

(2013) 03 DEL CK 0024

In the Delhi High Court

Case No : Writ Petition (C) No. 1761 of 2012

Sh. Rajan Sharma

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340

Railway Claims Tribunal Act, 1987 — Section 10, 10(c), 5, 5(3), 7

Citation : (2013) LabIC 2185

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : R.K. Saini with Mr. Vikas Saini, for the Appellant; V.S.R. Krishnav, Advocate with Mr. Abhishek Yadav, Advocate for Respondent Nos. 1 and 2 and Mr. S.S. Mishra, Advocate with Mr. Adbhut Pathak, Advocate, for the Respondent

Judgement

Valmiki J Mehta, J.

W.P. (C) No. 1761/2012 and C.M. Nos. 19093/2012 (directions) and 3871/2012 (stay)

1. This writ petition is filed by the petitioner seeking directions for being appointed as a member of Railway Claims Tribunal, w.e.f. 14.3.05 inasmuch as it is pleaded that the petitioner was in fact called for interview, was selected and placed at serial No. 1 in the Selection List of Members (Judicial). It is pleaded that the selection list is prepared by a committee comprising of a Judge of Hon"ble Supreme Court; Chairman, Railway Board; Chairman, Railway Claims Tribunal and the Secretary, Ministry of Law. On behalf of respondent Nos. 1 and 2, it is not disputed that petitioner was in fact put at No. 1 on the selection list, however, it is argued that there had been an error in calling the petitioner for appointment inasmuch as there existed a bar in terms of Section 10 of Railway Claims Tribunal Act, 1987 (hereinafter referred to as "the Act") as per which a member of a Railway Claims Tribunal cannot seek fresh appointment as a member of the Railway Claims Tribunal. A member, it is argued, though can

apply for being appointed as Vice-Chairman or Chairman of the Railway Claims Tribunal or Member or Vice-Chairman or Chairman to any other Tribunal, but, cannot again apply for being appointed as a member of the Railway Claims Tribunal.

2. On behalf of the petitioner, rebutting the stand of respondent Nos. 1 and 2, it is argued that qualifications of a person to be appointed as a Judicial Member of the Railway Claims Tribunal are contained in Section 5 of the Act and when this provision is read with Section 7 all that they provide for is an upper age limit of 62 years with respect to a Member, and, Section 10 cannot be read to deny the second or subsequent term as a Judicial Member of the Railway Claims Tribunal provided of course the age does not exceed 62 years.

3. In order to appreciate the arguments of both the parties since the provisions of Sections 5, 7 and 10 would be relevant, I reproduce the same as under:-

Section 5. Qualifications for appointment as Chairman, Vice-Chairman or other Member.-(1) A person shall not be qualified for appointment as the Chairman unless he-

(a) is, or has been, a Judge of a High Court; or

(b) has, for at least two years, held the office of a Vice-Chairman.

(2) A person shall not be qualified for appointment as the Vice-Chairman unless he-

(a) is, or has been, or is qualified to be, Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that service or any higher post for at least five years; or

(c) has, for at least five years, held a civil judicial post carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India; or

(d) has, for at least five years, held a post under a railway administration carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India and has adequate knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways; or

(e) has, for a period of not less than three years, held office as a Judicial Member or a Technical Member.

(3) A person shall not be qualified for appointment as a Judicial Member unless he-

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a Member of the Indian Legal Service and has held a post in Grade I of that service for at least three years; or

(c) has, for at least three years, held a civil judicial post carrying a scale of pay

which is not less than of a Joint Secretary to the Government of India.

(4) A person shall not be qualified for appointment as a Technical Member unless he has, for at least three years, held a post under a railway administration carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India and has adequate knowledge of rules and procedure of, and experience in, claims and commercial matters relating to railways.

(5) Subject to the provisions of sub-section(6), the Chairman, Vice-Chairman and every other Member shall be appointed by the President.

(6) No appointment of a person as the Chairman shall be made except after consultation with the Chief Justice of India.

