

(2015) 03 DEL CK 0216
In the Delhi High Court
Case No : Cont. CAS (C) 803/2014

Tara Chauhan and Others

APPELLANT

Vs

Pradeep Kumar and Others

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Citation : (2015) 7 AD 350 : (2015) 219 DLT 191 : (2015) 3 SLJ 154

Hon'ble Judges : Suresh Kait, J.

Bench : Single Bench

Advocate : S.K. Rungta, Senior Advocate and Prashant Singh, for the Appellant;
R.V. Sinha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—Vide the present petition, the petitioners seek direction thereby initiating the contempt proceedings for not complying with the directions as contained in common order/judgment dated 19.08.2014 passed by the Division Bench of this Court in W.P.(C) No.5111/2014, 5146/2014 and 5162/2014 as well as order dated 31.10.2014 passed in CM Appl. No.17593/2014 in W.P. (C) No.5111/2014 whereby further clarified the directions contained in para 13(v) of the said judgment and reiterated the directions to entertain/accept the applications of 100% blind category candidates and allowed them to participate in the recruitment test.

2. Initially, the petitioners had filed an OA before the Central Administrative Tribunal, Principal Bench, New Delhi, with a prayer to set aside and quash advertisement No.220-E/open mkt/RRC/2013 dated 30.12.2013 to the extent that it had excluded the 100% blind candidates from consideration for appointment to other posts except a post of Cook and accordingly, sought relief to declare that 100% blinds were eligible for consideration and appointment, if selected, to the posts advertised. The said OA was disposed of vide order dated 13.03.2014 by setting aside the advertisement to the extent it excluded the 100% blinds from consideration for appointment to other posts. Accordingly, the

respondents were directed to consider the 100% blinds also for appointment to other posts advertised. Consequently, the learned CAT directed the respondents to issue a corrigendum within fifteen days from the said date and well before the examination commences that 100% blinds and low vision candidates were also eligible to apply.

3. The respondents, being aggrieved, challenged the same before the Division Bench of this Court vide W.P.(C) No.5111/2014, 5146/2014 and 5162/2014. The said petitions were disposed of by a common judgment dated 19.08.2014 by directing as under:-

"13. In the light of the above discussion, the following directions are hereby issued:

i) The Tribunal's order to the extent which directs appointment of the applicants to the categories of Gateman, Lineman and Trackman pursuant to the advertisements in question in the present case is hereby set aside;

ii) The Chief Commissioner of Disabilities shall, after taking into account the notification dated 29.07.2013 and consulting the Northern Railways and considering the views of the other interested parties, furnish his report as to the equivalence of the posts which are the subject matter of the present case, and whether they are covered by the notification dated 29.07.2013 in respect of low vision and 100% blind category candidates. This report shall be furnished within eight weeks from today.

iii) The Northern Railways shall keep 1% of the entire vacancies notified pursuant to the advertisement dated 30.12.2013 unfilled till the aforesaid process is completed.

iv) The process of filling up the 1% reserved posts shall be completed pursuant to the report, after which the results in respect of those category of candidates would be declared and appropriate consequential orders of appointment etc. shall be undertaken. This direction will apply in W.P.(C.) Nos.5146/2014 and 5162/2014.

v) So far as the applicants in W.P.(C.) No.5111/2014 are concerned, since the recruitment process of the common test etc. have not yet been undertaken, the petitioner/Northern Railways is hereby directed to accept the applications of 100% blind category candidates and allow them to participate in the recruitment test. Their results, as well as those of the low vision category candidates, shall not be declared in the 1% reserved category under the Disabilities Act, and shall be subject to the final determination by the Chief Commissioner as directed by this Court.

vi) In case of candidates of low vision and blind category applying for and participating in any selection process and finding a place in the merit list (i.e. other than under reserved categories under the Disabilities Act or any other kind of reservation) , their results will be announced and the appointment process be

undertaken in accordance with the prevailing regulations and office memorandum.

vii) Subject to the above directions, result of candidates in respect of all other vacancies (except of the categories mentioned above) shall be declared."

4. Accordingly, the respondents were directed to complete the entire process of selection and recruitment within three months from the said date.

5. Pursuant to the aforesaid judgment, the National Federation of the Blind sought to submit 1113 application forms of 100% blind persons for recruitment in terms of advertisement No.220-E/Open Mkt/RRC/2013 dated 30.12.2013. However, the respondents received only a list of 1113 blind candidates without individual application forms.

6. Being again aggrieved, the petitioners filed contempt petition No.723/2014 and 725/2014 before this Court. The same was dismissed being misconceived.

