

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLENAGAR BENCH

HYDERABAD.

O.A.NO./P.NO. 124/95

Date of decision 01.09.03

Parvez Ahmad Warsi & Others Applicant(s)

Shri Z. A. Farroqui counsel for the
Applicant (s)

VERSUS

V.O.I & Others Respondent (s)

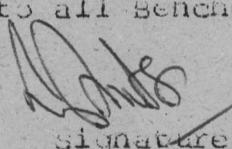
Shri K. P. Singh counsel for the
Respondent (s)

C O R A M:

Hon'ble Maj Gen. K.K. Srivastava F.E./Member (A)

Hon'ble Mr. A. K. Bhattacharya Member (J)

1. whether reporters of local papers may be allowed to see the judgement ?
2. To be referred to the reporters or not ?
3. whether their Lordship wish to see the fair copy of the judgment ?
4. whether to be circulated to all Benches ?


signature

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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABADORIGINAL APPLICATION NO.124 OF 1995
ALLAHABAD THIS THE 16th DAY OF September, 2003HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A. K. BHATNAGAR, MEMBER - J

1. Parvez Ahmad Warsi, aged about 38 years, son of Sri Samiullah Warsi, Resident of Near Police Club, Golghar, Gorakhpur.
2. Pradip Kumar Ganguly, aged about 37 years, son of Late Sri R.P. Ganguly, Resident of 614-D, Baulia Railway Colony, Gorakhpur.

(Presently working as A.C. Coach Mistri, under Senior Electrical Foreman, Air Conditioned Coach (Sr.E.Fo/ACC), North Eastern Railway, Gorakhpur.

.....Applicants

(By Advocate Shri Z.A. Faroqui)

Versus

1. Union of India through the General Manager, N.E. Railway, Gorakhpur.
2. The General Manager, North Eastern Railway, Gorakhpur.
3. The Chief Personnel Officer (Non-Gazetted), North Eastern Railway, Gorakhpur.
4. The Chief Electrical Engineer, North Eastern Railway, Gorakhpur.
5. The Divisional Personnel Officer, Loco Workshop, North Eastern Railway, Gorakhpur.
6. The Deputy Chief Electrical Engineer, Loco Workshop, North Eastern Railway, Gorakhpur.
7. Shri Vidya Sagar, Chargeman B in section of Dy. Shop Supdt. (DG AC Shop) under Dy. Chief Electrical Engineer, (Work Shop) Gorakhpur, N.E. Railway.
8. Shri Ram Chander Singh, Chargeman B (P.N. Shop), under Dy. G.E.E. (W) Gorakhpur, N.E. Railway.
9. Shri Bakshi A Swami Kumar Srivastava, Chargeman B (P.N. Shop) under Dy. C.E.E. (Workshop), N.E. Railway, Gorakhpur.



10. Shri Anand Mohan Pandey,
Chargeman B (Train Lighting Coaching Workshop)
under Dy. C.E. (W),
N.E. Railway, Gorakhpur.

11. Shri Om Prakash,
Chargeman B in Section of Dy. Shop Supdt.
(MOG Workshop) under Dy. C.E.E. (W),
N.E. Railway, Gorakhpur. Respondents
(By Advocate Shri ~~K.P. Singh~~)
+ V.K. Gurol -

O R D E R

HON'BLE MAJ GEN. K. K. SRIVASTAVA, MEMBER-A

In this O.A. filed under Section 19 of Administrative Tribunals Act 1985, the applicant has prayed for the following reliefs:-

"a) That the selection held for inducting Intermediate Apprentice Mechanics (Electrical) against the 25% quota earmarked for serving matriculate, employees in pursuance of the notification dated 10.03.1992, may be quashed.

b) That the respondents may be directed to hold the selection test for Intermediate Apprentice Mechanic (Electrical), against the 25% quota earmarked for serving matriculate employees, afresh, and further, to permit the applicants to appear at such selection test (s).

c) That the interse seniority of the selected candidates pursuant to the fresh selection test prayed for, be fixed afresh, without reference to the previous selection test or any training undergone in pursuance thereof.

d) That the respondents be directed to exempt the applicants from the two years training programme in accordance with law, in case the applicants are

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declared successful at the fresh selection test
prayed for above.

e) Any other suitable order, relief or direction
to which the applicants might be found entitled in
the facts and circumstances of the case and

f) That the applicants be awarded the costs of
this application.

2. The facts, in short, are that applicant no.1 after passing Three Years Act Apprentice Course from Loco Workshop Gorakhpur was appointed in unskilled cadre (Pay scale Rs.196-232) at Loco Workshop, Gorakhpur in 1980 and worked in the scale till 1982. The applicant no.2 also after completing three years course was appointed in unskilled cadre on 13.01.80 and worked in that grade till 1982. Both the applicants were selected in skilled category (Pay scale Rs.260-400) against 25% quota for direct recruits by circular dated 11.06.1982. By order dated 19/20.05.1983 applicants were further promoted for the post of Highly Skilled Grade II ACC Fitter/Refrigeration Mechanic (Pay scale Rs.330-480) after passing required trade test. The applicants cleared trade test for the post of ACC Fitter Grade I (Pay scale Rs.380-560) and were promoted to officiate as such by order dated 05.02.1986. By order dated 10.12.1990 the applicant no.1 was promoted to the post of Mistri Grade-I (Pay scale Rs.1400-2300), on being selected through a test. The applicant no.2 was likewise promoted to the post of Mistri Grade-I in 1991. By notification dated 10.03.1992, applications were invited from skilled workers working in Electrical Department Engineering/Personnel Electrical Department Engineering/ Colony and CDO Gorakhpur