Section 7. Term of office.-The Chairman, Vice-Chairman or other Member shall hold office as such for a term of five years from the date on which he enters upon his office or until he attains,-

(a) in the case of the Chairman, the age of sixty-five years; and

(b) in the case of the Vice-Chairman or any other Member, the age of sixty-two years;

whichever is earlier.

Section 10. Provision as to the holding of offices by Chairman, Vice-Chairman etc., on ceasing to be such Chairman or Vice-Chairman, etc.-On ceasing to hold office-

(a) the Chairman of the Claims Tribunal shall not be ineligible for further employment either under the Government of India or under the Government of a State;

(b) a Vice-Chairman shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman of the Claims Tribunal, or as the Chairman, Vice-Chairman or member of any other Tribunal established under any law for the time being in force, but not for any other employment either under the Government of India or under the Government of a State;

(c) a Member (other than the Chairman or Vice-Chairman) shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman or Vice-Chairman or as the Chairman, Vice-Chairman or member of any other Tribunal established under any law for the time being in force, but not for any other employment either under the Government of India or under the Government of a State;

(d) the Chairman, Vice-Chairman or other Member shall not appear, act or plead before the Claims Tribunal.

4. A reference to the aforesaid provisions shows that Section 7 provides for the term of office of a Member or Chairman or Vice-Chairman of Railway Claims

Tribunal to be of five years or till that person reaches the age of 65 years so far as the Chairman is concerned, and 62 years so far as Vice-Chairman or Member is concerned. Section 7 has therefore two ingredients one of which is of the term of a Member being five years and the second of limitation that it would not be of five years if the appointee exceeds the age of 65 years so far as the Chairman is concerned and 62 years so far as Member and Vice-Chairman are concerned. A Member therefore is appointed on a term of five years subject to upper age limit of 62 years.

5. Section 5 pertains to qualifications required for appointment as a Chairman, Vice Chairman or a Member, and which qualifications are respectively dealt with in sub-Sections (1), (2) and (3) of Section 5 of the Act. We are concerned with sub-Section (3) of Section 5 with respect to appointment of a Member and not with respect to sub-Sections (1) and (2) which talk of appointment as a Chairman or a Vice-Chairman. A reference to sub-Section (3) shows that a person will not be qualified for being appointed as a Judicial Member of the Railway Claims Tribunal unless he falls in one of the categories specified in clauses (a) to (c) of sub-Section (3) of Section 5 of the Act. Really therefore sub-Section (3) deals with and contains the qualifications required for appointment, though, the language is couched in negative.

6. Section 10 deals with entitlement of a Chairman, Vice-Chairman and Member of any other Tribunal for further appointment after that appointee completes his term in the post and therefore also as to disentitlement to a particular appointment. This provision provides that a Chairman of Railway Claims Tribunal shall be ineligible for further employment under the Government of India or under the Government of State. The bar so far as a Vice Chairman is however restricted for appointment/employment either under the Government of India or the Government of State, but, there is no bar for being appointed as the Chairman of the Railway Claims Tribunal or the Chairman, Vice-Chairman or Member of any other Tribunal i.e. a Vice-Chairman is specifically barred for to be again appointed as a Vice-Chairman. So far as a Member is concerned, there is a similar bar for appointment either under the Government of India or the Government of State, however, there is no bar for being appointed either as the Chairman or Vice-Chairman of the Railway Claims Tribunal or a Member or Vice-Chairman or Chairman of any other Tribunal i.e. he cannot seek a second appointment as a member.

7. A conjoint reading of various sub-Sections of Section 10 of the Act therefore shows that there are limitations carved out for further appointment/employment with respect to a Member, Vice-Chairman and Chairman. With respect to a Member, and with which post we are concerned, there is only an entitlement to be appointed as either a Vice-Chairman or Chairman of the Railway Claims Tribunal or as a Member or Vice-Chairman or Chairman of any other Tribunal. To put it differently the appointment again as a Member of the Railway Claims Tribunal is specifically found missing and thus not deliberately included in sub-

Section (c) of Section 10.

8. From the aforesaid discussion, the following conclusions emerge:-

(i) Though it is undisputed that the petitioner was put at No. 1 in the selection list by the committee of appointments, the petitioner is being denied appointment on the ground of the bar contained in Section 10(c) of the Act.

