

(2019) 01 CAT CK 0012

In the Central Administrative Tribunal

Case No : Original Application No. 330, 1093 Of 2018

Devendra Kumar Sonkaria

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 10-01-2019

Acts Referred:

Citation : (2019) 01 CAT CK 0012

Hon'ble Judges : Rakesh Sagar Jain, J; Mohd. Jamshed, J

Bench : Division Bench

Advocate : Shyamal Narain, L M Singh, Vidit Khanna, L P Tiwari

Judgement

Mohd Jamshed, J

1. Heard the arguments on the interim relief sought in the present OA.

2. The interim relief sought by the applicant is as under:-

"That this Hon'ble Tribunal be pleased to grant an appropriate interim order protecting the applicant's interest by restraining the respondents from making any postings to the post of General Manager (Non-Open Line, or equivalent), from amongst such of the empanelled officers belonging to the IRSME, as are junior to the applicant, failing which he shall suffer gravely."

3. Learned counsel for the applicant stated that the applicant is a member of the Indian Railway Service of Mechanical Engineers (IRSME) and entered service under the Railways on 08.03.1983. It has also been stated that the applicant is fully eligible, qualified, competent, deserving and entitled to be empanelled for appointment to the post of General Manager (Non-Open Line) and equivalent for the year 2018-19 in terms of his seniority in the IRSME cadre. However, as per order No. 23/18/2018-EO (ACC) dated 12.06.2018 issued by the Secretariat of the Appointments Committee of Cabinet conveying approval to the proposal of the Ministry of Railways for empanelment of 30 officers for appointment to the post of General Manager and equivalent in the Zonal Railways in the scale of pay

of Rs. 75,500-80,000/- for the year 2018-19, the applicant's name has not been included amongst those empanelled, however, in the same order, his name is included in the list of 05 officers who have not been empanelled for appointment to the post of General Manager and equivalent for the panel year 2018-19.

4. It has also been stated by the learned counsel for the applicant that 4 persons belonging to IRSME cadre have been included in the panel for the appointment to the post of General Manager and equivalent despite being junior to the applicant. It was also mentioned that ACC has granted approval to the proposal of Ministry of Railways for empanelment of 30 officers as well as its proposal for non empanelment of 05 officers including that of the applicant.

5. It was further submitted that the applicant has sought information from various sources including the Ministry of Railways & DoPT through RTI about the reasons for non inclusion of his name in the panel, however, no satisfactory reply has yet been received. Aggrieved by this impugned order and failing to obtain detailed information, the applicant has sought interim relief through this present OA.

6. Learned counsel for the applicant has argued that the applicant is having an unblemished service record and has been getting his regular promotions. However, officers of IRSME cadre who are junior to the applicant have been empanelled for appointment to the post of General Manager and equivalent for the year 2018-19 and the applicant has been left out. It is also stated that despite best efforts no information could be furnished providing reasons for non empanelment of the applicant by the concerned authorities. He also argued that in view of the names of junior officers of the IRSME cadre included in the panel, applicant would suffer gravely. He has strongly prayed for grant of interim relief protecting the applicant's interest by restraining the respondents from making any postings to the post of General Manager (Non-Open Line or equivalent), from amongst such of the empanelled officers belonging to the IRSME, as are junior to the applicant.

7. The respondents through their short counter affidavit have stated that seniority alone is not the criteria for empanelment for appointment to the posts of General Manager and equivalent. The Selection Committee, in its meeting held on 28.03.2018 has considered up-to-date CR dossiers/Career Cards and Vigilance position in respect of 45 eligible officers including the applicant for drawing up the panel of suitable officers for empanelment and appointment to the post of General Manager and equivalent against the vacancies for the year 2018-19.

8. The respondents have relied on para 6.1 of the resolution dated 16.08.2016, governing empanelment and appointment to the post of General Manager/ equivalent which is as under:-

"The selection committee will assess the suitability in all respects of officers belonging to Group-A Railway Services listed in Appendix II on merits based on

the record of their service and experience and any special requirements of the posts for which selection is to be made. In judging the suitability of the officers the Selection Committee will give due consideration to their 10 (Ten) available Annual Performance Appraisal Reports (APARs) preceding the cutoff date of eligibility (i.e., 01/04 of the year) Performance as Divisional Railway Manager and Principal Head of Department and other senior position, as applicable."

9. It has also been stated that the DPC has full discretion to device its methods and procedure for objective assessment of suitability and merit of the candidates. It has also been mentioned that the Selection Committee adopted the following criteria in judging the suitability of officers for empanelment to the post of General Manager and equivalent for 2018-19:-

(a) A total view of the record of service with particular reference to the performance in the preceding 10 years with a minimum of 6 Outstanding and 4 Very Good reports and 4 fitnesses for General Manager/equivalent, including 2 fitnesses for General Manager/equivalent in the last 4 years;

(b) As only officers of proven merit should occupy the key posts of General Manager and equivalent, entries in the APAR, including adverse remarks, recommendations etc will be considered carefully;

(c) While recommending empanelment the Selection Committee would indicate the specific type (s) of assignments for which each officer may be considered suitable;

(d) Performance of concerned officers as Divisional Railway Manager/Principal Head of Department and remarks regarding fitness for GM (OL) recorded in the ACRs as DRM/PHOD is given emphasis while declaring the suitability of officers;

(e) Clearance from Vigilance angle, Remarks regarding integrity as recorded in the ACRs and penalties if any, imposed recently.

