

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

MP- 673/91 In  
RA-177/90 InO.A. No. 1449/89  
T.A. No.

199

DATE OF DECISION 11.11.1991.

Shri D.S. Rana

Petitioner

Shri S.C. Paul

Advocate for the Petitioner(s)

Union of India and Others

Respondent

None

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal?

ORDER

(delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman)

The petitioner in this M.P. has prayed that this Tribunal should recall its judgement dated 10.12.1990 passed in RA-177/90 filed in OA-1449/89 and the respondents be directed to immediately put the petitioner (Shri Madan Singh) on ad hoc basis against the post circulated vide circular dated 29.8.1988 and 2.6.1989 if the result of the selection is still to be delayed by virtue of any technical hardships.

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2. The facts leading to the filing of the present miscellaneous petition are as follows. Shri D.S. Rana, while working as Inspector of Works (Afforestation) in the Railways, had filed OA-1449/89 which was disposed of by judgement dated 19.9.1989 to which one of us (P.K. Kartha) was a party. The applicant had prayed for the following reliefs:-

- (i) The letter of the respondents dated 2.6.89 insofar as it amounts to alteration of the recruitment rules and minimum qualifications as prescribed vide letter dated 28.8.1988, be quashed;
- (ii) the respondents be directed to call only those candidates who had applied upto 30.9.88 and had fulfilled the requisite qualifications as per letter dated 28.8.88 for promotion to the post of Assistant Engineer (Horticulture) by selection;
- (iii) the respondents be directed not to reserve the post of Assistant Engineer (Horticulture) for Scheduled Caste and Scheduled Tribe candidates because this is the only one post in the cadre; and
- (iv) the respondents be directed to promote the applicant on ad hoc basis till regular selection is made.

3. The case of Shri Rana was that according to the unamended recruitment rules, one of the conditions of eligibility for selection ~~was~~ that the employees must be working in the grade the minimum of which is Rs.1400/- and higher Group 'C' grades provided they have rendered not less than three years of non-fortuitous service in the grade and have reached the pay stage of Rs.2050/-.

The applicant submitted his application for the post from ✓ which it ~~was~~ clear that he fulfilled the prescribed qualifications under the unamended recruitment rules. According to him, there was no other candidate fulfilling the requisite qualifications. He submitted representations to the respondents on 10.1.1989, 11.4.1989 and 17.4.1989 which did not yield any result.

4. The respondents, vide their letter dated 2.6.1989, decided to hold the written test for selection to the post of Assistant Engineer (Horticulture) on 30.6.1989 and invited two more candidates to appear along with the applicant. In the said letter, the respondents changed the eligibility criteria for selection inasmuch as they dispensed with the condition of pay-scale of Rs.2050 which had been prescribed under the unamended rules. According to the applicant, the other two candidates, i.e., Shri Madan Singh and Shri Hari Kishan Sharma, did not fulfil the eligibility ✓

criteria prescribed under the unamended rules. He had also contended that as there ~~was~~ only one post of Assistant Engineer (Horticulture), it ~~could~~ be reserved for a Scheduled Caste candidate.

5. The learned counsel for the respondents drew our attention to the additional affidavit filed by the respondents on 1.9.1989, wherein the service particulars of S/Shri Madan Singh and Hari Kishan Sharma had been given. He stated that the vacancy ~~was~~ not going to be reserved for Scheduled Caste/Scheduled Tribe candidates and that S/Shri Madan Singh and Hari Kishan Sharma fulfilled the eligibility criteria under the unamended rules. The amendment of the rules by letter dated 2.6.1969, had no bearing on the instant case.

6. According to the additional affidavit filed by the respondents, Shri Madan Singh had been working in the grade of Rs.1400-2300 since 1.5.1978 and Shri Hari Kishan Sharma in the same grade since 22.1.1977. They ~~were~~ <sup>Q</sup> ~~xxxxxx~~ working in the scale of Rs.2000-3200. Their pay as on 31.7.1988 in the grade of Rs.2000-3200 ~~was~~ Rs.2120 and Rs.2060 respectively.

7. After going through the records of the case and hearing the learned counsel for both the parties, the

Tribunal expressed the opinion that S/Shri Madan Singh and Hari Kishan Sharma also fulfil the eligibility criteria for selection for promotion as Assistant Engineer (Horticulture) and their being called for selection cannot be faulted. Accordingly, it was held that the applicant and S/Shri Madan Singh and Hari Kishan Sharma should be considered for promotion by selection in accordance with the unamended rules dated 28.8.1988. The respondents ~~were~~ directed to consider their suitability in accordance with the said rules by holding a fresh selection as indicated above within a period of three months from the date of communication of this order. The application was disposed of with the above directions.

8. Thereafter, the respondents in OA-1449/89 filed RA-171/89 on 19.10.1989 which was disposed of by circulation by judgement dated 25.9.1990 to which one of us (P.K. Kartha) was a party. The respondents had stated that an error had crept into the operative part of the judgement to the extent that the direction to hold a fresh selection was unnecessary and it was not in consonance with the facts of the case. When OA-1449/89 had come up for admission on 25.7.1989, it was recorded as under:-

"We understand that a written test for selection has already been held on 30.6.1989 in which the applicant and two others have appeared. The result of the written test has

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not been announced as yet. After the result is announced, there will be viva voce test before final selection. While the respondents may proceed with the process of selection, we hereby direct the respondents not to announce the final result of the selection till 7.7.89 when the matter will come up for admission before us".

