which is reproduced below :

9(a) Inter District Visits and Participations : No member of a District Association can participate or represent in any other District's event without

prior sanction of the home district.

(b) Inter-State Visits and Participations : No member of the State Association shall participate, camp, represent in any other state's event without prior

sanction of the home State Headquarters.

(c) International Visits and Participations : No member of Bharat Scouts and Guides shall participate, camp, represent in any of the International Event

in the Foreign Countries without the prior sanction of the home State Headquarters and the National Headquarters. He/She should carry with him/her

an International letter of introduction issued by the National Headquarters.

12. The learned counsel for the Petitioners-Railways gives emphasis to Rule 9(b) as to 'Inter-State Visits and Participation', which says that no

member of the State Association shall participate/camp/represent in any other State's event without prior sanction of the Home State Headquarters.

But even a mere reading of the above provision gives a clear idea that it is not an absolute bar and that there can be such participation, if it is after

obtaining 'prior sanction' of the Home State Headquarters. In other words, the said Rule does not say that, if any member of such State Association

participates in any other State's event without prior sanction of the home State Headquarters, he will lose his membership or that he will not be

considered as a member of any of the two State Associations. No such ban is provided anywhere and no such provision is brought to the notice of this

Court by the learned counsel for the Petitioners-Railways. What is the consequence, if a person participates in such events without 'prior permission'

is not mentioned in the said Rules. At the maximum, it can be reasonably presumed that he may be losing the chance to bank upon the certificate

obtained by him in participating the said event where there was no prior sanction.

13. In any view of the matter, insofar as no Rule is brought to our notice that if anybody participates in such other State's event without 'prior sanction'

of the Home State Headquarters, his candidature would be cancelled, such a course could not have been pursued by the Railways. Annexure P/2

advertisement (Annexure A/2 in the OA) issued by the Railways nowhere contains any such provision that the credentials of a candidate who

participated in any other State's event without prior sanction of the Home State Headquarters, will not be considered or that the candidature would be

rejected summarily. There is no reference to the above Rule as well, anywhere in Annexure P/2 advertisement (Annexure A/2 in the OA) dated

08.08.2015. In the said circumstance, the norms for selection have to be taken strictly as given in Annexure P/2 advertisement (Annexure A/2 in the

OA) and once the said norms are satisfied, the future of the candidate is to be decided on the given merits in the selection.

14. The learned counsel for the Petitioners-Railways does not dispute the issuance of the subsequent clarification by the Railway Board vide

Annexure A/7 in July 2018 (extracted already), which is to the effect that no one can be a member of two State Associations at the same time or

simultaneously. It has also been mentioned there, that it should be clearly mentioned in the notification/recruitment against the Scouts and Guides quota

and a 'declaration' should be obtained from each applicant in future. No such clause was admittedly incorporated in Annexure P/2 advertisement

(Annexure A/2 in the OA) dated 08.08.2015 as the clarification issued by the Railway Board was only in July 2018 i.e. much after completion of the

process of selection in the year 2016. This being the position, the said/subsequent clarification was never to have any effect or impact on the selection

already finalized by conducting the written test, assessment of credentials as a Scouts and Guides participant over and above the minimum prescribed

eligibility condition and the personality test/ interview as envisaged under Clause 7.1 of the advertisement.

15. To a pointed query raised by this Court as to whether any question was included in the application form to be answered by the candidates as to

whether they were members of more than one State Association or had they participated / represented in more than one State in any events without

'prior sanction', the learned counsel fairly conceded the position in the 'negative'. Since Clause 9(b) of the Rules as referred above only places a 'rider',

preventing such participation without 'prior sanction', we asked the learned counsel if they had collected any material from any corner, as to whether

such participation was with a 'prior sanction' or not, to have the answer given by the Applicant (more so, since the candidature was cancelled without

affording an opportunity of hearing), the learned counsel conceded that no information was called for and no opportunity was given in this regard.

16. The learned counsel for the Petitioner-Railways could not bring any Rule, Clause or Term as contained in Annexure P/2 advertisement (Annexure

A/2 in the OA) dated 08.08.2015 to have justified their action in rejecting the candidature of the Respondent-Applicant. Similarly, there is absolutely no

basis for the submission made from the part of the Petitioner-Railways that there was 'suppression of material facts' from the part of the Respondent-

Applicant, insofar as all the relevant aspects in the format of application were correctly shown by the Applicant. No specific reference is made to any

answer given, to be branded it as wrong or amounting to suppression of material fact.

17. As observed by the Tribunal, the legal position has been made clear by the Apex Court vide decision in P. Mahendran (supra) to the effect that a

Rule has to be read, interpreted and applied as it stood there on the date of the cause of action and that the accrued rights cannot be taken away,

referring to the amended Rules, when there is nothing to show the retrospective effect for bringing out the amendment. On the other hand, the

Railway Board as per Annexure A/7 clarified the course of action to be pursued in the future advertisement to be issued by incorporating such a

clause and the necessity to obtain a 'declaration' to the requisite extent from the candidates. By virtue of absence of any such clause in Annexure P/2

advertisement (Annexure A/2 in the OA) and for want of 'declaration', the clarification issued by the Railway Board could not have been made

applicable to the process of selection involved in this case. The course pursued by the Petitioners-Railways in rejecting the candidature of the

Respondent-Applicant is virtually alluring the norms notified in Annexure P/2 advertisement i.e. by reading something more into the terms already

notified. Such course stands deprecated by the Apex Court as per the celebrated judgment in K. Manjushree v. State of Andhra Pradesh and Another

reported in (2008) 3 SCC 512. The law is further well settled by virtue of the rulings in this regard as reported in Hemani Malhotra v. High Court of

Delhi reported in (2008) 7 SCC 11 and Tamil Nadu Computer Science BEd Graduate Teachers Welfare Society (1) (supra) to the effect that the

Rules of the Game cannot be changed after commencement of the Game. No error, either on facts or law, has been committed by the Tribunal in

finalizing the matter as per Annexure A/1 verdict.

18. In the above circumstances, we are of the firm view that the course pursued by the Petitioners-Railways cancelling the candidature of the

Respondent-Applicant was quite arbitrary and unsustainable, which has been rightly intercepted by the Tribunal. We do not find any reason to

interfere with Annexure A/1 verdict passed by the Tribunal in our supervisory jurisdiction under Article 227 of the Constitution of India and the said

order is perfectly within the four-walls of law and in order.

The writ petition fails. It is dismissed accordingly.