

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 1500 of 1997 decided on 3.2.1999

Name of Applicant : Shri P.K.Ghosh & anr.

By Advocate : Shri B.S.Mainee

Versus

Name of respondent/s Union of India & others

By Advocate : Shri R.L.Dhawan

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

Hon'ble Dr. A.Vedavalli, Member (J)

1. To be referred to the reporter - Yes/No

2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No


(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1500/97

New Delhi, this the 3rd day of February, 1999.

Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr.A.Vedavalli, Member(J)

1. Shri P.K. Ghosh,
Inspector of Works,
Northern Railway,
Rail Niwas,
New Delhi.
2. Shri R.K. Sharma,
S/o Sh. H.K. Sharma,
Inspector of Works (General),
Northern Railway,
Baroda House,
New Delhi.

...Applicants

(By Advocate Shri B.S. Mainee)

Versus

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

...Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R

By Hon'ble Mr. N. Sahu, Member (A):

The applicants are aggrieved by the order dated 18.6.97 which announced the list of 18 successful candidates as a result of selection for the posts of Section Engineer (Works) in the grade of Rs.2000-3200 as a result of written test held on 18.11.95 and 8.2.97 followed by viva voce test on 22.4.97. The applicants state that they have been unjustly ignored although they passed the written examination and their names are high up in the seniority list of qualified candidates. They allege

malafides and state that they were ignored in order to accommodate junior incumbents. The grounds on which their omission is challenged are as under.

2. The respondents delayed the supplementary examination by 15 months and during this period those who had failed in the written examination and who had not even appeared in the written examination, have been promoted by way of modified procedure for selection. This procedure violated natural justice. It is stated that the respondents promoted one Shri Bhagwan Singh, who did not even secure qualifying marks in the written examination, yet he was allowed to appear in the interview by adding notional seniority marks. The important ground was that once the selection process had started and candidates appeared in the written examination the respondents could not have promoted some of the candidates who did not pass in the selection and even without declaring their results. They submitted a representation addressed to the DRM dated 22.6.97. Even before the respondents had time to consider the representation, the OA was filed on 27.6.97.

3. The essence of the grievance of the applicants is that the entire selection proceedings were held in an arbitrary and malacious manner. They allege that the DPC utilised the provision of 15 marks reserved for interview and manipulated the result. They allege that after initiating the

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selection and holding the written examination, four of the candidates were promoted as IOW Grade-I even before the result of the written examination was declared, even though they did not appear in the written examination or they had appeared and failed.

4. After notice the respondents stated that the representation by applicant no.2 was not received. They denied the allegations made in the OA and asserted that selection for the post of IOW had been conducted in accordance with the rules as per Chapter-II, Section-B of IREM Vol-I. The applicants failed to qualify. With regard to promotion of four senior persons on re-structuring, it was submitted as under at para 4.6:

"As a result of re-structuring of cadre, a panel was issued for ten employees under modified selection after consulting their confidential records only according to seniority of IOW Grade Rs. 1600-2660 (RPS) and out of 10 employees, 4 IOWs were already placed on the previous panel issued on 7.92. These IOW's were promoted as IOW Gr. 2000-3200 (RPS) w.e.f. 1.3.93 from the date of restructuring or from the date of actual joining of duty in grade Rs. 2000-3200 (RPS)".

5. The following are the marks allotted for written, viva voce and other items for both safety and non-safety categories in terms of extant instructions.

a) Professional ability 50 Marks Qualifying Marks

i) Written 35 Marks) -
15 Marks) 30 Marks

ii) Viva-Voce

b) Personality, address
& Leadership & 20 Marks -----
Academic
Qualification.

c) Record of Service 15 -----

d) Seniority On a 15 to 0 Scale.

Total: 100

NOTE: The candidate has to secure 60% marks both under the head of written & professional ability and also in the aggregate for being placed on the panel.

The Selection Board by mutual consent awarded the marks of Record of service in the following manner,

1. C.R. 'Outstanding' 5 Marks) For CRs of last
2. C.R. 'Very Good' 4 Marks) 3 yrs where CRs
3. C.R. 'Good' 3 Marks) were available

4. C.R. ' Average ' 2 Marks) for two years,
5. C.R. ' Below 1 Mark) Prorata marks
Average ' were taken for
the 3rd year.

In terms of P.S. No.10158 one mark was given for each Cash Award for the last three years and 1/2 Mark deducted for each Minor penalty and one mark for major penalty in the last three years.

4. The Written test was held on 18.11.95 and 8.2.97 and as a result of Written test 34 could qualify the written test.

5. The members of the Selection Board met on 22.4.97 and interviewed 32 candidates and marks awarded under each head is tabulated in one sheet which we perused".

6. The Committee of four recommended 18 out of 32 candidates and marks were awarded. In the case of Shri P.K. Ghosh he got 21 out of 35 in written which is 60% but he got 6+6 for professional acumen and leadership⁶ academic qualification. For record of service he got 7.5. We have seen the marking given in respect of other candidates also. There is no material to hold that these marks were given contrary to the criteria mentioned above.