9. The respondents also drew our attention to the additional affidavit filed by them on 31.3.1989 wherein it was stated that the applicant and S/Shri Madan Singh and Hari Kishan Sharma had appeared at the selection. It was also stated that after the conclusion of the arguments, the learned counsel of the respondents made a request that the result of the selection which had been withheld by the order of the Tribunal dated 25.7.1989, be allowed to be made public.

10. In the light of the above, the respondents had prayed in RA-171/89 that the direction in the operative part of the judgement dated 19.9.1989 to hold fresh selection be deleted as it did not reflect the correct factual position.

11. After considering RA-171/89, the Tribunal felt that the error pointed out by the respondents should be corrected. Accordingly, by order dated 25.9.1990, we directed that in para 9, line 2 of the judgement, the following words are to be omitted in the original copy of the judgement:-

"by holding a fresh selection as indicated above, within a period of three months from the date of communication of this order".

12. Accordingly, we corrected the second line of para. 9 which reads as under:-

"The respondents are directed to consider their suitability in accordance with the said rules".

13. R.A.171/89 was disposed of on the above lines.

14. After the above orders were passed, Shri Rana, the original applicant in OA-1449/89, filed RA-177/90 on the ground that RA-171/89 filed by the respondents was disposed of by the Tribunal without giving notice to him. He pointed out that the respondents did not hold selection pursuant to the Tribunal's judgement dated 19.9.1989 despite several representations made by him and consequently, a contempt petition had been filed in the Tribunal, which had been fixed for hearing on 28.1.1991. According to him, the Tribunal had heard both the parties before issuing the direction to the respondents to hold a fresh selection. In this context, he has stated that in accordance with the interpretation of the rules given by the Tribunal in its judgement dated 19.9.1989, there may be certain other candidates also who would be eligible to appear in the said given in selection. He has, therefore, submitted that the direction/ our judgement dated

19.9.1989 to hold fresh selection, was justified and that there was no error in the said direction.

15. After going through the records carefully and considering the rival contentions, the Tribunal recalled its order dated 25.9.1990 in RA-171/89 filed by the respondents. The learned counsel for the petitioner in RA-177/90 had submitted that though the written test for selection had been held on 30.6.1989 in which the petitioner and two others had appeared, the process of selection was on the basis of the instructions of the Railways that the selection was to be made for a reserved vacancy. This was denied by the learned counsel for the respondents. The Tribunal had directed by its order dated 25.7.1989 that the respondents shall not announce the final results of the selection during the pendency of the application.

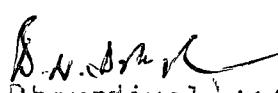
16. In view of the above, the Tribunal expressed the opinion that the direction contained in the Tribunal's judgement dated 19.9.1989 cannot be construed as an error apparent on the face of the judgement. We, accordingly clarified that the respondents shall, in compliance with the Tribunal's judgement dated 19.9.1989, hold a fresh selection in accordance with the unamended rules dated 28.8.1988, as interpreted by the Tribunal in the judgement. In the interest of justice, all persons who were eligible to

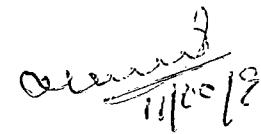
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appear for the written test and viva voce for the selection to the post of Assistant Engineer (Horticulture) as on 30.6.1989, should be given an opportunity to appear in the written test and viva voce by holding a fresh selection. It should be indicated to all concerned that the selection **would** be for the post of Assistant Engineer (Horticulture) in the general category and that it **was** not reserved for Scheduled Caste/Scheduled Tribe.

17. Shri Madan Lal, who was not a party to the above proceedings, has filed the present miscellaneous petition. The learned counsel for the petitioner has also relied upon the decisions of the Supreme Court in M/s Star Diamond Co. India Vs. Union of India & Others, 1986 (4) S.C.C. 246; ~~and~~ in A.V. Raghuraman and Others Vs. Presiding Officer, National Industrial Tribunal, Bombay & Others, 1981 (3) S.C.C. 546 and in Mohammed Sujat Ali & Others Vs. Union of India & Others, 1975 (3) S.C.C. 76. We have gone through the aforesaid decisions which, in our opinion, are not relevant in the facts and circumstance of the present case. The present petitioner is, in fact, reagitating the very same points which were raised by the respondents in RA-171/89 filed by them, which was disposed of by judgement dated 25.9.1990. Our judgement dated 25.9.1990 had, however, been recalled in RA-177/90 and was disposed of by

judgement dated 10.12.1990. We see no merit in the present miscellaneous petition and the same is dismissed. There will be no order as to costs.

  
(B.N. Dhoundiyal) 11/12/91  
Administrative Member

  
(P.K. Kartha)  
Vice-Chairman (Judl.)