7. Being aggrieved, the petitioners filed CM No.17593/2014 in W.P.(C) No.5111/2014 whereby sought to apply to the Railway Authorities for participating in the ongoing recruitment process on 01.09.2014 through a communication of National Federation of Blind. The Division Bench of this Court vide order dated 31.10.2014 disposed of the same and recorded as under :-

4. The previous portions of the aforesaid order - especially paragraphs 7 and 11 clarified that certain categories such as Gateman, Lineman and Trackman not having been identified, could not be subjected to reservation for candidates with vision impairment/blindness. At the same time, the Court directed that in respect of other categories, till the time assessment as to suitability to man a post is actually determined in a joint consultative mechanism, as directed, all those eligible to apply - including the 100% blind category candidates, ought to be permitted to do so.

5. The applicants' contentions are that despite their having applied, as 100% blind category candidates, in respect of the posts other than Gateman, Lineman and Trackman, the applications, when submitted, were not entertained. They approached the learned Single Judge complaining of contempt and disobedience of the directions of the Court. It is stated that the learned Single Judge by an order dated 27.10.2014 dropped the contempt proceedings (C.P. Nos.721/2014 and 723/2014) after forming the opinion that the directions in this regard were not clear. However, this order is stated to be not yet available.

6. This Court has reproduced the directions. The body of the order deals with both categories, i.e. 100% blind category candidates - whose applications were not accepted, as well as those with better vision but nevertheless deemed to be disabled under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The only caveat that the Court imposed was that in respect of the three posts, i.e. Gateman, Lineman and Trackman, candidates those with 100% blindness, or with vision impairment, were not

entitled to apply. However, in the absence of determination - either way, positively, or otherwise ? as to the suitability of candidates with low vision/100% blind to hold the other types of posts, this Court felt that applications and candidature of all others should be considered. It was in the light of this directions in paragraph 13(v) was issued.

7. In these circumstances, non-applicant Railway establishment and all other authorities involved in the ongoing recruitment process, scheduled to be held on 02.11.2014, are hereby directed to strictly comply with paragraph 13(v) of the aforesaid order and entertain/ accept the applications of 100% blind category candidates and allow them to participate in the recruitment test.

8. The Chief Commissioner of Disabilities shall coordinate with the Railway authorities in ensuring compliance with the present order to see that none of these candidates are excluded from participating in the ongoing recruitment process."

8. Mr. S.K.Rungta, learned senior counsel appearing on behalf of the petitioners, submitted that in view of the order dated 31.10.2014, the respondents were duty bound to accept the applications of 100% blind category candidates and allowed them to participate in the recruitment process. However, neither pursuant to order dated 13.03.2014 passed by CAT, the respondent had issued corrigendum to allow the 100% blind candidate to participate in the examination nor accepted the applications of 100% blind candidates pursuant to order dated 31.10.2014 and allowed them to participate.

9. Learned counsel further submits that after passing the order dated 31.10.2014, the National Federation of the Blind again submitted representation on 31.10.2014 itself to accept the application forms of 1113 100% blind candidates in terms of direction issued in para 7 of order dated 31.10.2014. The respondent Railway responded to the aforesaid representation as under:-

"1. Writ Petition No.5111/2014 was filed by the Railway Administration against the Tribunal Orders Dated: 13/3/2014 in OA No:467/2014 by two applicants named Smt. Tara Chauhan and Smt. Veebha. During adjudication of the case, the scrutiny of 20 Lakh applications including applications of 100% Blind Candidates in VH Category was also under process. Now, as on date after completion of this scrutiny of applications it can be ascertained that a total number of 2785 applications of VH Candidates including 785 applications of 100% Blind Candidates has been accepted by this office and Admit Card to all these Candidates has been issued/uploaded on the RRC Website. No application of the 100% Blind Candidates has been rejected or debarred on the basis of 100% disability. Even, both the applicants/Respondents in the above subjected case has been issued Admit Card for the said Examination, as they had applied along with other 100% Blind Candidates. Copy of Admit Card of both the applicants is also enclosed for your reference.