(ii) Section 10(c) with its various sub-Sections provide for the avenues which are open, and thus also the avenues which are not open, after a person's term of appointment either as a member or Vice-Chairman or Chairman of the Railway Claims Tribunal comes to an end. With respect to a Chairman, there is a bar for appointment under the Government of India or Government of State. With respect to Vice-Chairman besides the afore-stated bar, there is an additional bar for being appointed as a Vice-Chairman or Member of the Railway Claims Tribunal, and, with respect to a Member, there is a bar for being appointed under the Government of India or Government of State and also as a Member of the Railway Claims Tribunal.

9. The legislative intention excluding appointments of a Member, Chairman or Vice-Chairman again to their specific posts is ex facie clear and cannot be curtailed by reference to the qualifications for appointment which are governed by Section 5 with its sub-Sections. Section 5 deals with qualifications and Section 10 deals with entitlement to further appointment and thus also the limitations qua further appointments.

10. Learned counsel for the petitioner sought to argue on the basis of various judgments of the Supreme Court, citations of which I need not refer to, that unless there is a specific bar, the provisions of a statute should not be read so as to create a bar, and it is argued that the bar in the present case is only created by Section 5(3) and not by Section 10(c) so far as the petitioner is concerned, and the petitioner hence cannot be denied appointment.

There cannot be a dispute to the proposition of law that the bar has to be specific, however in my opinion, and as already stated above, the provision of Section 5(3) of the Act really deals only with the issue of qualifications (though the language couched in the negative) and not with respect to the bars for further appointment. The said provision talks of which person can be qualified for appointment as a Judicial Member i.e. what should be the qualification. This provision cannot be interpreted as if it deals with a bar being contained in this provision and, it cannot be doubted that Section 5 with its sub-Sections only deals with qualifications for appointment of a Chairman or Vice Chairman or a Member in view of its categorical language. Section 5 with its sub-Sections cannot be read to mean that the same also deals with the aspect of who cannot be appointed as a Member or a Vice-Chairman or a Chairman i.e. the disqualifications specifically.

11. In any case, in my opinion, the issue is resolved by applying the principle of

harmonious construction with regard to interpretation of statutes. Legislature is said not to legislate in futility, and if there is a specific provision of law viz. Section 10, the same has necessarily to be given effect to unless it does violate to any other provision of the statute. Therefore, on a harmonious construction of Sections 5, 7 and 10 it becomes clear that a Member of a Railway Claims Tribunal is not re-eligible for being appointed again as a Member of the Railway Claims Tribunal though he can always be appointed as Vice Chairman or a Chairman of the Railway Claims Tribunal or a Member or Vice Chairman or Chairman of any other Tribunal.

12. Merely because the Committee may have overlooked the vital provision of Section 10(c) of the Act, and the petitioner was put at No. 1 in the selection list, would not mean that this Court is liable to issue prerogative writs which will result in violating the specific provision of Section 10(c) of the Act.

13. In view of the above, there is no merit in the petition which is accordingly dismissed, leaving the parties to bear their own costs.

Crl. M.A. No. 17760/2012 (under Section 340 Cr.P.C.)

14. By this application the petitioner seeks permission/direction for prosecution u/s 340 CrPC of the signatory to the counter-affidavit one Sh. Manoj Kumar on the ground that a letter dated 30.9.2011 of Sh. Mahender Sharma, Advocate relied upon in the counter-affidavit is a fabricated document.

15. I have by a detailed judgment dismissed the writ petition, and ordinarily, I would not have passed any orders on this application inasmuch as exercise of jurisdiction u/s 340 CrPC is discretionary, however I am passing orders inasmuch as the petitioner who is present in person instructs his counsel to strongly pursue the present application. A Constitution Bench of the Supreme Court in the case of Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, has held that Courts will not exercise powers u/s 340 CrPC if the fabrication is of a document which is stated to be manufactured by an act done outside the premises of the Courts i.e. outside the Court case. Therefore, without commenting one view or the other on merits of the facts urged by either party, this application is dismissed.