

(2012) 10 DEL CK 0205
In the Delhi High Court
Case No : Writ Petition (C) No. 559 of 2012

Braj Mohan

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 15-10-2012

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 5(4)

Citation : (2012) 10 DEL CK 0205

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Ravi Prakash and Ms. Avni Singh, for the Appellant; R.V. Sinha, R.N. Singh and Mr. Himanshu Bajaj, for the Respondent

Judgement

Suresh Kait, J.—Vide the instant petition the petitioner is seeking relief as under:

(a) Set aside the impugned Circular NO. 18 (4) EO/92 (SN) dated 08.05.1992 issued by the Department of Personnel and Training.

(b) Direct the respondents to reconsider the petitioner for appointment to the post of Member (Technical), Railways Claims Tribunal in

accordance with law.

The main challenge of the petitioner in the instant petition is that vide Circular No. 18 (4) EO/92 (SN) dated 08.05.1992 candidature of the

petitioner for being considered for appointment as Member (Technical), in the Railway Claim Tribunal was rejected.

2. Vide Vacancy Notice No. 315/2010 dated 11.11.2010, the eligibility for the post of Member (Technical) was described as under:-

S 5(4) - A person shall not be qualified for appointment as a Technical Member unless he has, for at least three years, held a post under a Railway

administration carrying a scale of pay which is not less than that of a Joint

Secretary to the Government of India and has adequate knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways.

3. Accordingly, petitioner being an eligible candidate applied for the said post and interviewed on 16.07.2011 by the Selection Committee headed

by a Sitting Judge of the Supreme Court.

4. After verifying all the documents and knowledge of the petitioner, he was selected by the aforesaid High Power Committee for the said Post,

however, his candidature was rejected for the reasons mentioned in the Memorandum dated 18.05.1992 issued by DOP&T which is as under:

New Delhi, the 8th May, 1992

OFFICE MEMORANDUM

Sub: Appointments of officers to various statutory Commissions, Tribunals, quasi-judicial bodies etc. under the Central Government.

The undersigned is directed to refer to the subject mentioned above and to say that the Prime Minister while considering proposal in the

Appointments Committee of the Cabinet has directed that the following principles should be observed while making appointments to various

statutory commissions, tribunals, quasi-judicial bodies and other similar organizations under the Central Government:

(i) No retired Government official should be appointed.

(ii) A person to be appointed to any post in these bodies should have a maximum tenure of 5 years in all the posts to be held in a particular

organization or the person attaining the age of 60 years, whichever is earlier.

2. The Prime Minister has also ordered that the appointments to be made to these should be on the basis of the criteria as indicated above and all

the existing statutes and rules should be amended to conform to these principles.

3. All Ministries/Departments are requested to take note of the above directives of the Prime Minister while sending proposals for the approval of

the ACC. Receipt of this Communication may be acknowledged

5. Counsel for the petitioner submits that vide the aforesaid Office Memorandum, Prime Minister had also ordered that the appointments would be

made on the basis of criterion as indicated above and all the existing statutes and Rules should be amended to conform to these principles.

However, till date, as per the aforesaid Memorandum no amendment has been carried out, therefore, the said Office Memorandum cannot take

the place of the Statute without the amendment in a particular Act. In the absence of any amendment, the said OM has no relevance. If the Statute

has been silent or there has been gap in some Rules and Regulations, only in that eventuality, the aforesaid OM would have been read as Statute.

6. The petitioner is eligible as per Section 5 (4) of the Railway Claims Tribunal Act, 1987 and the petitioner was selected by a High Power

Committee headed by a sitting Judge of the Supreme Court with Chairman, Railway Board, Member (Mechanical) Railway Board and Chairman,

Railway Claims Tribunal. It is not in dispute that the said Committee selected him and his case was sent to ACC for approval.

7. It is important to note that vide order dated 29.05.2012 passed by this Court respondents were directed to keep one post vacant till the disposal of the instant petition.

8. Respondents no. 1 to 3 have filed their response to the instant petition wherein it is admitted that the petitioner fulfils the eligibility criterion laid

down in the Act. The petitioner was accordingly called for the interview held by the Selection Committee headed by the Sitting Judge of Supreme

Court. The Selection Committee recommended the name of the petitioner along with other candidates on the basis of knowledge, experience,

performance in the interview etc. The recommendation of the Selection Committee, with the approval of the Minister for Railways sent to DOP&T

for seeking and conveying approval of the Appointment Committee of the Cabinet.