10. Learned counsel for the respondents stated that the Selection Committee scrutinized the records of all the eligible officers for empanelment to the post of General Manager/equivalent including the applicant. The Selection Committee noted that in the APAR for the year 2009, the applicant was assessed as 'Good'. In most of the attributes in the said APAR also, the officer was rated as 'Good'. It was further remarked in the said APAR that 'the officer can shoulder higher responsibility in the areas related to his own department'. The Committee had also noted that Shri Sonkaria had subsequently represented against the said APAR grading of 'Good' which was rejected by the competent authority. Considering the above, the Committee observed that as per the general criteria/guidelines adopted by the Selection Committee it shall take a total view of the record of service of officer with particular reference to the performance in the preceding 10 years in judging the suitability of the officer. The officer should have been assessed a minimum of 6 'Outstanding' and 4 'Very Good' in his APARs in the preceding 10 years. Having been assessed 'Good' in the year 2009, the

applicant Shri Devendra Kumar Sonkaria, IRMSE falls short of the criteria adopted by the Selection Committee for assessing fitness for empanelment as General Manager/equivalent. As such, the applicant is considered 'unfit' for inclusion in the panel of General Managers/equivalent for the year 2018-19.

11. It has also been stated by the respondents that the panel prepared by the Selection Committee including the recommendation in respect of applicant was submitted for approval of the Appointments Committee of the Cabinet. While approving the recommendation of the Selection Committee for empanelment of 30 officers, ACC had also agreed with the recommendation of the Selection Committee and has placed the applicant in the list of Non-Empanelled officers along with four others.

12. Learned counsel for the respondents argued that the interim relief as sought by the applicant should be rejected as granting interim relief to the applicant would impact the posting and promotion of officers who have already been empanelled by the Selection Committee and whose empanelment has been approved by the ACC.

13. Learned counsel for the respondents has also argued that it is a settled law that no adverse orders can be passed against persons who are not made party in the litigation. In this connection, learned counsel for the respondents has submitted a copy of the Apex Judgement in the case of Ranjan Kumar etc Vs State of Bihar & Ors dated 16.04.2018. Relevant portion of the aforesaid judgment is quoted below:-

"3. Learned counsel for the appellants have raised two principal contentions, first, most of the appellants herein were not impleaded as respondents before the High Court and without taking note of the said aspect the High Court has invalidated the selection and nullified their appointments which is violative of the principles of natural justice; and second, all the private respondents who were writ petitioners before the High Court having participated in the interview which was the procedure adopted, could not have challenged the said process in a court of law because of their failure, for the same is not permissible in law.

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[1], 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 Court on the ground that the provisions therein were violative of Articles 14 and 16(1) of the Constitution of India.

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6. In *Km. Rashmi Mishra v. M.P. Public Service Commission and others*[3], after referring to *Prabodh Verma (supra)* and *Indu Shekhar Singh (supra)*, the Court took note of the fact that when no steps had been taken in terms of Order 1 Rule 8 of the Code of Civil Procedure or the principles analogous thereto all the seventeen selected candidates were necessary parties in the writ petition. It was further observed that the number of selected candidates was not many and there was no difficulty for the appellant to implead them as parties in the proceeding. Ultimately, the Court held that when all the selected candidates were not impleaded as parties to the writ petition, no relief could be granted to the appellant therein.

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9. In *J.S. Yadav v. State of Uttar Pradesh and another*[10] it has been held that no order can be passed behind the back of a person adversely affecting him and such an order, if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. It was further held that the litigant has to ensure that the necessary party is before the Court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity.

12. In view of the aforesaid enunciation of law, we are disposed to think that in such a case when all the appointees were not impleaded, the writ petition was defective and hence, no relief could have been granted to the writ petitioners."

14. We have heard the arguments of learned counsels for both the parties and perused the record.

15. It is obvious that the limited interim relief sought is with regard to restraining the respondents from making any postings to the post of General Manager (Non-Open Line, or equivalent), from amongst such of the empanelled officers belonging to the IRSME, as are junior to the applicant. This is directly related to the empanelled and subsequent postings of the empanelled candidates of IRSME cadre who have not been impleaded in the OA. Any such restraining order shall adversely impact the promotion and postings of the empanelled officers who have not been impleaded in the OA.

16. Considering the facts of the case and Apex Court ruling, we are not inclined to grant the interim relief prayed by the applicant.

17. Issue notice to the respondents to file detailed counter affidavit along with relevant records within 04 weeks. Rejoinder, if any, may be filed within two weeks thereafter.

18. List this case on 26.02.2019.