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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No.1967 /1998 Date of Decision: 26- 5 -1998

Shri Anand Pal Singh .. APPLICANT
(By Advocate Shri G.D. Bhandari)

versus

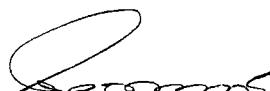
Union of India & Ors. .. RESPONDENTS
(By Advocate Shri R.L. Dhawan and H.K. Gangwani)

CORAM:

THE HON'BLE SHRI T.N. BHAT, Member (J)

THE HON'BLE SHRI S.P. BISWAS, MEMBER (A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member (A)
26.5.1998

Cases referred:

1. Prem Prakash Vs. UOI & Ors. AIR 1984 SC 1831
2. Shankar Sen Dash Vs. UOI 1991(2) SLR 779
3. Ramana Dayaram Syrett V. International Airport Authority (1979) 3 SCC 489
4. Ashok Kumar Vs. State of AP & Ors. 1993(3) SCC 320

(27)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1967/987

New Delhi, this 26th day of May, 1998

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

Shri Anand Pal Singh
s/o Shri Harcharan Singh
JP-51, Maurya Enclave, Delhi-34 Applicant

(By Shri G.D. Bhandari, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway, Moradabad
3. Shri Harender Kumar, Elec. Khalasi
Under SEFO, DRM Office, Moradabad
4. Shri Atul Saxena Johri
Typist, under CLA, DRM Office
Moradabad
5. Shri Alok Malhotra
Typist, under Sr. DDM, NR
DRM Office, Moradabad Respondents

(By Shri R.L. Dhawan, Advocate, for R-1 & R-2)

(By Shri H.K. Gangwani, Advocate for R-3 to R-5)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, a Gangman (Group D) under PWI/Raja Ka Sahaspur of Northern Railway is aggrieved for his non-selection to the post of typist in terms of Rule 175 of IREM, by which 33 1/3% of said posts by promotion are to be filled up from Group D staff. In pursuance to an internal circular dated 10.11.89 issued by the Railways, a Typing Test from amongst Group D staff was held on 31.3.90 for forming a panel of four posts of typists in the grade of Rs. 950-1500 under the DRM,

Moradabad/Northern Railway (R-2). A-3(a) is the result of the speed test. The Test/Selection so held was cancelled by the respondent-department against which R-5 approached this Tribunal through OA 216/92 which was decided on 3.3.93 in terms of the following mutually agreed order:

"The answer sheets of those who had appeared in the Hindi Typing Test on 31.3.90, could be revalued at the reduced (and prescribed) speed of 25 WPM - those who achieve that speed would be deemed to have achieved the required standard to proficiency in Hindi typing, while leaving the position of those who had already been declared successful untouched. Furthermore, a fresh typing test in Hindi at the prescribed speed of 25 WPM could be held for those who were eligible to appear, but did not do so for the test dated 31.3.90, because of the misleading mention of the Hindi typing speed as 30 WPM".

2. The number of four posts included one meant for SC candidate. On receipt of Tribunal's aforesaid order, 1990 selection was revived and the selection held on 25.4.92 was cancelled. Following the above orders of the Tribunal, four more candidates were declared successful in the test held on 3.9.94. This included R-4. Thus, a total of seven candidates, as in A-5, were to be face-written test and interview. herein and R-5 who were earlier declared successful in the written test were asked to appear in the interview to be held on 20.2.95. R-3 was called for typing test held in 1992, against one of the posts reserved for SC and was found eligible for written test to be held on 13.9.96 (A-2). As a result of written test held on 3.4.95 and interview on 12.6.95 only the name of Shri Navin Chand was placed in the panel (A-6 and A-7 dated 5.9.95).

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3. During the course of selection process and before finalisation of the panel, R-2 by orders dated 14.12.94 (A-5(a)) and 23.2.95 (A-5(b)) decided to regularise two posts in favour of R-4 and R-5 on account of the instructions of the headquarters of Railways, i.e. Baroda House.

4. It is the alleged wrong regularisation of R-4 and R-5 as per the orders of the DRM and the proposed empanelment of only one candidate, namely Navin Chand (A-3) that has been challenged. Shri G.D. Bhandari, learned counsel for the applicant argued that in view of A-3(b), applicant's name is deemed to be placed in the panel. In support of his contention, learned counsel placed heavy reliance on the judgement of the apex court in Prem Prakash Vs. UOI & Ors. AIR 1984 SC 1831 as quoted in the order of the Tribunal in OA 2317/93 decided on 5.8.94. Shri R.L. Dhawan, learned counsel for respondents strenuously argued to say that there has been no irregularity in the process of selection. So is the claim of R-3 who mentioned that he was "called for typing test for the post of Typist in 1992 against one of the posts reserved for SC.....But the result was not declared due to a case pending in CAT, New Delhi".