7. The respondents' counsel cited the case of Kuldeep Chand, Appellant v. State of H.P. and others, Respondents, (AIR 1997 SC 2606) The Hon'ble

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Supreme Court, relying on the leading case of Dalpat Abasaheb Solunke vs. Dr. B.S. Mahajan, AIR 1990 SC 434, held that whether a candidate is fit for a particular post is a field exclusively reserved for a Selection Committee. The Tribunal having no expertise on such a subject has no jurisdiction to interfere with the decision of the Selection Committee except on limited grounds. The Hon'ble Supreme Court held that the High Court or the Tribunal finding fault in award of marks in viva voce and thereby quashing the selection without any reason exceeded its jurisdiction.

8. The learned counsel for the applicant relied on the case of Mrs. Saroj Ghai v. G.M. Northern Railway, New Delhi (ATJ 1997 (1) 13). That was a case of promotion from the post of Head Clerk to Office Superintendent-II. The applicant was not empanelled although he had qualified in the written examination and earned four commendation certificates, including cash awards for devotion to work and was amongst the top four candidates in the order of seniority. He alleged that weightage of commendation certificates and cash awards were not given in professional ability as well as service record. This case cited by Shri B.S. Mainee is not applicable to the case before us because in that case the Tribunal found tampering with the ACRs of the applicant. The second finding of the Tribunal was that the procedure adopted by the DPC was not in accordance with the Rules. It was under these circumstances that the Tribunal directed the DPC to

be re-convened for review of the assessment of the applicant. We find that there is no such material to doubt the tampering of the service record or the ACR or there is no material to doubt that the DPC was not in accordance with the rules. No doubt, there was a delay in declaration of the results but then the delay was explained as mentioned above because the person who was entrusted with the job of evaluation was on leave for sometime and there was a need to reappoint some other suitable substitute in his place in the Committee. Meanwhile the modified procedure as a result of restructuring required some vacancies to be filled up. We are not on the question of the vires of the modified procedure for promotion. The four people selected under the modified procedure are a different class and under a different scheme. Unless that scheme is challenged, their promotion cannot be questioned in this O.A. Eventually we notice that all the candidates were interviewed. We are satisfied after going through the tabulation form of marks that all the four members of the Selection Committee have satisfied themselves about the allotment of marks under each head and signed the minutes as well as tabulation sheet. Respectfully following the law laid down by the Hon'ble Supreme Court, we hold that we are not competent to question or reappraise or sit in judgement over the Selection Committee proceedings. We are satisfied that there is no material to doubt the bonafides of the evaluation by the Selection Committee. We are satisfied that the said evaluation has been done in accordance with the Rules.

9. In the case of Parveen Jindal and Others v. State of Haryana & Others, 1994 (1) AISLJ 1 cited at the Bar the facts were as under. The Public Service Commission issued a notification in 1985 for combined competitive examination for recruitment of Assistant Executive Engineers in PWD. In this notification the number of vacancies in Public Health and R&B Wings were specified but the vacancies in Irrigation Wing were not specified. Examination was held and the selection was made. The vacancies in Public Health and R&B were filled up, yet no demand was received in respect of Irrigation Wing. The candidates who could not be absorbed in the first two Wings agitated the matter. The Supreme Court held that the method of recruitment by calling the candidates for interview on merit basis out of the candidates who satisfied the eligibility criterion of minimum percentage of marks in the written test was justified and it also held that the Government could not be compelled to send a request to the Commission for selecting AEs in respect of other vacancies. The head note in this case sums up the decision. It is as under:

"As regards the method of calling the candidates for interview, following the decision of Supreme Court in Ashok Kumar Yadav v. State of Haryana, AIR 1987 SC 454, in the instant case it was to be held that prescribing of minimum percentage of marks in written test both for appointment and for being called for interview, does not create a right in the candidate, who has obtained the prescribed percentage of marks, to be called for interview. It is open to the PSC to say that out of the candidates who satisfy the eligibility criterion of minimum percentage of marks in the

written examination, only a limited number of candidates at the top of the list shall be called for interview.

(emphasis supplied by us)

As regards the second issue, for the reasons given by the Government, the decision for not sending requisition for 44 posts of AEEs in the Irrigation Branch was a 'bonafide' decision actuated by relevant considerations. There were no mala fides on the part of the Government in not filling up the said posts of AEEs. Further, merely because the appellants appeared at the selection they did not get any right to compel either the PSC or the Government to select and appoint them. The mere appearance at the selection does not clothe them with the right to selection and/or appointment.

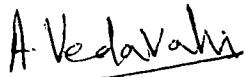
(emphasis given by us)

Further, it was to be observed that where the Rules had created a particular category, fixed its cadre strength and had also prescribed a quota for such category in the matter of promotion to the higher category, the Govt. would not be justified in not making appointments to such category for over a decade unless there were very strong and good reasons therefor. The Govt. would not be justified in nullifying--Though not in word, but in spirit--The Rules in this manner there was no reasons why the Govt. did not think it to make some ad hoc appointments to the category of AEEs when it was recruiting a large number, on ad hoc basis, to the category of AEs. Therefore, at least part of the cadre strength of the AEEs in the Irrigation Branch should be filled up in the near future. If any of the candidates who had applied in pursuance of the 1985 notification apply again, and if they are found to have become age-barred, relaxation in the matter of age shall be granted to them so as to make them eligible for consideration."



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10. The observations in the last para do not apply in view of the decisions of the Supreme Court in the first two paras cited above and also in the light of decision in Abbasahab's case, (supra) we are satisfied that there is absolutely no merit in this case. It is dismissed. No costs.



(Dr. A. Vedavalli)
Member (J)



(N. Sahu)
Member (Admnv)

'Sanju'