

(2011) 09 PAT CK 0169

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3152 of 2005

Union of India (UOI)

APPELLANT

Vs

Rajesh Kumar and Others

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Citation : (2011) 09 PAT CK 0169

Final Decision : Dismissed

Judgement

Shiva Kirti Singh and Shivaji Pandey, JJ.—Heard the parties.

2. This writ petition has been preferred by the Union of India through the General Manager, North East Railways against the judgment and order dated 1st November 2004 passed by the Central Administrative Tribunal, Patna Bench, Patna in Review Application Case No. 45 of 2002 (arising out of O.A. No. 259 of 1998) and another analogous Review Application No. 86 of 2000 (arising out of O.A. No. 259 of 1998). By the impugned order, contained in Annexure-1, the Tribunal has dismissed the review application filed by the Petitioner and also the review Application No. 86 of 2000 filed by some of the aggrieved railway employees.

3. This writ petition primarily raises an important issue of law as to the interpretation and effect of Rules 302 and 303 of the Railway Establishment Manual regulating seniority of non-gazetted Railway servants. Some ancillary issues of law have been raised on behalf of private Respondents to question the maintainability of the application. The first issue is that the review application was filed beyond time prescribed by Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter, in short, referred to as the "Rules") and the other issue is that a writ petition preferred by the Petitioner against the judgment and order dated 23rd October 2000 bearing C.W.J.C. No. 4105 of 2002 was dismissed by this Court on 8th May 2002 along with one review petition bearing No. 12 of 2002 and hence, the Tribunal has rightly held that it has no scope to go into the merits of the matter.

4. The order dated 23rd October 2000 whereby O.A. No. 259 of 1998 preferred by the Respondents before the Tribunal was allowed is Annexure-2 and it discloses that the applicant/respondent herein joined as Fireman(A) on different dates between March 1989 to January 1993. The letter of appointment of one of the applicants dated 24th February 1998 which is Annexured-7 is said to be similar to the appointment letters of other applicants. Clause 2 & 3 of the appointment letter is to the effect that appointment is only as an apprentice/trainee (temporary appointee), and the trainee will be appointed to the working post after successful completion of training and the temporary service period will commence from the date of such appointment. As per Clause 3, the period of training as an apprentice/trainee will be of 2 years and only on successful completion of training, the temporary appointee will be offered temporary appointment in a regular post in the Railways in the scale of Rs. 950-1,500/-. Para-1 of the appointment letter shows that the initial temporary appointment was in the post of trainee/apprentice Fireman(A) at stipend of Rs. 900-20-920/- per month in the scale of Rs. 950-1,500/- plus usual dearness allowance during the training period.

5. Since the Respondents/applicants passed the training and joined the post of Fireman(A), they claimed before the Tribunal that their seniority should be fixed in the cadre of Fireman(A)/Diesel Assistant (an equivalent post) on the basis of period of training as trainee Fireman. Such claim for counting their period of apprenticeship towards regular service for the purpose of seniority was allowed by the Tribunal on 23rd October 2000 by following the views expressed in the order of Jaipur Bench of the Tribunal dated 18th December 1996 passed in O.A. No. 188 of 1991 and also on the basis of the Supreme Court judgment in the case of M.P. Pradhan Vs. Union of India and others,

6. Against the aforesaid order of the Tribunal dated 23rd October, 2000 the Petitioners preferred a writ petition before this Court bearing C.W.J.C. No. 5773 of 2001. The same was dismissed summarily by order dated 2nd May 2001(Annexure-4). From Annexure-4 it appears that this Court did not go into the merits of the matter and dismissed the writ petition by appreciating that the Tribunal was adopting a consistent approach by following the views of the Jaipur Bench and the judgment of the Supreme Court in the case of M.P. Padhan (supra). Thereafter by an order dated 21st November 2002, contained in Annexure-5, the Jaipur Bench of the Tribunal allowed the review Application No. 7 of 1997 and reversed its earlier view. On considering the provisions in Rules 302 and 303 of the Railway Establishment Manual, it was held by the Jaipur Bench that the Rules did not permit counting the training period for the purpose of seniority. The Jaipur Bench made a distinction between the post of trainee/apprentice and the working post to which a trainee would be entitled to join only after successful completion of the training.

