

28

Central Administrative Tribunal, Principal Bench

O.A.No.1550/91

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 4th day of September, 1997

Shri Harish Chander
Sr. Draftsman (Construction)
Directorate of Naval Design
Naval Headquarters
Ministry of Defence
Govt. of India
A-33, Kailash Colony, Pocket 15
New Delhi.

... Applicant

(By Shri B.S.Mainee, Advocate)

Vs.

Union of India through

1. The Secretary to the
Govt. of India
Ministry of Defence
South Block
New Delhi.

2. The Director
Naval Architecture
(Naval Headquarters)
Ministry of Defence
Govt. of India
Sena Bhavan
New Delhi.

... Respondents

(By Shri P.H.Ramchandani, Advocate)

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant who was working as Senior Draftsman (Construction) in the Directorate of Naval Design, Naval Headquarters, Ministry of Defence, Govt. of India is aggrieved that his status as a Scheduled Caste has not been taken into account while considering his performance in the written examination conducted by the respondents for promotion to the post of Head Draftsman. The examination was held in July, 1988 and its result was declared on 30.9.1988 (Annexure A1). The applicant was declared as unqualified having secured only 36 marks in Paper-1, 37 marks in Paper-2 and 37 marks in Paper-3 when the qualifying marks in each paper were 40 out of 100. The

De

29

-2-

applicant's case is that as per Naval Headquarters Circular No.CP/MG/3020 dated 20.5.1988 (Annexure A3) the authorities should have adopted a more liberal standard while assessing the performance of SC/ST during recruitment/promotion examinations. Further more, such relaxation need not be limited to 5% grace marks to SC/STs and a flexible yardstick should have been applied keeping in view the parameters of the number of vacancies reserved for SC/ST as well as General candidates, minimum standard of fitness for appointment, and overall strength of cadre and that of SC/ST cadre. The applicant submits that the prescribed reservation quota, 15% for Scheduled Caste candidates and 7 and half % for Scheduled Tribe candidates, had not been completed, the performance of the applicant was close to the qualifying standard and that in any case he was entitled to 5 grace marks though the aforementioned Circular dated 20.5.1988 allows for a more flexible approach. The applicant therefore prays for a direction to the respondents to give grace marks to him in accordance with the Rules and to give him promotion with the appropriate seniority in the service.

2. The respondents submit in the reply that the promotion of the Head Draftsman is on selection basis and is required to be made from Sr. Draftsmen who have completed three years regular service and have also qualified the departmental qualifying examination held for the purpose, after obtaining the minimum qualifying marks in the subject. They admit that candidates belonging to SCs/STs are entitled to grace marks. The applicant was detailed for a training programme in Ship Building & Naval Architecture Course for three months at Visakhapatnam and in the Departmental qualifying examination, considering his status as SC, a liberal yardstick was applied and he was given 8 and 5 grade marks for paper-1 and paper-2 respectively. However, no grace marks were given in Paper-3 as this was on practical

du

aspects of Naval Architecture where no dilution of standard is warranted. Since, despite the award of grace marks, the applicant did not get the minimum standard, he was not selected.

3. We have heard the counsel on both sides and gone through the record. The learned counsel for the applicant, Shri B.S.Mainee disputed the claim of the respondents that any grace marks whatsoever had been awarded to the applicant. On 9.4.1996, when the matter came up for hearing it was observed by the Bench that the relevant answer sheets will have to be seen to verify whether the grace marks had been added or not. Further time was sought by the learned counsel for the respondents for production of whatever records were available. Finally an affidavit was filed by one Commander A.K.Saxena stating that the answer books of the various candidates who had appeared, including those of the petitioner, in the Departmental Qualifying Examination for Head Draftsman (Construction) held during July, 1988 were not traceable in Naval Headquarter in spite of the diligent search made for the same. During the course of the arguments, learned counsel for the applicant urged that adverse inference should be drawn for the failure of the respondents to produce the relevant records. In this context, he sought to rely on the judgment of the Supreme Court in Pritpal Singh & Others Vs. State of Haryana & Others, AISLJ 1995(1) SC 23. We have gone through that judgment. That matter related to the selection made by the Haryana Subordinate Services Selection Board for the appointment of Assistant Sub-Inspectors of Police in 1989. It was found that the answer books in written examination had been destroyed even before the final result after interview was declared on 6.4.1990. In the circumstances, the answer papers of the written examination having been destroyed even before the results of the

Dr

-4-

(3)

selection, and such a hasty action not having been found to be correct, the Supreme Court concluded that the selection made by the Board was suspect and must be quashed.

4. The facts of the present case are different inasmuch as the results were declared in 1988, and the present OA was filed in 1991 after a gap of three years. The respondents have also raised the question of limitation. In these circumstances, we are not inclined to conclude that the non-availability of the relevant answer books/sheets in the present case should mean that the respondents' version is automatically suspect and unreliable.

It has been urged by the learned counsel for the respondents that leaving aside the question of award of grace marks for Paper 1 and Paper 2, the applicant could not be considered fit for promotion as he did not secure the minimum qualifying marks in paper 3 which related to practical aspects of naval architecture. He submitted that the respondents did not allow any grace marks in Paper 3 since possession of requisite efficiency in the relevant subject was indispensable and was regarded by the respondents as a pre-requisite for the fitness of even Scheduled Caste/Scheduled Tribe candidates for promotion as Head Draftsman. The learned counsel relied on the case of Vinod Kumar Vs. Union of India, JT 1996(8) SC 643 in respect of this stand.

6. We have carefully considered the rival arguments. The D.O. No.8/12/69-EST(SGT) dated 23.12.1970 issued by the Department of Personnel & Training provided that a relaxed standard could be considered for promotion/confirmations, in respect of SC/ST candidates, provided they are not found unfit for such promotion/confirmation. Similar provision was made in the OM No.26/2/81-SPE-I dated 4.5.1981. In the Naval

2

-5-

3

Headquarters OM dated 20.5.1988, Annexure 3, it has been stated that the above relaxation is subject to minimum standard of fitness for appointment to the post. The Supreme Court also observed in S.Vinod Kumar and another (Supra) as follows:

" We are therefore of the opinion that so far as the provision for lower qualifying marks or lesser level of evaluation in the matter of promotion is concerned, it is not permissible under Article 16(4) in view of the command contained in Article 335 of the Constitution."

7. We are therefore of the view that it was open to the respondents to insist on minimum qualifying marks in Paper 3 and to refuse to grant any grace marks in respect of SC/ST candidates. We are not persuaded by the arguments advanced by Shri B.S.Maine, learned counsel for the applicant that the fitness referred to in the OM dated 20.5.1988 is to be judged with reference only to the service record of the applicant and if his service record is upto the mark then the applicant becomes entitled to the award of grace marks in all aspects of the promotion examination. Nor does it make any difference that in the next examination the applicant has since been found fit and has been promoted by the respondents.

8. In the facts and circumstances of this case, we therefore dismiss the application. There shall be no order as to costs.

R.K. Ahooja
(R.K. AHOOJA)
MEMBER(A)

/rao/

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)