
(2019) 10 DEL CK 0423

In the Delhi High Court

Case No : Civil Writ Petition No. 11238 Of 2019

Union Of India & Ors.

APPELLANT

Vs

Sameer Dikshit, Irsse & Ors.

RESPONDENT

Date of Decision : 22-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 10 DEL CK 0423

Hon'ble Judges : G.S.Sistani, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : R.V. Sinha, A.S. Singh, Amit Sinha, Vaibhav Pratap Singh, Dr. K.S. Chauhan, Ajit Kumar Ekka, Murari Lal, R.S.M. Kalky

Final Decision : Dismissed

Judgement

G.S. Sistani, J

CAV.PET.1057/2019

1. Learned counsel enters appearance on behalf of the caveators.

2. The caveat petition is accordingly disposed of.

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3. With the consent of the parties, the present writ petition is set down for final hearing and disposal.

4. The petitioners are aggrieved by order dated 26.08.2019 passed by the Central Administrative Tribunal (the 'Tribunal') in OA. No.1158/2019.

5. Brief facts which are required to be noticed for the disposal of this petition are that respondent No.1 is an officer of the Indian Railway Service of Signal Engineers of the 1986 batch. Respondent No.1 filed an OA before the Tribunal seeking a direction to the petitioners to be posted as Divisional Railway Manager (DRM). At the time of filing of the OA, respondent No.1 was working as Chief

Workshop Manager, Signals Workshop, Ghaziabad. Admittedly, respondent No.1 became eligible to be considered for being included in the panel for appointment as DRM in the year 2016-17. It is also an admitted fact that he was not empanelled since two charge memos dated 16.03.2012 and 08.09.2015 were pending against him.

6. By an order dated 11.01.2016, punishment of stoppage of two increments was imposed upon respondent No.1 in the first charge memo; while in the second charge memo, a minor penalty of 'censure' was imposed. An appeal was filed by respondent No.1 against the order of punishment; and while the appeal was pending, respondent No.1 also made a representation dated 01.10.2017 requesting that he be considered for being included in the panel for posting as DRM. Having received no response, OA No.1124/2018 was filed by respondent No.1 before the Tribunal. This OA was disposed of by order dated 16.03.2018, with a direction to the petitioners herein to decide the representation of respondent No.1.

7. The representation of respondent No.1 was rejected by a speaking order on 09.08.2018 on the ground that in view of the penalty having been imposed, he could not be considered for empanelment. Order dated 09.08.2018 was challenged by respondent No.1 by filing OA No.432/2019. By the time this OA filed by respondent No.1 was taken-up for hearing, both penalties imposed against respondent No.1 were set-aside in the appeal preferred by him and respondent No.1 stood exonerated. Resultantly, in its order dated 04.02.2019, the Tribunal took the view that once the disciplinary proceedings initiated against respondent No.1 resulted in his being exonerated, he could not be treated as ineligible. Accordingly, order dated 09.08.2018 passed by the petitioners herein was set-aside and the petitioners were directed to pass fresh orders for respondent No.1 being included in the panel, taking into account the subsequent developments.

8. Thereafter, the petitioners' passed order dated 22.03.2019, reiterating their earlier stand. Respondent No.1 was forced to file another OA being OA No.1158/2019; and while admitting the O.A., an interim order dated 10.04.2019 was passed by the Tribunal directing that one post of DRM shall be kept vacant. Since this interim order dated 10.04.2019 was violated by the petitioners, a contempt petition was also filed by respondent No.1. By an order dated 26.08.2019 the Tribunal allowed the OA. No.1158/2019, which has led to the filing of the present writ petition.