7. Learned Counsel for the Appellant submitted that since the views of the Patna Bench of the Tribunal was dependent upon the views of the Jaipur Bench which

was reversed subsequently, the Petitioners rightly filed a review petition before this Court bearing Civil Review No. 12 of 2002 for review of the order dated 2nd May 2001, contained in Annexure-4. According to him, the said review petition and another writ petition bearing C.W.J.C. No. 4105 of 2002 relating to the same controversy were heard by a Division Bench of this Court and by order dated 8th May 2002 (Annexure-6), the Division Bench rightly granted liberty to the Petitioners to pursue review application before the Tribunal. However, by the impugned order, as noticed earlier, the Tribunal refused to examine the matter on merits in view of dismissal of the writ petition on 2nd May 2001 and on account of no relief granted by the Court in Civil Review No. 12 of 2002. According to the learned Counsel for the Petitioners, the Tribunal should have allowed the Review Application No. 45 of 2002 because of liberty granted by this Court, vided order dated 8th May 2002 and should have followed the subsequent judgment and views of the Jaipur Bench of the Tribunal, in stead of maintaining the earlier order based upon the earlier view of the Jaipur Bench.

8. On merits, the learned Counsel for the Petitioners placed reliance upon Rules 302 and 303 of the Railway Establishment Manual and pointed out that a bare reading of those rules makes it obvious that the criterion for determination of seniority in the case of promotee is the date of regular promotion after due process and in case of direct recruit, the date of joining the working post. The note to Rule 302 was highlighted for the purpose that it mentions that the date of joining the working post in case of a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training. He also placed reliance upon the judgment of the Apex Court in the case of Kuttiyappan Vs. Union of India (UOI) and Others, Paragraph 3 of that judgment contains extract of Rule 302 and in Paragraph-4 it has been clarified that in the case of promotee candidates, the seniority starts from the date of joining the working post after completion of the process and in case of direct recruit, their enter se seniority will start from the date of their entry into the grade. However, it may be noted that in this case the facts were different inasmuch as the Petitioners in that case were the promotees whose process of selection was started earlier, but before they could join the promotional post after training, the direct recruits joined the working post earlier. Thus, the context in which that judgment was rendered was different.

9. Before proceeding further with the merits of the controversy and the main issue, it appears necessary to notice the submissions advanced on behalf of Respondents. One of the arguments is based upon the limitation as provided under Rule-17 of the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter, in short, referred to as the "Rules"). The Rules provide that no application for review shall be entertained unless it is filed within 30 days from the date or receipt of copy of the order sought to be reviewed. It is not in dispute that the review application preferred by the Petitioners in the year 2002 against the judgment and order of the Tribunal dated 23rd October 2000 was much beyond the period of limitation prescribed under Rule 17 of the Rules, no

application for condonation of delay in preferring the application was filed by the Petitioners and an objection was taken on behalf of Respondents on the ground of limitation, as is apparent from Paragraph-7 of the impugned order. The Tribunal, however, did not discuss the issue of limitation and proceeded to consider the review application on various other considerations. Learned Counsel for the Respondents has submitted that in absence of any application for condonation of limitation, the Tribunal was required to dismiss the review application on limitation itself and, therefore, this Court should not go into the merits of the matter, because the review application was bound to be dismissed on the ground of limitation itself.

10. Limitation prescribed under the Rules, in our view, binds the Tribunal and it was obligatory on the part of the Tribunal to consider the objection once it was raised on behalf of Respondents, as noticed above. Being a creation of Statutes, the Tribunal could not have ignored the statutory rules and since there was no application for condonation, it could not have considered the review application on merits or other grounds because the review application being barred by limitation had to be dismissed as such.

11. In that view of the matter, we find no option but to dismiss this writ petition because it is not possible to grant relief on the basis of a review application which was barred by limitation and on which the Tribunal itself could not have granted any relief.

12. Before parting with the matter, we would like to indicate that the issue raised on behalf of Petitioners on the basis of Rules 302 and 303 of the Railway Establishment Manual requires deeper consideration in an appropriate case on account of subsequent view of Jaipur Bench of the Tribunal which appears to be consistent with the provisions of the Rules. However, we refrain from expressing a final view in the matter on account of plea of limitation as decided above.

As a result, the writ petition is dismissed. No costs.