

**(2009) 08 CAL CK 0007**  
**In the Calcutta High Court**  
**Case No : W.P.C.T. 170 of 2009**

Sanjoy Kumar Samanta and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 10-08-2009

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation :** (2009) 08 CAL CK 0007

**Hon'ble Judges :** Pratap Kumar Ray, J;Mrinal Kanti Sinha, J

**Bench :** Division Bench

**Advocate :** Bratati Dutta, for the Appellant; Raj Dip Roy, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Pratap Kumar Ray, J.—Heard the learned Advocates appearing for the parties.

2. Assailing the order dated 24th February, 2009 passed by the Central Administrative Tribunal, Calcutta Bench, in Original Application No. 842 of 2004, this writ application has been filed. The impugned order reads such.

" ORDER

This application has been filed jointly by 19 applicants being aggrieved by their non-appointment to Group "D" category under South Eastern Railway, Adra Divison.

2. The case of the applicants is that they are wards retired Railway employees. The respondent authorities issued a circular on 1.11.1989 inviting applications from the wards of retired Railway i.e. who retired after 31.10.1984 or those who would retire before 31.10.1994 to form a panel for appointment to Group "D" category of posts available against casualties. The applicants applied accordingly and they were screened for empanelment and according to them they were all empanelled. Their grievance is that the authority, without following the panel position, had been appointing persons by pick and choose method ignoring their

case and even those who were not in the panel were also appointed. They have further stated that some similarly placed persons like them filed an OA 704 of 1989 before this Tribunal which was allowed on 26.2.1993 directing the respondents to consider their case. Similar application had also been filed being OA 611 of 1994 which was decided on 25.11.2003 and similar direction was passed. Since they were not considered, they had earlier filed OA 122 of 2004 (Debashish Ganguly & Ors.) before this Tribunal seeking similar direction. The said OA was disposed of on 19.3.04 directing the respondents to consider their representation and to pass a speaking order. In compliance thereof the respondents have passed a speaking order on 26.4.04 rejecting the claim of the applicant. In the present OA the applicants have challenged the speaking order issued by the respondent authorities on 24.6.2004 and have also prayed for the following main reliefs:

(a) An order directing the respondents to cancel, withdraw and/or rescind the impugned order dated 24.6.2004.

(b) An order directing the respondents to review all appointments/engagements purported to have been made pursuant to circular dated 1.11.1989 and further directing them to disengage/terminate the service of all ineligible candidates and/or to cancel the entire selection.

(c) An order directing the respondent to consider the case of the applicants for engagement as Gangman or in any other capacity, if necessary by holding fresh screening and also granting necessary age relaxation in terms of the order dated 28.7. 2004 passed in OA 714 of 1994 by this Hon'ble Tribunal.

3. The respondents have filed a reply in which they have stated that the circular dated 1.11.1989, against which the applicants had applied, was subsequently held as illegal by this Tribunal in OA 968 of 1990 (Abdul Sattar & Ors.). It is further stated that the applicants' applications were also considered, but they could not be recommended by the Screening Committee and therefore, their names were not included in the panel. They have disputed the panel enclosed with the OA. They have also stated the factual position in respect of the OAs mentioned by the applicants are different as will be evident from the speaking order and therefore the applicants cannot claim similar benefits.

4. We have heard the learned counsel for both parties and have considered the matter carefully. It is admitted position that the applicants applied in terms of the circular dated 1.11.1989 which was restricted only for the wards of retired/or would be retiring Railway employees. This Tribunal subsequently held in OA 968 of 1990 that such an employment notice is wholly illegal as Government employment cannot be restricted to a particular section nor can public employment be given only on descent and therefore, the said circular was quashed. Since the advertisement itself was quashed, the applicants, who applied, do not have any legal right to claim appointment to the posts in question based on their so called selection and empanelment in reference to that circular.

Moreover, it is, however, the specific case of the respondents that the applicants were screened along with others, but they could not come out successful and therefore their names were not included in the panel.

5. Our attention is also drawn to a decision of this Tribunal in OA 714 of 1994 passed on 28.7.2004 wherein direction for review of appointment already made in terms of the circular dated 1.11.1989 was reiterated. It was also directed that the case of the applicants therein for appointment may also be considered on such review, and to give them age relaxation, if they were otherwise eligible for age relaxation. Since the original notification was already cancelled, the legal right of the applicants also ceased. Moreover, it is settled legal position that even after empanelment, candidates has no right to be appointed.

6. The only point urged before us is regarding discrimination because some of the candidates in response to the same notification had been appointed. However, the applicants have not indicated names of persons who were appointed inspite of quashing of the circular nor have they made them parties. The respondents in the speaking order have also clarified that in regard to OA 704 of 89 dt. 25.2.93, it was specifically observed by the Tribunal that the benefit will be limited to the parties and that it should not be cited as precedent. Therefore, it was a case of concession in the special circumstances of the case. That case was filed in 1989 whereas the applicants first came before this Tribunal in 2004 i.e long after the circular was quashed. That apart in the case of Union of India (UOI) and Another Vs. International Trading Co. and Another, , it has been held by the apex Court that a party cannot claim that since something wrong has been done in another case, direction should be given to do the same wrong. It would be setting the wrong right but would be perpetuating another wrong. In such matter no discrimination is involved.