5. The issues that arise for determination are:- (i) whether a part of the vacancies, notified to be filled up through regular process of selection, could be filled in abruptly by an order of DRM on the strength of a separate Scheme/order of the headquarters?; (ii) whether the selection held in April, 1992 could be

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considered legally valid in the background of the order of the Tribunal in OA 216/92?; and (iii) whether those who have been already working for more than four years as Typists arising out of the process of regularisation undertaken by the DRM could be disturbed at this stage?

6. It is well settled in law that when the process of selection involving typing test, written examination followed by a viva-voce test, respondents cannot fill up advertised vacancies by resorting to different mode of selection based on internal instructions on regularisation. It was well within the competence of respondents-Railways to cancel the entire selection for reasons recorded in writing in terms of the law laid down by the Hon'ble Supreme Court in *Shankar Sen Dash Vs. UOI 1991(2) SLR 779*. To give effect to the orders of the headquarters dated 14.12.90, the correct course of action should have been to readvertise/notify only two posts instead of four and proceed with the selection process as per rules.

7. We are tempted to extract here a passage from the judgement of the Supreme Court in the case of *Ramana Dayaram Shett V. International Airport Authority (1979) 3 SCC 489* which is as follows:

"It is well settled rule of administrative law that an executive authority must rigorously hold to the standards by which it professes its action to be judged and it must scrupulously observe those standards on point of invalidation of an act in violation of them".

of

8. In their belated anxiety to adhere to the headquarters instructions, respondents have adopted a short-cut method as in A-5(a) and A-5(b) which has resulted in a real wrong-cut in terms of procedure. This is impermissible (emphasis added).

9. What is not disputed is that (a) against four posts originally taken under selection process, panel containing only one name has been made out, (b) the applicant is at Sl.No.2 (page 55 of the relevant file) followed by Shri Navin Chand and (c) that there was no SC candidate available when the selection was held in 1990. A perusal of the records show that respondents wanted to consider applicant's appointment against a SC vacancy and had accordingly sought for 'dereservation'. This, however, was not agreed to by the Railway Board. Though well up in the merit list, applicant thus was denied promotion/selection because of the two vacancies in general category, out of three (3 general one SC), were taken out by DRM's orders in favour of R-4 and R-5. But for the irregular step by R-2, applicant would have not only initially come in the panel but also would have undoubtedly got adjusted against the two vacancies filled up unduly by R-2. We find the judgement of the apex court in the case of Prem Prakash (supra) is applicable in the facts and circumstances of the case. It was held therein:

"Justice to one group at the expense of injustice to another is perpetuation of injustice in some form or the other".

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10. So far as the selection held in April, 1992 is concerned, respondents themselves have submitted that "on receipt of this Hon'ble Tribunal's orders dated 3.3.95 (Annexure A-4) in OA 216/92, the 1990 selection was revived and subsequent selection of 25.4.92 was cancelled". R-3 was not even eligible for consideration in 1990 Selection. He also loses his claim in respect of April, 1992 selection when the said selection was considered invalid in the eyes of law in terms of the orders of the Tribunal.

11. The question then would arise as to what would happen to R-4 and R-5 who were considered by the DRM for regularisation of service as Typists. The scheme of the headquarters dated 14.12.90 stipulates as under:

"Subject: Regularisation of services of Typists working on ad hoc basis for more than 3 years.

It has been decided by the competent authority to regularise the typists working on adhoc basis for more than three years, after holding suitability test against the existing vacancies, and their seniority will reckon from the date they qualify suitability"

12. We find that these two officials, though could have been considered outside the advertised vacancies, were picked up wrongly during the course of the selection though they were not at fault for the same. In a situation like this, we shall do well to adhere to the principles laid down by the Hon'ble Supreme Court in the case of Ashok Kumar Vs. State of AP & Ors. 1993(3) SCC 320. In that case, their Lordships refused to grant relief to the petitioner therein on the ground that selection had already been over, candidates were



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selected and appointed to the post. Those already in position over a period of years, following process of selection, need not be disturbed.

13. In the light of the discussions aforesaid, the OA is allowed with the following orders:

- (i) Applicant shall be considered for the post of Typist against one of the future vacancies in Moradabad Division and if found fit, shall be regularised in the said post. He will, however, be eligible only for notional seniority from 25.7.95, when the DRM had approved the panel provisionally but shall not be paid any back wages since he did not actually share the higher responsibilities.
- (ii) Since reserved vacancy still continues and R-3 was considered and found suitable earlier against the same post he shall also be considered for regularisation and notional seniority from the date he was finally selected, if he is found fit, but without any back wages;
- (iii) The position of R-4 and R-5 need not be disturbed in terms of the law laid down by the Apex Court in the case of Ashok Kumar (supra).

The OA is disposed of as aforesaid. No costs.


(S.P. Biswas)

Member (A)


(T.N. Bhat)

Member (J)

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