

(2010) 10 OHC CK 0025

In the Orissa High Court

Case No : Writ Petition (C) No. 6671 of 2010

Gadadhar Mohapatra

APPELLANT

Vs

Chief Security Commissioner, R.P.F. East Coast Railway

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Railway Protection Force Rules, 1987 — Rule 63, 63.1, 63.1(2), 68, 69

Citation : (2011) 111 CLT 398 : (2011) 1 OLR 713

Hon'ble Judges : V. Gopala Gowda, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—In the present Writ Petition, the Petitioner challenges the action of the Opp. Parties in not allowing him to participate in the test for promotion to the rank of A.S.I. under Rule 72 of the R.P.F. Rules, 1987 (for short, "Rules 1987") which was scheduled to be held on 21.04.2010 onwards at Vishakhapatnam on the ground that the said action is illegal, arbitrary & in violation of the fundamental rights guaranteed under Articles 14 & 16 of the Constitution of India.

2. Bereft of unnecessary details, the facts & circumstances giving rise to the present Writ Petition are that the Petitioner was selected for the post of Constable on 08.03.1999. After his selection, he was sent for training & after completion of nine months training he was appointed as Constable on 29.01.2000. While working as such, Opp. Party-Chief Security Commissioner/RPF, East Cost Railway, Bhubaneswar, Dist: Khurda issued letter on 30.10.2009 (Annexure- 2) inviting written willingness from the Constables & Head-Constables, who have completed ten years" service on the date of notification, to appear in the test to be considered for promotion to the post of A.S.I. Pursuant to the said notification, the Petitioner made a representation before the Opp. Party to permit him to appear in the selection test. In this connection, a

reference was made to the Railway Board seeking clarification as to whether training period shall be counted for departmental selection. Under Annexure-3, the Chief Security Commissioner/RPF, East Coast Railways, Bhubaneswar vide letter dated 27.11.2009 clarified that the training period shall not be counted for the purpose for appearing in any test for departmental selection. On receipt of the said letter, the Petitioner filed a representation stating, inter alia, that there is nothing in Rule 72 to ignore training period while counting the period of ten years. During pendency of the Petitioner's representation, latter dated 22.03.2010 (Annexure-5) was issued directing 17 Constables & Head-Constables to remain in readiness to appear in the selection test/promotion test of A.S.I. which was scheduled to be held on 21.04.2010 & onwards. In the said list, the name of the Petitioner does not find place. Hence, the Writ Petition.

By an interim Order Dated 13.04.2010 this Court directed the Opp. Party to allow the Petitioner to appear in the selection test fixed to be held on 21.04.2010. It was further directed that the result of the aforesaid test shall be subject to further order that would be passed by this Court.

3. Mr. Manoj Kumar, Khuntia, Learned Counsel appearing for the Petitioner submits that Rules 68 to 74 of the Rules 1987 deal with promotion & career planning of the enrolled members of the Force. Rule 70 deals with Departmental. Promotion Committee. Rule 71 deals with marks & Rule 72 provides for holding of limited departmental competition. Rule 63.1 of the Rules 1987 provides that the period of training shall be treated as duty for all purposes. In the letter dated 30.10.2009 the eligibility criteria have been fixed without taking into account this provision of the Rules 1987. Under Rule 72.1, applications from eligible candidates for appearing in the limited departmental competition to the ranks of Head Constable & Assistant Sub-Inspector are to be invited thirty days in advance to the proposed date of holding the said competition. Since the examination was fixed to 21.04.2010, applications should have been invited thirty days before from the candidates eligible as on 22.03.2010. It is submitted that even if the training period of the Petitioner is excluded then also, he will be eligible to participate in the selection test for promotion to the rank of ASIPF held on 28.04.2010 as he completed ten years' service as on 28.01.2010. Had the applications been invited in accordance with Rule 72 of the Rules 1987, the Petitioner would have been considered for the said post. The instrumentalities of the State are required to discharge their functions in a fair & just manner. In the present case, the action of the Opp. Party- authority is violative of Articles 14 & 16 of the Constitution.