9. Mr. Sinha, learned counsel for the petitioners submits that the order of the Tribunal is bad in law; the Tribunal has exceeded its jurisdiction and has failed to take note of the fact that at the relevant time, respondent No.1 was not eligible for empanelment. Mr. Sinha has placed reliance on the policy "Guidelines for Shortlisting and Posting of Divisional Railway Managers (DRMs) in the Indian Railways" dated 16.08.2016. Reliance is placed on paras 5, 10 and 12 of the Guidelines, which we reproduce below:

"5. Officers being considered for short listing as DRMs should be less than 52 years of age as on 1st July of the year for which the short list is being made. A short listed officer can be posted as DRM within the period of currency of the short list, even if at the point of his actual posting as DRM, he has crossed the age of 52 years. Once short listed for a particular year, officers will be posted to vacancies earmarked for their Service arising in that year, strictly in the order of their seniority in their respective cadre.

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"10. At the time of inclusion in the Short List as well as at the time of actual posting as DRM, officers should be clear from Vigilance angle. Since the post of DRMs are sensitive posts, officers who are not clear from vigilance angle will not be considered for short-listing and posting as DRM.

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"12. Only such officers who fulfill all the above mentioned eligibility conditions as on 1st of July of the year in which the Short List is prepared shall be considered for posting as DRM. Once the Short List has been prepared and approved by the competent authority, no officers shall be considered for short listing/posting as DRM even if he happens to fulfill the eligibility conditions at a later point of time."

10. Relying on para 5 of the said Guidelines, Mr. Sinha has contended that respondent No.1 is now beyond 52 years of age and hence cannot be considered. While relying on para 10, the learned counsel submits that since respondent No.1 was not cleared from the vigilance angle, he was correctly overlooked; and while relying on para 12 of the Guidelines, learned counsel submits that respondent No.1 did not fulfil the eligibility conditions and thus, he was rightly overlooked; and further that there is no provision for review of such decision.

11. Learned counsel for respondent No.1 however submits that there is no infirmity or illegality in the order passed by the Tribunal which would require interference in the present proceedings under Article 226 of the Constitution of India. He submits that there is no doubt that at the relevant point of time, two charge sheets were pending against respondent No.1 and accordingly he was overlooked. However, it is contended that once he was exonerated, respondent No.1 had to be reverted back to the original date of consideration, as he cannot be faulted for the illegal action initiated against him, which is evident from the fact that he stands exonerated. Learned counsel for respondent No.1 submits that paras 5, 10 and 12 of the Guidelines sought to be relied upon by the learned counsel for the petitioners have no bearing on the facts of the present case. Learned counsel submits that one post of DRM was kept vacant by an interim order passed by the Tribunal for this very purpose; and it is not a case wherein a fresh recruitment is to be made; nor would the age factor come into play. Learned counsel for respondent No.1 submits that since he was exonerated, he cannot be denied the relief which has been granted by the Tribunal.

12. We have heard the learned counsels for the parties and considered their rival submissions.

13. We have detailed the facts in the foregoing paragraphs since these facts are not in dispute. The Tribunal has opined that once respondent No.1 stood exonerated in both charge sheets and the minor penalties imposed were set aside, there is no reason why respondent No.1 should not be relegated to the original position or that he be deprived of being posted as DRM.

14. Admittedly, the only reason why respondent No.1 was overlooked at the relevant time was that he was not cleared from the vigilance angle since two charges were pending against him. Subsequently, he was awarded punishment; however, later-on it transpires, that respondent No.1 was exonerated and thus, he cannot be deprived of being posted as DRM. On basic considerations of fairness and justice, respondent No.1 cannot be faulted for the pendency of the charge sheets against him at the relevant time, since ultimately all charges against him stand rejected in the appeal filed by him.

15. In this view of the matter, we find no infirmity or illegality in the order passed by the Tribunal which would require interference by this Court in exercise of its extraordinary powers under Article 226 of the Constitution. The writ petition is accordingly dismissed.

16. Since respondent No.1 has been forced to file three OAs and one contempt petition, we impose cost of Rs.7,500/- upon the petitioners to be paid to respondent no.1 within four weeks.

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17. In view of the order passed in the writ petition, the application also stands dismissed.