7. In view of what has been stated above, we find no merit in this OA which is accordingly dismissed. No costs.

Sd/:

MEMBER(A) VICE-CHAIRMAN"

3. By the impugned order, the Tribunal rejected the original application seeking appointment on the strength of the circular dated 1st November, 1989 issued by the South Eastern Railway. The said circular letter reads such.

"S.E. Railway

No DFO/ADV/DRM Adra,

Dt. 01.11.89

To

All Branch Officers-ADA Division

ARSe-BKSC, BURN, RNC & BJE

All AENs-ADA Division

All supervisors In charges, ADA Division

Sub: Arrangements to meet casualties in essential categories when the leave reserve is inadequate.

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In order to meet contingency of the casualties/absenteeism exceeding the leave Reserve provided in essential categories in the lowest grade (Group "D") under Engineer Department, applications are invited in the prescribed format from the ward (as covered under pass rule) of retired/retiring employees of the Division with the following stipulations for engagement as casual labour purely on temporary measure on day-to-day basis;-

1. Employees retired after 31.10.1984 and will be retiring within 31.10.1994 may send their application.

2. The ward must have within 18 to 28 years of age as on 31.10.89.

In case of SC/ ST candidates relaxation of five years age is admissible.

3. Candidates should be able bodied and capable of performing manual labour.

4. None of the wards of the ex-employee/employees should be in Railway service.

The application should be duly filled in by the applicant as per the format attached and same should be submitted to the nearest PWI on or before 15.11.89. No applications will be entertained after the closing date.

Sr.DEN(L) DEN/I, DEN/II, DEN/III

Signature."

4. This circular letter was considered by the Tribunal in Original Application No. 968 of 1990 and by the order dated 13th August, 1993 the learned Tribunal quashed the said circular as ultra vires to the constitutional provision of Article 14 and 16 of the Constitution of India. Similar order passed in other Original Applications, being O.A.945/ 1993, O.A. 946/1993, O.A. 959/1993, O.A. 960/1993, O.A. 1100/1993, O.A. 1211/1993 and O.A. 472/1994.

5. Against the order of the learned Tribunal, subsequently another group moved the Tribunal seeking appointment on the basis of the said circular letter in O.A. No. 714 of 1994 wherein the learned Tribunal directed by order dated 28.7.2004 to review the application for appointment and to appoint the eligible candidates.

6. On the strength of the said order, the present writ petitioners moved the Original Application, the order of which is under challenge before us. The learned Tribunal below by the impugned order has rejected the contention on the grounds, namely, long delay and also non-applicability of Article 14 of the Constitution of India on the alleged discrimination as raised.

7. There is no doubt that the circular letter of 1st November, 1989 is in breach of Article 14 and 16 of the Constitution of India as by the said circular letter the appointment was limited/contoured to the retired and/or retiring employee's dependants. The Tribunal accordingly passed an order quashing the same in Original Application No. 968 of 1990 which reads such.

In the result the case is disposed of with the following orders. The application fails. The order No.DPO/ADA/BRM dated 1.11.89 issued by the Senior Divisional Engineer(L), Adra as mentioned in Para 7(1) of the counter affidavit is hereby quashed. The Railway authorities will review the appointments made on the basis of the impugned circular which has been quashed by us. We make no order as to costs.

8. Having regard to the fact that said notification stood quashed, the applications as filed on the basis of the said notification were not maintainable, irrespective of the fact that screening of the applications were done. Learned Advocate for the writ petitioner has urged strongly on the point that despite quashing of the said notification, the Railway authority had given appointment to many persons on the basis of that notification. Without going into the details of those appointments, we are of the view that even if there was any appointment given on the basis of the said notification of 1st November, 1989 after quashing of the same by the learned Tribunal below in other proceeding, the same cannot be a ground to give appointment to the present writ petitioner applying the principle of Article 14 of the Constitution of India. The point of issue as raised under Article 14 of the Constitution of India, it is not a negative concept but a positive one and the applicant to introduce the concept in the field of discrimination is required to answer first about his legal right right to claim something and after that, the question of discrimination to be considered which otherwise means that if a person is not lawfully entitled, the question of discrimination would not be a factor to deal with it. It is held further that no equality on illegality. Reliance is placed to the judgment passed in the case *State of U.P. v. Raj Kr. Sharma* reported in 2006 AIR SCW 3627, *State of U.P. Vs. Neeraj Awasthi and Others*, *Union Bank of India and Others Vs. M.T. Latheesh*, , *State of Kerala v. K. Prasad* and another reported in 2007(7) SCC 14.

9. Long delay is also a factor for giving appointments. The writ petitioners intended to establish right with reference to the screening made on the basis of applications filed in terms of the notification dated 1st November, 1989 and after long so many years the writ petitioners approached the Tribunal. The delay is a factor which is required to be considered to adjudicate in such type of case. To entertain a writ application the Apex Court has stipulated the guidelines by holding that any belated application should not be entertained in the case *City and City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Others*, wherein in paragraphs 26 and 27 the Court highlighted the position.

10. In the instant case, consideration of the application of the writ petitioner

could be nothing but an action which would breach Article 14 and 16 of the Constitution of India as under the constitutional mandate, all appointments should be by providing proper opportunity to all the eligible candidates.

11. Having regard to our aforesaid findings and observations, we are not finding any illegality to interfere the impugned order of this writ application. Hence, at the motion stage, we are dismissing this writ application.

This writ application accordingly stands dismissed.

Mrinal Kanti Sinha, J.

12. I agree.