9. Meanwhile, the petitioner retired from the Railway Services w.e.f. 31.07.2011 on attaining the age of superannuation.

10. It is further stated that as per the DOP&T O.M. dated 08.05.1992 mentioned above, no retired Govt. Official would be appointed and a

person to be appointed to any post in the Statutory Commissions, Tribunals, Quasi-judicial bodies and other similar organization under the Central

Government should have maximum tenure of 5 years in all the posts to be held in a particular organization or the person attaining the age of 60

years whichever is earlier.

11. Since the petitioner had retired on superannuation on 31.07.2011, the

DOP&T vide communication dated 30.08.2011 had conveyed that the Appointment Committee of the Cabinet (ACC) has approved the proposal of the other candidates, but not of the petitioner.

12. Mr. R.V. Sinha, Id. Counsel appearing on behalf of the respondents submits that the candidature of the petitioner has been rightly rejected in

view of the Office Memorandum dated 08.05.1992, wherein it is clearly enumerated that no retired Govt. Servant should be appointed to various

Statutory Commissions, Tribunals, Quasi-judicial Bodies etc. under the Central Government. The petitioner applied for the post of Member

(Technical), Railway Claims Tribunal and this very post comes as per the instructions issued by the Memorandum mentioned above.

13. Id. Counsel has further submitted that the decision taken by the Prime Minister has a binding effect and the candidature of the petitioner has been rightly rejected.

14. I heard Id. Counsel for the parties.

15. It is not in dispute that the petitioner is eligible to be appointed u/s 5 (4) of the Railway Claims Tribunal Act, 1987 as per which a candidate

should not be qualified for the appointment as a Technical member unless he has, for at least 3 years, held a post under the Railway Administration

carrying a scale of pay which is not less than that of Joint Secretary to the Government of India and has adequate knowledge of rules and

procedure of, and experience in, claims and commercial matters relating to railways.

16. Respondents have not denied that petitioner is not qualified for the post. It is also not denied that there is a bar in the Railway Claims Tribunal

Act. But only relied upon the Circular mentioned above, vide which not even a single statute was amended since 1992.

17. Law has been settled in a case of Joint Action Committee of Airlines Pilot Association & ors. v. Director of Civil Aviation wherein it is held

that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point,

Government can fill up the gaps and supplement the rules and issue instructions, which is not the case in hand.

18. In the present case, there is no gapping in the Act. As per the Act, the petitioner is eligible for the post however the DOP&T has rejected the

case of the petitioner in view of the above circular.

19. Undoubtedly, ACC is the High Power Committee and competent to appoint a candidate for the post in question. The aforesaid Committee

acts on the recommendations of the High Power Committee constituted for the said purpose. Therefore the recommendations of such Committee

is not a mere formality. The said Committee, being expert, has to see the eligibility, experience, knowledge and expertise of a candidate to be

appointed for the post. Undoubtedly, the ACC has power to reject the recommendations made by the aforesaid Committee, but with reasons.

20. In the present case, the ACC rejected the candidature of the petitioner while relying only on the Office Memorandum dated 08.05.1992,

which is contrary to the Statute. The said Memorandum would have been effective if as per the direction of the Prime Minister, Railway Claims

Tribunal Act, 1987 would have been amended accordingly. In the absence of that the said Office Memorandum cannot take the place of the

Statute.

21. The petitioner is eligible, qualified and had cleared the interview conducted by the High Power Committee above, therefore, in my considered

opinion, there was no reasons before the ACC to reject the candidature of the petitioner.

22. In view of the above discussion and the legal position discussed above, the circular dated 08.05.1992, is hereby quashed as prayed by the

petitioner.

23. Consequently, the decision taken by the ACC based on the aforesaid Circular is also set aside.

24. Accordingly, respondent no. 3 is directed to put up the case of the petitioner before the ACC within two weeks from the receipt of the

direction passed by this Court. Thereafter, respondent no. 2 Appointments Committee of the Cabinet while ignoring the Office Memorandum

dated 08.05.1992 shall take decision on the petitioner as per law. Instant petition is allowed on the above terms with no order as to costs.

CM. No. 7159/2012 (Direction)

In view of the above, instant application becomes infructuous and disposed of as such.

Dasti to the Id. Counsel for the parties.