

Union of India and ors Vs. Braj Mohan

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Court : Delhi

Decided On : Nov-26-2012

Judge : D.Murugesan,Chief Justice

Appellant : Union of India and ors

Respondent : Braj Mohan

Advocate for Def. : Mr. Ravi Prakash, Mr. Avni Singh

Advocate for Pet/Ap. : Mr. R.V. Sinha, Mr. R.N. Sinha

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

26. h November, 2012 % + LPA 765/2012 UNION OF INDIA & ORS Through: Appellants Mr. R.V. Sinha & Mr. R.N. Sinha, Advs. versus BRAJ MOHAN Through: Respondent Mr. Ravi Prakash & Mr. Avni Singh, Advs. CORAM :HONBLE THE CHIEF JUSTICE HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW D. MURUGESAN, CHIEF JUSTICE. Caveat No.1180/2012 1. The counsel for the caveator / respondent has appeared, the caveat stands discharged. LPA 765/2012 2. This intra-court appeal impugns the order dated 15th October, 2012 of the learned Single Judge, allowing W.P.(C) No.559/2012 preferred by the respondent by directing the appellants to again put up the recommendation made by the Selection Committee for appointment of the respondent as Member (Technical) of the Railway Claims Tribunal (RCT), before the Appointments Committee of the

Cabinet (ACC) and directing the ACC to consider the said recommendation, ignoring the Office Memorandum dated 8th May, 1992. We have with consent, heard the appeal finally.

3. The respondent had in pursuance to the Vacancy Notice dated 11 th November, 2010 applied for the post of Member (Technical) of the RCT claiming to fulfill the eligibility conditions therefor as laid down in Section 5(4) of the Railway Claims Tribunal Act, 1987 which is as under:5. Qualifications for appointment as Chairman, ViceChairman 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 ViceChairman.

(2) A person shall not be qualified for appointment as the ViceChairman 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 or any higher post for at lest 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 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 that 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.

4. A Selection Committee was constituted for the aforesaid purpose which found the respondent eligible and in its recommendations dated 16 th July, 2011, included name of the respondent. The respondent however, on attaining the age of superannuation, retired from the last post of Additional Member, Commercial (Railway Board) held by him, on 31st July, 2011 i.e. before the recommendations of the Selection Committee could be considered by the ACC. The ACC did not consider the case of the appellant for appointment on the basis of the Office Memorandum dated 8 th May, 1992 issued by the Department of Personnel and Training (DOPT) which reads as under: New Delhi, the 8th May, 1992 OFFICE MEMORANDUM Subject: Appointments of officers to various statutory Commissions, Tribunals, quasi-judicial bodies etc. under the Central Government. The undersigned is directed to refer to the subject mentioned above and to say that the Prime Minister while considering a proposal in the Appointments Committee of the Cabinet has directed that the following principles should be observed while making appointments to various statutory commissions, tribunals, quasi-judicial bodies and other similar organizations under the Central Government: (i) No retired Government official should be appointed. (ii) A person to be appointed to any post in these bodies should have a maximum tenure of 5 years in all the posts to be held in a particular organization or the person attaining the age of 60 years, whichever is earlier.

2. The Prime Minister has also ordered that the appointments to be made to these should be on the basis of the criteria as indicated above and all the existing statutes and rules should be amended to conform to these principles.

3. All Ministries / Departments are requested to take note of the above directives of the Prime Minister while sending proposals for the approval of the A.C.C.

Receipt of this communication may please be acknowledged.

5. It may be noticed that the retirement age prescribed under Section 7 of the Act for a Member (Technical) of RCT is of 62 years which the respondent will attain on 27th July, 2013. We had at the outset enquired from the counsel for the respondent as to what purpose the appointment, even if any, of the respondent for a short duration of barely eight months would achieve. The counsel for the respondent contended, that had the respondent been considered and appointed in pursuance to the recommendation, he would have enjoyed a tenure of two years as Member of the RCT and ought not to be deprived of the said post.

6. The learned Single Judge has, as aforesaid allowed the writ petition observing that the Office Memorandum aforesaid was contrary to the eligibility conditions laid down in the statute aforesaid; accordingly the Office Memorandum dated 8th May, 1992 has been quashed and the decision of the ACC on the basis thereof has been set aside. Though the appellants before the learned Single Judge cited The Joint Action Committee of Airlines Pilots Associations of India Vs. The Director General of Civil Aviation (2011) 5 SCC 43. but the learned Single Judge held the same to be not applicable as there were no gaping holes in the statute and the Office Memorandum supra sought to make the respondent, who otherwise fulfilled the statutory eligibility conditions, ineligible.

7. The counsel for the appellants has raised the same argument before us which did not find favour before the learned Single Judge.

8. Though the learned Single Judge has not mentioned but we find that the vacancy notice in response where to the respondent had applied, also under the column Age, provided as under: In the event of selection, the officer to be appointed should not have retired at the time of offer of appointment. Similarly under the column Term of Appointment it provided: By voluntary retirement from Railway service in the event of selection, the selected candidate will have to join RCT within one month of issue of offer of appointment by seeking waiver of three months notice period applicable for voluntary retirement from Railway service.

9. The Vacancy Notice on which the respondent had acted thus left no doubt that applicant had to be in the service of the Railways at the time of offer of appointment and was for the purpose of joining the post required to seek voluntary retirement from the Railway service. It was further clarified that if applicant, at the time of offer of appointment, had already retired, he would not be selected.

10. The respondent thus, at the time of applying, knew very well the date of his retirement and applied with the knowledge that he would not be selected if had already retired by the time the selections were made. We on this account alone, are of the opinion that the impugned order cannot be sustained.

11. We are even otherwise of the opinion that conditions aforesaid in the Vacancy Notice cannot be said to be contradictory to the statutory eligibility conditions. In this regard it may be noticed that the legislature in Section 5 supra, wherever wanted to make those who had already retired eligible for appointment, as in the case of Chairman, Vice Chairman and Judicial Member, under Section 5(1),(2)&(3), expressly provided so. However the language in Sub Section (4) is distinct from that of the earlier Sub Sections. We are even otherwise of the view that the ACC can always, even in the absence of the Office Memorandum supra, choose not to select a candidate who has a short tenure and who owing whereto will not be in a position to contribute substantially to the functioning of the RCT.

12. We accordingly allow this appeal by setting aside the judgment of the learned Single Judge. However in the circumstances, no costs. CHIEF JUSTICE RAJIV SAHAI ENDLAW, J NOVEMBER 26 2012 pp..

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