4. Per contra, Mr. A.K. Patra Learned Counsel appearing for the Opp. Party submits that the Petitioner has not completed ten years' service as Constable to be eligible for consideration for selection/promotion to the rank of ASIPF under Rule 72 of the Rules 1987. The present Petitioner having not completed ten years' service by the date of issue of notification dated 30.10.2009, made a representation to allow him to appear in the said selection. In that connection, a

reference was made to Railway Board seeking clarification whether the training period shall be counted as service period for the purpose of departmental selection. Railway Board in their letter dated 20.11.1999 (Annexure-3/1), intimated the Opp. Party that the training period shall not be counted for any departmental selection & accordingly the Petitioner was informed. The Petitioner has completed nine years nine months of service as Constable on the date of notification on 30.10.2009 for which he was not eligible to appear in the aforesaid selection test. The Petitioner has counted the period of his training which is not permissible in law. Under Rule 72.1 & Schedule-IV of Rules 1987, a Head Constable who has put in ten years service in the Force on the date of notification shall be eligible for appearing in the departmental competitive selection. The Petitioner having entered the Railways service as a Constable on 29.01.2000 & completed nine years nine months service only by the date of notification, i.e., 30.10.2009 he was not found eligible as per the statutory Rules. The Petitioner cannot derive any benefit from Rule 63.1 of the Rules 1987 as Rule 72 equally provides that one should have completed ten years' service by the date of notification to be eligible to appear for selection test to the post of ASIPF. The period spent on training cannot be treated as service as the initial course of training is a pre-requisite for employment in the Force & no service is rendered by the trainee to the Railway Force. The period spent on training cannot be treated as service as after completion of initial training they are appointed in the Force & are designated as Constables & thereafter they are allotted with number, PF number, EYN number etc. During the period of training no salary is paid to the trainees, but only stipend is paid to them. They are entitled to get the salary only after completion of the training period & therefore training period cannot be treated as service. The date of test could not be fixed after thirty days due to administrative inconvenience & selection was held on 28.04.2010.

5. On rival contentions the question that falls for consideration by this Court is: Whether the initial training period of Constables is to be counted for the purpose of computing ten years service as on the date of notification, which is a pre-requisite eligibility to appear in the departmental selection test for promotion to the rank of ASIPF under Rule 72 of the RPF Rules 1987?

6. It is not in dispute that the Petitioner was selected for the post of Constable on 08.03.1999 & was sent to undergo initial training course for a period of nine months. After successful completion of the said training he was appointed as Constable on 29.01.2000. According to the Opp. Party, notification dated 30.10.2009 was issued to hold a competitive selection of eligible candidates/ Head Constables, who have completed ten years' service as on the date of notification, i.e., 30.10.2009, for selection to the rank of ASIPF under Rule 72 of the Rules 1987. The Petitioner had completed only nine years' nine months service as Constable as on the date of notification, i.e., 30.10.2009 & not ten years. Petitioner's case is that if nine months' training period is taken into consideration while computing the total period of service rendered, he would be eligible to participate in the selection test. In support of his contention, he placed

reliance on Rule 63.1 of Rules 1987 which provides that the period of training shall be treated as duty for all purposes. At this juncture, it is felt necessary to quote Rule 63 of the RPF Rules, 1987.

63. Regulation of training period:

63.1 Subject to Sub-rule (2), the period of training including in-service courses shall be treated as duty for all purposes.

63.2 During the period of training, the recruits shall be paid stipend or pay & allowances as may be specified from time to time.

A plain reading of Rule 63.1 makes it clear that the period of training including in-service course shall be treated as duty for all purposes. There is no reason as to why the Opp. Party-authority shall not accept the Rule 63.1, which is quite unambiguous. Clarification issued on 20.09.2009 (Annexure-3/1) issued by the Railway Board regarding counting of training period for the purpose of appearing in the selection under Rule 72 of the Rules 1987 simply says that "it is to advise that training period shall not be counted for the purpose of appearing in any of the departmental selection". There is no reference to Rule 63.1 of the Rules, 1987 in the said clarification. In any event, any clarification/order/resolution issued by the Railway Board contrary to the provisions contained in Rule 63.1 of the Rules, 1987 is not sustainable in law.