2. Regarding Orders dated: 31/10/2014 in CM No.17593/2014 in WP No:

5111/2014, it is informed that the Hon''ble High Court has been appraised on only one ground of interpretation as observed by Contempt Bench during the hearing in Contempt Petition No.723/14 and 725/14 and the other observations like locus standi to submit 1113 applications, afresh, of those who never applied (thereby meaning as to why applications of this particular section of 100% disabled candidates now represented by you despite not being party in the case) as against others who already applied should be considered was not placed before the court. It was also observed by contempt Bench that this way of submission of afresh application at the stage of issuance of admit card would not allow the Administration to complete the Recruitment process. However, this Order in Contempt Petition is yet to be received by this office. Moreover, the applicants contention as stated in Para 5 of Orders Dated: 31/10/2014 in CM No:17593/2014 that despite their having applied as 100% Blind Candidates were not entertained is not factually correct as both the applications along with all other 100% Blind Candidates (i.e. 785 in Number) has already been issued Admit Cards for the said Examination. Further, the Hon''ble High Court of Delhi at the time of hearing during CM No. 17593/14 has reproduced its directions rightly in true spirit limiting its scope to applicants only in Para 5 and by stating that Orders deals with both Categories, i.e., 100% Blind Candidates - whose applications were not accepted, as well as those with better version in Para 6 of the orders dt. 31/10/14. As the Railway Administration has already accepted the applications of 100% Blind Category Candidates along with Candidates with better Vision, as detailed above, there is full compliance of the Orders."

10. Mr. Rungta submitted that Hon''ble Division Bench, in para 2 of order dated 31.10.2014 noticed the communication dated 1st September, 2014 of National Federation of Blinds, whereby sought to submit 1113 application forms of 100% blind candidates and accordingly, again directed to entertain the applications.

11. Learned senior counsel further submitted that the respondent chose not to appear on 31.10.2014 when the clarification was ordered by the Division Bench and thereafter interpreted the said order in their own terms. If they had any grievance, they were to seek clarification from the Division Bench of this Court. However, they failed to do so.

12. Learned counsel further submitted that the issue before the CAT and before this Court was whether the exclusion of 100% visually handicapped was justified. The learned CAT allowed the OA filed by the petitioners and set aside the advertisement in question and directed the respondents to issue corrigendum. In the advertisement dated 30.12.2013, the 100% blind candidates were excluded for the posts mentioned therein except for one post of Cook. Thus, by the said advertisement, all the candidates who were 100% blind were not allowed to participate in the said examination.

13. Learned senior counsel submitted that inaction of the respondents had played with the career of 1113 candidates who are 100% blind. Some of them might have crossed the age limit, thus, has caused irreparable loss to such

candidates. In this manner, the respondents while not complying the directions passed by this Court, have committed contempt of this Court. Accordingly, they may be punished as per law.

14. On the other hand, Mr. R.V.Sinha, learned counsel appearing on behalf of the respondents, submitted that this Court passed the following order on 27.10.2014 in Cont. Cas(C) No.723/2014 and 725/2014:-

"5. The learned counsel for the respondents has already made a statement that so far as the candidature and the applications of the present petitioners, who are three in number is concerned, that will be accepted and they will be permitted to take the examination. Since the second interpretation is also possible which has been favourably accepted by the respondents, I feel that an order, which is open to two different interpretations, cannot be made as a basis for disobedience of an order by the respondents much less it can be said to be wilful.

6. In view of the above, I feel that the present contempt petitions are totally misconceived and the same are not maintainable. Accordingly, the petitions are dismissed. However, the respondents shall be bound by the statement which has been made by them permitting the petitioners to take the examination after acceptance of their applications."

15. Accordingly, the contempt filed by the petitioners was dismissed being misconceived. Learned counsel further submitted that the respondent/department is following the Supreme Court judgment for reservation to handicap persons by reserving 3% vacancy for PWD categories and out of this, 1% vacancies are reserved for VH categories. However, the applicants and other blind candidates who had applied for posts, were 785 in numbers out of 2785 VH category candidates, and have been allowed to appear in the written examination held between 02.11.2014 to 30.11.2014. Thus, the process of written examination is already over by now.

16. Learned counsel further submitted that the claim of the petitioners that the respondents did not accept the applications for blinds through their apex organizations are misconceived and misleading in view of the fact stated above. Even otherwise, the applications leading to the writ petitions under reference order, which is stated to have been violated, pertains to the individual applicants aggrieved in the application. The said application was not in representative capacity which entitled the Association to take benefit of the orders passed by the Division Bench of this Court. The cut-off date, i.e., the last date of the submission of the application was 10.02.2014, however, this Court vide order dated 19.08.2014 did not pass the orders in the writ petition, in specific terms and directed that the fresh application forms of blind candidates be considered after the cut off date. Moreover, the respondents had never debarred any blind candidate from applying for the posts as identified for 100% blinds.

17. Learned counsel further submitted that even the order passed in CM No.17593/2014 in W.P.(C) No.5111/2014, this Court has not extended the cut-off

date in the advertisement and directed the respondents to accept the fresh applications or otherwise for those who had not applied within cut off date. The respondents were duty bound to accept the application as contained in para 13(v) , as directed by this Court vide order dated 19.08.2014, which have been accepted.

18. Learned counsel submitted that the respondents have not committed any contempt, accordingly the present petition may be dismissed.

