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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 436/90 198
T.A. No.

DATE OF DECISION 24.8.1990

SHRI NIRANJAN SINGH Applicant (s)

SHRI B.S. MAINEE Advocate for the Applicant (s)
Versus
UNION OF INDIA & OTHERS Respondent (s)

SHRI O.N. MOOLRI Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. T.S. OBEROI, MEMBER (J)

The Hon'ble Mr. I.K. RASGOTRA, MEMBER (A)

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

JUDGEMENT

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A) 24/8/90

Decided 24/8/90
m (J)
(T.S. OBEROI)
MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.436/90

DATE OF DECISION: 24.8.90.

SHRI NIRANJAN SINGH

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

SHRI B.S. MAINEE

COUNSEL FOR APPLICANT

SHRI O.N. MOOLRI

COUNSEL FOR RESPONDENTS

CORAM:

HON'BLE SHRI T.S. OBEROI, MEMBER (J)

HON'BLE SHRI I.K. RASGOTRA, MEMBER (A)

JUDGEMENT

(DELIVERED BY HON'BLE SHRI I.K. RASGOTRA, MEMBER (A))

Shri Niranjan Singh, the applicant has filed the above OA under section 19 of the Administrative Tribunals Act, 1985, challenging the impugned order No.753-E/6/3(EI) dated 6.11.1989 (Annexure A-I) promoting his juniors as Deputy Shop Superintendent (Rs.2000-3200 -Revised Pay Scale) on regular basis. The case of the applicant is that he was working as Chargeman (pay scale Rs. 425-700 - pre-revised) since 1977. He was upgraded in the scale of Rs. 550-700 - pre-revised scale, w.e.f. 1.1.1984 consequent upon restructuring of the cadre. He was however, ignored for further promotion as Deputy Shop Superintendent in the grade of Rs. 2000-3200 on adhoc basis against which he had protested on 11.9.1987. Ultimately, he was also promoted on adhoc basis as Deputy Shop Superintendent in the grade of Rs. 2000-3200 on 12.1.1988. Since the post of Deputy Shop Superintendent is a selection post the process of selection was

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initiated vide Respondent's order dated 26.10.1988 when 21 eligible candidates were called to appear in the written test. Seven candidates were declared successful vide respondent's letter dated 21.12.1988 including the applicant who was at S.No.2 of the list of the candidates, who qualified in the written test. The viva voce test was held on 6.1.1989 and the final select list comprising three successful candidates was announced on 16.6.1989. While the applicant was not in the final select list, his junior Shri Avtar Kishan and Shri S.P. Sharma were on the panel. All the three persons selected were appointed as Deputy Shop Superintendent on regular basis w.e.f. 4.7.1989. Two more persons junior to the applicant was promoted subsequently on 6.11.1989. The applicant represented against his supersession on 10.9.1989 contending that he had no adverse confidential reports as none was communicated to him and that his record of service was unblemished. The applicant further places reliance for being included in the select list of Deputy Shop Superintendent on the basis of Railway Board's letter of 1976 which provides

"Panels should be formed for selection posts in time to avoid adhoc promotions. Care should be taken to see, while forming panels that employees who have been working in the posts on adhoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment.

The Board desires that the above instructions

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should be strictly complied with, particularly in regard to SC/ST employees".

Based on the above guidelines contained in the Railway Board's letter (Supra), the applicant has contended that he should have been placed in the final select list of 16.6.1989, as he had passed the written test and as he had been working as Deputy Shop Superintendent (Rs. 2000-3200) on adhoc basis w.e.f. 12.1.1988.

The learned counsel for the applicant further cited Central Administrative Tribunal, Calcutta Bench's decision reported in ATR 1987-II CAT 517 Mohini Mohun Dutta Vs. UOI & Ors. and ATR 1986(1) CAT:PB 16 S.P. Banerji Vs. UOI & Ors. in support of his case.