7. It is the settled law that when any action of the State or its, instrumentalities is not in accordance with the rules or regulations & supported by the statute, the Court must exercise its jurisdiction to declare such action of the Authority as illegal & invalid.

In this regard it would be necessary to refer to the decisions of the Apex Court in the case of Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, wherein the Apex Court observed that the rules or the regulations framed by the government under the Statute are binding on the authorities.

Whenever any action of an authority is in violation of the provisions of the statute or the action of it is constitutionally illegal, it cannot be allowed to sustain in law. Wherever the statutory provision is ignored by the Authority, the Court cannot become a silent spectator to such an illegality & it becomes the solemn duty of the Court to deal with the person(s) violating the law with heavy hands. (See R.N. Nanjundappa Vs. T. Thimmiah and Another, , Sultan Sadik Vs. Sanjay Raj Subba and Others,).

Thus, the legal position remains, every statutory provision requires strict adherence; for the reason that, the statute creates rights in favour of the citizens, & if any order is passed de-hors the same, it cannot be held to be a valid order & cannot be allowed to sustain. (See Swastik Agency and Others Vs. State Bank of India, Main Branch and Others, .

8. Needless to say that every action of the state & its instrumentality should be

fair, legitimate & aboveboard & without any affection or aversion. (See Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation, ; E.P. Royappa Vs. State of Tamil Nadu and Another, and State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others,).

9. In view of clear provision of Rule 63.1 of the Rules, 1987, we have no hesitation to hold that the period of nine months" training undergone by the Petitioner shall be included for the purpose of computing total period of service as on the date of notification, i.e., 30.10.2009. If this period of nine months" is added to nine years & nine months the total period of service of the Petitioner undoubtedly would exceeds ten years as on 30.10.2009 & thereby the Petitioner was eligible to appear for departmental Test as on the date of notification, i.e., 30.10.2009 for selection to the post of ASIPF.

10. The case of the Petitioner can be looked at from another angle. Rule 72.1 of the Rules, 1987 provides that "applications from eligible candidates for appearing in the limited departmental competition to the ranks of Head Constable & Assistant Sub-Inspector shall be invited thirty days in advance of the proposed date of holding the said competition." Thus, applications are to be invited thirty days before the proposed date of holding the competitive Test from the candidates, who are eligible on the date of inviting applications. In the instant case the date of holding the examination was fixed to 21.01.2910 by Order Dated 22.03.2010 without inviting applications from eligible candidates. On the other hand, a panel of candidates has been prepared to remain in readiness to appear the test on 21.04.2010. Under Rule 72.1 of the Rules, 1987 had the applications from eligible candidates for appearing in the limited departmental competition to the rank of Head Constable & Assistant Sub-Inspector been invited 30 days in advance of 21.04.2010, the Petitioner would have been found eligible for such examination as he completed. 10 years" service on 28.01.2010 even excluding the training period. In the instant case the Opp. Party has not invited applications from eligible candidates for such departmental competition in terms of Rule 72.1 of the Rules, 1987.

Law is well settled that when the statute provides for a particular procedure to do an act, the authority has to follow the same & it shall not be permitted to act in contravention of the provisions of the Statute. It has been hither to uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods or mode of performance are impliedly & necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim "Expressio unius est exclusion alteris", meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner & in no other manner & following other course is not permissible. (See Taylor v. Taylor, (1876) 1 Ch.D. 426; AIR 1936 253 (Privy Council); Ram Phal Kundu Vs. Kamal Sharma, & Indian Bank"s Association v. Devkala Consultancy Service, AIR 2004 SC 2615.

Thus, considering the case of the Petitioner from any angle, he is found eligible

to participate in the test for promotion to the rank of Assistant Sub-Inspector which was scheduled to be held on 21.04.2010 onwards.

11. In view of the above, the Writ Petition is allowed. The Opp. Party is directed to declare the result of the test held on 28.04.2010 & consider the candidature of the Petitioner for the post of Assistant Sub-Inspector. No order as to costs.

V. Gopala Gowda, C.J.

12. I agree.