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**(2013) 04 AP CK 0002**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 11702 of 2013**

R. Markandeya Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision : 22-04-2013**

**Acts Referred:**

**Citation : (2014) 1 ALD 76 : (2014) 2 ALT 732**

**Hon'ble Judges : R. Subhash Reddy, J;A.V. Sessa Sai, J**

**Bench : Division Bench**

**Advocate : Siva, for the Appellant; G.S. Sanghi, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

R. Subhash Reddy, J.—This writ petition is filed questioning the order, dated 2.4.2013, in OA No. 827 of 2012, passed by the Andhra Pradesh Administrative Tribunal, Hyderabad. The petitioner was one of the candidates empanelled vide proceedings, dated 17.4.1996, to the post of Junior Clerk-cum-Typist, pursuant to the notification issued in Employment Notice No. 4/95, dated 29.10.1995, by respondent No. 4. He was appointed and posted at Guntakal Division of South Central Railway Zone. Subsequently, he was promoted to the post of Senior Clerk and was posted to work under Statistical and Analysis Office of South Central Railway Zone.

2. On a complaint being filed, questioning the selections made pursuant to notification, dated 29.10.1995, C.B.I. has registered a case against the Chairman, Member Secretary, Senior Clerk and some other officials of the Railway Recruitment Board, Bangalore, alleging that they entered into a criminal conspiracy by abusing their official position and selected their interested persons pursuant to notification, dated 29.10.1995. Basing on the preliminary report of the C.B.I. and after considering the matter in entirety, respondent No. 1-Board has decided to cancel the entire panel and terminated the services of the candidates, who were empanelled and appointed pursuant to notification, dated

29.10.1995.

3. When the services of one O. Chakradhar, who was also selected pursuant to the notification, dated 29.10.1995, were terminated, he approached the Tribunal by way of OA No. 1265 of 1999, which was allowed by setting aside the order of termination. Aggrieved by the same, the respondents filed WP No. 4898 of 2000 before this Court, and this Court, dismissed the same. Aggrieved by the same, the respondents carried the matter by way of appeal in Civil Appeal No. 1326 of 2002 before the Honourable Supreme Court, which was allowed by order, dated 19.2.2002. While allowing the appeal, the Honourable Supreme Court held as under:

As per the report of the CBI whole selection smacks of mala fide and arbitrariness. All norms are said to have been violated with impunity at each stage viz., right from the stage of entertaining applications, with answer-sheets while in the custody of Chairman, in holding typing test, in interview and in the end while preparing final result In such circumstances it may not be possible to pick out or choose any few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so inter-mixed with the whole process of the selection that it becomes impossible to sort out right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is could such selection be acted upon in the matter of public employment? We are therefore of the view that it is not one of those cases where it may have been possible to issue any individual notice of misconduct to each selectee and seek his explanation in regard to the large scale widespread and all pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise but it is difficult to separate the cases of some of the candidates from the rest even if there may be some. The decision in the case of Krishna Yadav (supra), applies to the facts of the present case. The Railway Board's decision to cancel the selection cannot be faulted with. The appeal therefore deserve to be allowed.

4. Basing on the above decision of the Honourable Supreme Court, the respondent authorities have issued Memorandum No. ST/P/563/Vo. I, dated 13.11.2002, terminating the services of the petitioner. Aggrieved by the same, the petitioner approached the Tribunal by way of present O.A. The Tribunal, by the impugned order, dated 2.4.2013, dismissed the O.A.

5. Heard the learned Counsel for petitioner and perused the impugned order, dated 2.4.2013, passed by the Tribunal and the judgment, dated 19.2.2002, rendered by the Honourable Supreme Court.

6. In this writ petition, it is contended by Sri Siva, learned Counsel for petitioner, that though the order of termination was passed on the ground that the selections made pursuant to notification, dated 29.10.1995, were declared illegal by the Honourable Supreme Court, subsequently, the C.B.I. has filed its final report to the effect that the evidence gathered during the investigation was not sufficient to launch prosecution against the Chairman, Railway Recruitment Board, who was heading the Selection Board at that point of time for the purpose of recruitment. The same was accepted by the designated Court and the criminal case registered against the Chairman was closed. In that view of the matter, by placing reliance on the recitals made in the preliminary report filed by the C.B.I., basing on which the civil appeal filed by the respondents was allowed by the Honourable Supreme Court, terminating the services of the petitioner is unsustainable. It is also further contended that one other candidate by name Sunderesen, who was also appointed pursuant to notification, dated 29.10.1995, is still being continuing in service and as such, there is discrimination shown by the respondents by terminating the services of the petitioner.

7. In this case, it is to be noticed that the petitioner was also one of the selected candidates in the selections made pursuant to notification, dated 29.10.1995. The Honourable Supreme Court, while reversing the earlier order of the Tribunal passed in OA No. 1265 of 2009, as confirmed by this Court, has categorically recorded a finding that the whole selection smacks of mala fide and arbitrariness. All norms are said to have been violated with impunity at each stage viz., right from the stage of entertaining applications, with answer-sheets, while in the custody of Chairman, in holding typing test, in interview and in the end while preparing final list. In the same judgment, it is held that in the above circumstances, it may not be possible to pick out, or choose any few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. It is further held that illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out right from the wrong or vice versa. When such is a finding recorded by the Apex Court, only on the ground that the Chariman of the Recruitment Board is discharged in criminal proceedings, is no ground to interfere with the order of termination. Even as per the learned Counsel for petitioner, it is not in dispute that out of 95 candidates selected, the services of 94 candidates were already terminated, and it is not known on what ground that the other candidate by name Sunderesen is being continuing in service. The petitioner has not furnished any particulars to show that the said Sunderesen was selected pursuant to notification, dated 29.10.1995. In the absence of such particulars being furnished by the petitioner, he cannot seek reinstatement on the ground that the said Sunderesen is still continuing in service.

8. At the same time, it is to be noticed that there is yet another ground to reject the claim of the petitioner. The termination order was passed against the petitioner as early as on 13.11.2002 and in spite of the same, he has chosen to question the same before the Tribunal only after ten long years by way of

present O.A. Absolutely, there is no explanation offered by the petitioner for the abnormal delay and for the lapses on his part for keeping silent for ten long years, after the order of termination was passed. The delay is sought to be explained by the learned Counsel for the petitioner stating that as some of the persons have approached the Supreme Court by filing writ petitions directly against the orders of termination, and that while permitting the petitioners therein to withdraw the writ petitions, filed under Article 32 of the Constitution, liberty was given to them to approach this Court, the petitioner could not file the O.A. in time. It is not in dispute that the petitioner is not one of the petitioners before the Honourable Supreme Court. In that view of the matter, the liberty given by the Honourable Supreme Court for the petitioners therein cannot be accepted to be a ground for delay on the part of the petitioner in filing the O.A. For the aforesaid reasons, we do not find any merit in this writ petition, so as to interfere with the impugned order passed by the Tribunal. Subject to the above, the writ petition is dismissed. Miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.