2. The respondents in their written reply have submitted that applicant has not challenged the panel of the selected candidates announced on 16.6.1989 but has only challenged the order promoting S/Shri A.V.J. Murthy and P.M.M. Singh, Chargemen on regular basis against existing vacancies. It has been further averred that the applicant was appointed on adhoc basis pending passing the requisite selection test and since he has failed in the selection he can have no grievance against his non-regularisation. He has no legal right to be allowed to continue in the post of Deputy Shop Superintendent on account of his failure in the selection. It is also averred that the record of service of the applicant is not unblemished, as the applicant has been punished on 11 occasions so far. These punishments are:

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- (a) Censure in February, 1968, July, 1968;
- (b) Stoppage of Passes for 12 months in 1966;
- (c) Withholding of passes/PTOs in July, 1981, July, 1982, March, 1984, February, 1985, May, 1985 and November, 1987;
- (d) withholding of increment temporarily for one year in 1985.

All these minor penalties relate to the period prior to the selection. There is no averment in the written reply to indicate that the applicant's work was not satisfactory after he was promoted on adhoc basis as Deputy Shop Superintendent w.e.f. 12.1.1988. The respondent's contention in paragraph 4 in reply to paragrph 4.23 and 4.24 of the application that "it does not lie in the mouth of the applicant to allege that he had been working in a satisfactory manner" in view of the details of punishments furnished above lacks conviction. The respondents have also stated that in the ratio of Jethanad's case (Full Bench Judgement) the applicant has no right to be retained in the post of Dy. S.S. on adhoc basis, as he has failed in the selection. The pleadings made in the written reply were reiterated by the learned counsel for the respondents in the hearing on 13.8.1990.

The learned counsel also submitted that the applicant had come up for viva voce test by virtue of the modified scheme introduced vide Railway Board's letter No. E(NG)I/83-PMI-65 (PNM/NFIR) dated 5.12.1984,

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which allows senior persons to come up for viva voce by adding marks for seniority notionally (such notional marks are however not included in the final tally of the marks obtained both in written test and viva voce for the purpose of empanelment.) Thus although he was made eligible for the viva voce test, he failed to qualify in the examination and merit a place on the select list. The learned counsel for the respondents also submitted service record of the applicant and the proceedings of the departmental promotion committee for the perusal of the court.

3. From the proceedings of the selection committee it is observed that 13 candidates had appeared in the written test on 26.11.1988 and only 6 candidates were found eligible for the Viva Voce. "Out of these 6 candidates S/Shri Niranjan Singh and Avtar Kishan could not obtain 60% marks but by adding the seniority marks they secured more than 60% marks and as such they were included in the list of eligible candidates for Viva Voce Test". The proceedings go on to further record that "out of the above 6 candidates, candidate at Item No.2 above, viz. Shri Niranjan Singh could not obtain 60% marks either in the professional ability or in the aggregate and as such he has not been placed on empanelment although he is already working on adhoc basis as Deputy S.S. C & W in the grade of Rs.2,000-3200 (RPS)".

4. We have carefully considered the submissions of Advocate Shri B.S. Maine for the Applicant and Advocate Shri O.N. Moolri, for the Respondents and the material placed including the proceedings of Departmental

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Promotion Committee.

It is observed that besides the candidates who obtain 60% of marks in the written examination, others who obtain 60% of the total of the marks prescribed in the written examination and for seniority have also been made eligible for viva voce test in terms of Railway Board's instructions of 5.12.1984. Thus if a candidate has been called for interview, it does not mean that he has necessarily qualified in the written examination. The applicant's averment in paragraph 4.9 of the application that he was declared successful in the written examination vide Annexure A-V, page 14 of the paper book, indicates lack of appreciation of the modified system of eligibility for being called for viva voce. The Respondent's letter at Annexure-V, (page 14 of the paper book) only lists the names of the candidates who are eligible to be called for viva voce test. It does not say that the candidates listed therein have passed the written test. From the proceedings of the Selection Committee and the results attached therewith we find that the applicant secured 19 (out of 35) marks in the written test and 8 (out of 15) in the viva voce test. But for adding the marks notionally for seniority, the applicant would not have become eligible for viva voce test, as he had secured less than 60% marks in the written test. The mere fact that he was made eligible for viva voce test cannot be construed to mean that he had qualified in the written test. The modified scheme only confers eligibility on the senior