19. I have heard learned counsel for the parties.

20. Initially, the petitioners had filed OA before the Central Administrative Tribunal, Principal Bench, New Delhi, with a prayer to set aside and quash advertisement No.220-E/open mkt/RRC/2013 dated 30.12.2013 to the extent that it had excluded the 100% blind candidates from consideration for appointment to other posts, except a post of Cook. The said OA was disposed of vide order dated 13.03.2014 by setting aside the advertisement to the extent it excluded the 100% blinds from consideration for appointment to other posts. Accordingly, the respondents were directed to consider the 100% blinds also for appointment to other posts advertised. Consequently, the learned CAT directed the respondents to issue a corrigendum that 100% blinds and low vision candidates were also eligible to apply.

21. The respondents, being aggrieved, challenged the same vide W.P.(C) Nos.5111/2014, 5146/2014 and 5162/2014. The said petitions were disposed of by a common judgment dated 19.08.2014 and directed in para 13 (v) as under:-

" So far as the applicants in W.P.(C.) No.5111/2014 are concerned, since the recruitment process of the common test etc. have not yet been undertaken, the petitioner/Northern Railways is hereby directed to accept the applications of 100% blind category candidates and allow them to participate in the recruitment test. Their results, as well as those of the low vision category candidates, shall not be declared in the 1% reserved category under the Disabilities Act, and shall be subject to the final determination by the Chief Commissioner as directed by this Court."

22. Pursuant to the aforesaid judgment, the National Federation of the Blinds sought to submit 1113 application forms of 100% blind persons for recruitment in terms of advertisement No.220-E/Open Mkt/RRC/2013 dated 30.12.2013. However, the said applications were not accepted by the respondents.

23. The petitioners, being aggrieved, filed contempt petition No.723/2014 and 725/2014. The same were dismissed being misconceived.

24. Being aggrieved again, the petitioners filed CM No.17593/2014 in W.P.(C) No.5111/2014 whereby sought to apply to the Railway Authorities for participating in the ongoing recruitment process. The Division Bench of this Court vide order dated 31.10.2014 disposed of the same and passed directions in para 7 and 8 as under :-

"7. In these circumstances, non-applicant Railway establishment and all other authorities involved in the ongoing recruitment process, scheduled to be held on 02.11.2014, are hereby directed to strictly comply with paragraph 13(v) of the aforesaid order and entertain/ accept the applications of 100% blind category candidates and allow them to participate in the recruitment test.

8. The Chief Commissioner of Disabilities shall coordinate with the Railway authorities in ensuring compliance with the present order to see that none of these candidates are excluded from participating in the ongoing recruitment process."

25. Accordingly, the National Federation of the Blind again submitted representation on 31.10.2014 itself to accept the application forms of 1113 of 100% blind candidate in terms of direction issued in para 7 of order dated 31.10.2014 passed in CM No.17593/2014 in W.P.(C) No.5111/2014. However, the respondents Railway did not accept the same.

26. It is pertinent to mention here that pursuant to the advertisement dated 30.12.2013 the respondents have considered and allowed to participate in the examination all the visually handicapped including 100% blind candidates who applied before the cut-off dates but has not allowed the 1113 other 100% blind candidates whose applications were submitted by National Confederation for Blind.

27. I note, vide order dated 19.08.2014 in para 13(v) , as noted above, this Court had directed to accept the applications of 100% blind category candidates and allowed them to participate in the recruitment test.

28. In order dated 31.10.2014 passed in CM No.17593/2014 in W.P.(C) No.5111/2014, the Division Bench has not directed the respondents to accept the applications of 1113 100% blind candidates whose applications were sought to be submitted by the National Federation for Blinds. Moreover, the National Federation for Blinds was not a party either before the Central Administrative Tribunal or before this Court. It is not in dispute that 100% blind candidates who applied pursuant to the advertisement dated 30.12.2013 were not allowed to participate in the examination conducted by the respondents. The cut off date, i.e., the last date of submission of the applications was 10.02.2014. Vide order dated 19.08.2014 and 31.10.2014 this Court has neither passed any order in specific terms and directed that fresh application forms of blind candidates would be considered after the cut-off date nor this Court has extended the cut-off date as mentioned in the advertisement.

29. It is pertinent to note that vide order dated 13.03.2014, the learned Central Administrative Tribunal directed the respondents to issue a corrigendum and allow the 100% blind candidates to participate in the examination. The said order has been merged in the order dated 19.08.2014 and 31.10.2014.

30. In view of the above discussion, I am of the considered opinion that the

respondents have not committed any contempt of the orders, mentioned above, passed by this Court. Accordingly, I am not inclined to pass any order against the respondents.

31. Accordingly, the present petition is dismissed with no order as to costs.

32. Consequently, the contempt notices issued against the respondents are discharged.