

(2013) 07 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition No. 32532 of 2013 (S-CAT)

Railway Board and The Secretary, Railway Board

APPELLANT

Vs

Shri N.C. Sinha and Shri. Devi Prasad Pande

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0011

Hon'ble Judges : D.V. Shylendra Kumar, J;B.S. Indrakala, J

Bench : Division Bench

Advocate : Mohan Parasaran, Solicitor General of India for Sri S. Kalyan Basavaraj, Assistant Solicitor General of India, for the Appellant; P.S. Rajagopal, for C/R-1, for the Respondent

Final Decision : Disposed Off

Judgement

1. Though this matter is listed for Preliminary Hearing and has come up for Preliminary Hearing, having regard to the nature of the matter which is against an interim order passed by the Central Administrative Tribunal in an application pending before the Tribunal and having heard the learned Counsel for the petitioners and the learned Counsel for the respondents on merits, we dispose of the writ petition as under:

This writ petition by the Chairman and Secretary, Railway Board, New Delhi is directed against the modified interim order passed by the Central Administrative Tribunal, Bangalore Bench, Bangalore on 12.7.2003 in pending Original Application No. 525/2013.

In the pending application, it appears, the Tribunal had initially granted an order of status quo as on 3.7.2013 particularly vis-a-vis., the 6th respondent in the application. The case was directed to be called on 23.7.2013 but on an application having been filed seeking for vacating the interim order, the matter had been taken up at the instance of the writ petitioner and the impugned order has come to be passed.

2. The first respondent is before the Tribunal contending that due promotions as per the seniority while holding the post of Chief Operations Manager, South Central Railway, Hubli and his legitimate promotion to the post of General Manager has been withheld and because of that, the 6th respondent in the application has taken a march over the applicant notwithstanding the case of the applicant having been cleared for promotion for the post of General Manager and for one reason or the other, it is not being implemented and that the applicant apprehends that it is only to favour the 6th respondent that his legitimate promotions have been delayed and in this background while there was a possibility of the applicant being still not promoted due to some excuse or the other, the 6th respondent is likely to be considered for being appointed as Member (Traffic Transportation), Railway Board and the Member (Traffic Transportation), Railway Board being a promotional post to a General Manager, persons in the cadre of General Managers will be eligible and it is an appointment from the category of General Managers or in the equivalent ranks.

3. It is the stand of the applicant before Tribunal that the Member Traffic of the Railway Board is a promotional post to the officers in the cadre of General Manager etc.

4. The Tribunal had initially granted an order of status quo as earlier noticed and on the application for vacating stay filed by the respondent/Railway Board, the impugned order has come to be passed.

5. In the present writ petition, what is pointed out is that the Tribunal has gone beyond the relief that is possible in law; that the larger public interest is not kept in mind, but individual interest alone is taken to be the criteria and in respect of the very senior post like Member Traffic, considerations cannot be on individual claims or otherwise, but is an appointment to a high level decision making Body and therefore the Tribunal could not have granted such an interim order which is virtually in the nature of granting main relief, but which was not possible in law etc.

6. First respondent in the writ petition is applicant before the Tribunal and sixth respondent in the application is arrayed as second respondent in the writ petition.

7. We have heard Sri. Mohan Parasaran, learned Solicitor General of India, appearing for the writ petitioner - Railway Board and Sri. P.S. Rajagopal, learned senior counsel appearing for the first respondent.

8. We notice that the impugned order passed on 12.7.2013 is an order much beyond the scope of relief that is possible to the applicant even in the main application and definitely not an order which can be granted at the interim stage of a pending application.

9. What is urged on behalf of the petitioner is that the applicant before the Tribunal - first respondent is a person holding the post of Chief Operations Manager and appointment to the post of Member Traffic or other Branch or a

Member of Railway Board is by way of selection from amongst persons holding the post of General Manager or of equivalent rank; that the applicant before the Tribunal - first respondent herein is not one such and therefore his case cannot be considered as of now for appointment to the post of a Member; that the order directing the court to consider his case for appointment as Member Traffic even on temporary basis is much beyond the relief that is possible in law.

10. It is also submitted that the order of status quo does come in the way of the very responsible post being not filled up and keeping it vacant is not in the larger public interest etc.

11. On the other hand, Sri. P.S. Rajagopal, learned senior appearing for first respondent submits that the prayer in the application is comprehensive enough to grant such relief as has been given by the Tribunal; that the applicant being eligible for appointment to the post of General Manager and without any valid or genuine cause or reason his promotion having been held up and the moment the applicant gets his promotion to the post of General Manager, he will also be entitled for consequential benefits of such promotion and therefore has the potential to go up, particularly, he being senior to the sixth respondent in the Indian Railways Traffic Service and feeder post of Chief Operations Manager.

12. Mr. Rajagopal also points out that the matter is set down for final hearing itself on 6.8.2013 and there is no need to alter or modify the order; that even the sixth respondent is not a person who is eligible for appointment to the post of Member Traffic of Railway Board having regard to his limited experience in the post of General Manager etc.,; that the order of status quo at least can be maintained pending disposal of the application as the order of status quo is only vis-a-vis sixth respondent in the application before the Tribunal and not against anyone else.

13. We have examined the submissions for the limited purpose of the challenge to the order dated 12.7.2013 passed in the pending application.

14. We, prima facie, find that the direction to consider the case of the applicant even temporarily for the post of Member Traffic is not a direction that is either tenable in law nor could have been given by way of an interim direction in the pending application and that part does not elicit our approval at all.

15. Insofar as the order of status quo to be maintained is concerned, we find that the order which had been passed earlier ex parte and on the application being made by the respondent for vacating the same, the present order has come to be passed which is much beyond the earlier order passed by the Tribunal. The order is also independent of the grounds urged in the application for vacating the order of status quo, and without considering the same. What is submitted on behalf of the writ petitioner is that the order has come in the way of filling up a responsible post and affects public at large and public interest.

16. In our considered opinion, interim order should not come in the way of the

larger public interest irrespective of the individual interest. Though the Tribunal has observed that the public interest is totally entwined with individual interest, we are afraid it cannot be said so, at the peril of public interest.

17. In the circumstances, we are of the opinion that the order passed by the Tribunal requires to be set aside, but all developments and actions taken and to be taken by the writ petitioner - respondent before the Tribunal shall be subject to the result of the application before the Tribunal.

18. It is also made clear that no party can claim any equity or any right under any measure taken by the present writ petitioner and the respondent before the Tribunal in respect of appointment to any post, filling up of any post or promotion to any post.

19. We also record the undertaking given by the learned Solicitor General of India who has appeared for the petitioner that the writ petitioner will go on with the main matter before the Tribunal on 6.8.2013 without fail with or without reply and on such dates as the Tribunal may fix for further hearing. With such observations, this writ petition is disposed of.