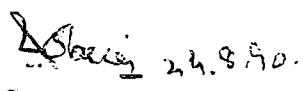
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(13)

persons for the viva voce test. Once they have become eligible "the normal selection procedure will be followed in the remaining part of the selection." Since the applicant had not qualified in the written test, he cannot claim the benefit of the instructions of the Railway Board's letter dated 25.1.1976. It is not disputed that the applicant is officiating on adhoc basis and there is no material before us to indicate that his work has not been satisfactory, but since he had not qualified in the written test, he cannot be placed on the select list on the basis of the instructions of 25.1.1976. The case of Mohini Mohan Dutta Vs. U.O.I. & Ors. ATR 1987-II CAT 517 cited by the learned counsel for the applicant is of no assistance to him as the adhoc promotion/selection viva voce test in that case relate to the period prior to the issue of the modified scheme of eligibility for viva voce test introduced by the Railway Board's letter dated 5.12.1984. The eligibility for viva voce was thus based on the qualification in the written test and not by adding seniority marks to the marks obtained in the written test. The case of Abdul Wahabkhan Abdul Gafarkhan Vs. Union of India and others reported in ATR-1989 (1) CAT 96, also relates to the event which took place prior to 5.12.1984 and therefore is not germane to the case before us.

In the facts and circumstances of the case the application fails and is dismissed with no orders as to the costs.


(I.K. RASGOTRA)
MEMBER(A) 24/8/90


(T.S. OBEROI)
MEMBER(J)

ONE ORUKE

DASTI

CASE FILED FOR 2.3.98

FROM:-

The Registrar,
High Court of Delhi,
New Delhi.

To

Central Administrative Tribunal
Principal Bench,
New Delhi.

28960/10
26/12/97

C.A. 812197

M38/90

32
21/12/97

1-52
1-198

G.M.-2

10789/97

IN C.W.P.

5576/97

Chief Secretary, & Ors.

PLT IT JUNIOR/S

VS.

Sneodhan Singh & Ors.

RE SPONDENT/S

In continuation of this Court's letter No. _____

Dated _____, I am directed to forward for information and immediate compliance a copy of order at 19.12.97 passed by a Division Bench _____ before Mr. Justice _____

of this Court in the above noted case together with a copy of G.M. No. 10789/97 whereon the said order has been passed.

Please notice that G.M. 10789/97 is fixed for hearing on 2.3.98 at 10.30 A.M.

Please acknowledge receipt.

Note:- Order was passed in cases G.M. No. 812/97, 881/97 & 10789/97 on 21.12.97.

Yours faithfully,

(Signature)

Continuation Sheet

Date

Orders

19-12-97 Present: Mrs. Avnish Ahlawat with Ms. Anupama Chandra
for the petitioner.

CW 5576/97

Rule D.B.

CM 10789/97

Notice for 02.03.1998.

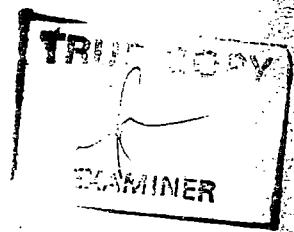
Till the next date, operation of the impugned
judgement of the Tribunal shall remain stayed.

Dasti.

Sd/-
Deepti Gupta J

Sd/-
S K Nayak J

December 19, 1997
a.m.



IN THE HIGH COURT OF DEFENCE AT NEW DELHI

Collected by G. W. Gandy, Net - ~~at Diller's Rock~~ - 1900

13. In your opinion, how many respondents are there?

**APPLICATION UNDER SECTION 151 CPC FOR STAY OF
THE ORDER/JUDGEMENT**

That the writ petition is pending disposal before this Hon'ble Court. The facts stated in the writ petition may be read in support of the present stay application also. They are not repeated herein for the sake of brevity.

...with the petitioners' department and many of its contractors (Driver) will suffer irreparable loss and injury if the judgement of the Tribunal is to be implemented at this stage.

dated 28.5.1997 passed in OA 812/90 be

stayed, and

ii) any other relief which this Hon'ble Court may deem fit in the facts and circumstances of the case.

THE PETITIONER

THROUGH

AVNISH AHLAWAT
ADVOCATE FOR THE PETITIONER
242. LAWYERS CHAMBERS,
HIGH COURT OF DELHI
NEW DELHI

NEW DELHI

DATED

28.5.1997

Note: Order was passed in OA 806/90, 812/90, 881/90 & 436/90