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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 2696/1999
MA 2827/2000

New Delhi this the 15th day of November, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri V.K. Majotra, Member (A)

Shri Jitender Kumar S/O Sh. Suresh Prasad,
S/O J-183, Jaipur, Near Badarpur and Arpar
Vihar, New Delhi-110044

.. Applicant

(By Advocate Shri Yogesh Sharma)

Versus

1. Union of India through the General Manager,
Northern Railway Baroda House, N/Delhi.

2. The Divisional Railway Manager,
Northern Railway, Delhi Division,
Near New Delhi Railway Station, N/Delhi.

3. The Chief Divisional Medical Officer,
Railway Central Hospital, Near New
Delhi Railway Hospital, New Delhi.

.. Respondents

(By Advocate Mrs. Meera Chhibber)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The main ~~claim~~ of the applicant in the present
O.A. is for a direction to the respondents to appoint him as a
Safaiwala as an OBC candidate.

2. The brief relevant facts of the case are that the
applicant applied for the post of Safaiwala against the adver-
tisement issued by the respondents in 1996. He was called for
held
interview/oral test by the respondents by their letter dated
30.1.1997 on 19.2.1997. Thereafter, the Selection Committee
recommended the names of 439 candidates who had appeared before
the
them for viva-voce/interview. Out of 439 candidates, 399 were
also
allotted the Delhi Division. The applicant's name was/sponsored

for the Delhi Division, His name appears at Serial No. 323 in the panel of selected candidates (Annexure A-1). The candidates were required to make their applications on the prescribed format, as called for from the open market.

3. In the application submitted by the applicant, Shri Yogesh Sharma, learned counsel has very vehemently submitted that the applicant did not indicate any caste against Column 7.
 mark
 He has submitted that tick(✓) indicated in the application form has not been done by the applicant but by the officials
 mark
 of the respondents. This tick/has been done against the ST in Column 7 which also included OBC and SC. ~~etc.~~ He has submitted that in the State of Bihar to which the applicant belongs Mandal Community could be either an OBC or ST community. A select panel was issued by the respondents in April, 1997 wherein applicant's name has been shown as ST at Serial No. 323. The applicant had a made/representation to the respondents. Finally, he has obtained the OBC certificate on 10.6.1997(Ann.A.5) from the concerned authority on which he relies upon. Learned counsel has submitted that there is an obvious mistake by the respondents on which they cannot take advantage, as the applicant is an OBC candidate and not ST candidate as wrongly indicated in the select panel issued by the respondents in April, 1997.

4. One of the other main grounds taken by the applicant is that in an identical situation, by mistake the name of one Shri Gulam Mandal whose name appears at Serial No. 420 in the select panel had been mentioned as ^a ST candidate instead of an OBC candidate. According to the applicant, the respondents

have rectified the mistake with regard to the person whose name appeared at Serial No.420 regarding his caste category. At the time of hearing, Shri Yogesh Sharma, learned counsel has also categorically mentioned that whatever he is stating before the Court are/instructions from the applicant. ~~However~~, The applicant is also present in Court and has been identified by Shri Yogesh learned counsel.

Sharma. He, however, denies that any such instructions had been given to Shri Yogesh Sharma, learned counsel. He states that these instructions have been given in respect of Sh. Vijay Bahadur whose name appears at Serial No.402 in the panel as SC candidate. In view of the clear pleadings in Paragraph 5(d), the submissions made by the applicant cannot be accepted as it appears to be/after-thought.

~~as~~ He had verified and signed the pleadings, in which in Paragraph 5(d) reference has been made to Shri Gulam Mandal, whose name appears at Serial No.420 in the select panel issued by the so-called respondents in the/identical situation which has been rectified.

In the reply given by the respondents to this averment, they have stated as follows:-

"The contention of the applicant is wrong and denied. No mistake has been done in the panel by mentioning his name as ST candidate. Sh. Dulal Mandal S/O Shri Babu Mandal whose name due to typographical mistake in the panel at Sl.No.420 was mentioned as Gulam Mandal is very much a ST candidate and he has submitted ST certificate in this regard thus the averment is wrong. He has been appointed as ST candidate."

After hearing the learned counsel for the parties, we are

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satisfied that the applicant's above contention cannot be accepted. In the rejoinder to the aforesaid averments made by the respondents in their counter affidavit he has made a general denial to Paragraphs 5(a) to 5(e) of the reply and reiterated his contention that he should not be mentioned as a ST candidate in the application form.

6. After careful consideration of the pleadings and the submissions made by Shri Yogesh Sharma, learned counsel for the applicant, we find no merit in this application. In the proforma application, admittedly submitted by the applicant placed at Annexure R-1, there is a declaration which he is required to sign before it, English translation of which reads as under:-

" I hereby declare that the particulars given by me in the application form are true, complete and correct as per my information and belief. If in the information given by me, if anything is found to be wrong and false my candidature can be cancelled without any information."

In view of the above provision, the contention of the applicant that as he had not indicated any caste in Column 7 in the application form, but it is still valid appears to be untenable and therefore, cannot be sustained. In this contention, Sh. Yogesh Sharma, learned counsel has submitted that MA 2827/2000 may be allowed and the records may be called to verify the position that the tick mark indicated against Col. 7 against ST has not been done by the applicant but by the concerned official. This

will not assist the applicant because as per his own admission he has submitted an incomplete form which, therefore, shows that the respondents can cancel his candidature. In the circumstances, the applicant's plea to call for the records is rejected.

7. Mrs. Meera Chhibber, learned counsel for the respondents has submitted a copy of the application form of Sh. Dular Mandal (wrongly mentioned as Gulam Mandal) whose name appeared in the select panel at Serial No. 420. Taking into account the reply given by the respondents in Paragraph 5(d), the correction of the typographical mistake in the name of this candidate establishes that the contention of the applicant that it was in identical situation cannot be accepted. Further as noted above, learned counsel for the applicant has submitted that Shri Gulam Mandal and the applicant are residing in the same village in the State of Bihar which again has been found to be incorrect as seen from the copy of the application form of Shri Gulam Mandal (Copy placed on record). In that application Shri Gulam Mandal states that he belongs to the district of Malda, West Bengal. Therefore, the relevant facts related by the applicant regarding this candidate are entirely dissimilar and the applicant cannot rely on the correction of the typographical mistake in the name of the other candidate as the basis of the claim in this O.A.

8. The explanation given by the learned counsel for the applicant as to why the applicant had not submitted his OBC

certificate well in time or he had left Col.7 blank, is not at all sufficient to condone the lapses and delay which have incurred in this case, when the panel was issued in April, 1997.

Apart from that, there is also no merit in this application, and the O.A. is liable to be dismissed.

9. From the above discussion, it will be seen that the learned counsel for the applicant has misled the Tribunal, perhaps on wrong instructions from the applicant who has now also personally attempted to contradict the information given by him in the OA. In the circumstances on this ground alone, namely, that the applicant has misused the process of law, the OA is liable to be dismissed with costs. However, considering the fact that the applicant belongs to the weaker section of the community and is unemployed, the OA is dismissed on merits but as a special case without any costs, which has been explained to him in Hindi. Shri Yogesh Sharma, learned counsel has tendered an unconditional apology and has submitted that the averments made in the OA have been made in accordance with the instructions received from the applicant at the relevant time of filing the OA.

10. In the result, the OA fails and is dismissed. Parties to bear their own costs.

V.K.Majotra
(V.K.Majotra)

Member (A)

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)

Member(J)

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