for filling up 25% of the vacancies of the Chargeman in the pay scale of Rs.1400-2300/- at Electrical Department Headquarter Unit, Gorakhpur from amongst inter-Apprentices. Applicants applied for the same, a list of eligible candidates was issued on 26.10.1992 in which the applicant's name did not figure. They approached the authorities and were informed verbally that since Mistries are of Supervisory category they were excluded from the selection process as the same was meant only for the persons of Artisan category. The applicants filed appeal before Divisional Electrical Engineer (Workshop Gorakhpur) on 29.10.1992. They were verbally informed that the matter was engaging the attention of the concerned higher authorities and their grievances, if found justified, would be suitably redressed. Since the appeal evoked no positive response ~~was given~~, they filed representation on 17.08.1993 (Annexure A-13) followed by another representation dated 04.02.1994 before the Chief Electrical Engineer, North Eastern Railway, Gorakhpur. They sent a reminder on 24.03.1994. The Personnel Branch was directed by General Manager Electrical, Gorakhpur to examine the case and put up full details before Chief Electrical Engineer, by letter dated 15.02.1994. However, no action was taken. Another communication was floated on 31.03.1994 in this regard and ultimately the DPO Mechanical Workshop informed Deputy Chief Electrical Engineer, Headquarter Gorakhpur, N.E.R. by letter dated 11/18.04.1994 stating that since the post of AC Mistri on which the applicants were working at the time the applications were invited was not that of Skilled category, therefore, they were not included in the selection test. By letter dated 21.11.1992 a penal was declared selecting respondent no.7 to 11 for promotion to Chargeman 'B' Grade of Rs.1400-2300/- against 25% quota for intermediate Apprentices. Aggrieved by this, the applicant

filed this O.A which has been contested by the respondents by filing counter affidavit.

3. The sole ground taken by the applicants is that the applicants were eligible to appear in the selection test for the post of Intermediate Apprentices Mechanic (Electrical) and the action of the respondents in ignoring the claim of the applicants is arbitrary and is not supported by rules.

4. Opposing the claim of the applicants the respondents have taken the ground that the applicants were not eligible to appear in the selection because the post of Mistri Grade-I is supervisory/ⁱⁿnature and the applicants were not working as Skilled ^{Artisan} on the date of notification. The respondents in their counter affidavit have stated that the applicants who were promoted as Mistri Grade-I, payscale of Rs.1400-2300/- in the year 1990 and 1991 respectively and after their promotion as Work Mistri they are no more working as Skilled ^{Artisan}. An employee working as Mistri after promotion from Skilled grade is not itself the category ^{of} skilled ^{Artisan} and is not entitled for being considered for promotion and selection as Apprentice Mechanic. The applicants having already been promoted as Mistri Grade-I are eligible for promotion on the post of Chargeman 'B' according to the then applicable AVC, for whom 25% vacancies have already been reserved. The applicants as Mistri Grade-I are not entitled to be considered against 25% quota reserved for Apprentice Mechanic and thus avail ^{to} two quotas.

5. We have heard counsel for the parties, carefully considered their submissions and perused records.

6. In this ^{case} controversy a short controversy is involved

whether the applicants as Mistri Grade-I were eligible to appear in the selection for the post of Intermediate Apprentice Mechanics. In order to arrive at conclusion we refer to para 140 of Indian Railway Establishment Manual VOL-I. In terms of para 140 (1) of the Manual 75% vacancies in the category of Chargemen 'B' in the pay scale of Rs.1400-2300/- in Mechanical and Electrical Engineering Department and in the cadre of Draftmen in these departments will be filled by induction of Apprentice Mechanic as under:-

- i) 50% from open market through Railway Recruitment Boards, and
- ii) 25% from serving Matriculate employees with three years service in skilled grade(s) and below 45 years of age as Intermediate Apprentice Mechanics.

It is not denied by the respondents that the applicants did not have three years service in Skilled Grade and also they were not below 45 years of age. Therefore, in our view they did fulfil the conditions specified in para 140.1 (II). The second point taken by the respondents is that the post of AC Mistri is not of skilled category. The respondents have failed in their CA to place before us any Rule in support of their contention. This contention of the ^{respondent} applicant has been rejected by their own Chief Electrical Engineer vide letter dated 20.04.1994 (Annexure 19 page 50). We have seen the letter dated 20.04.1994 and it has been stated in no indefinite terms that the Mistries fall in skilled category and they cannot be treated to be belonging to supervisory category. Not only this as per Railway Board letter dated 29.09.1987 (Annexure 20 page 51) Mistries are eligible for promotion as Chargeman 'B'. The relevant para is reproduced below:-

"The post of Chargeman 'B' (Rs.1400-2300/-) etc. will, in future, be filled from amongst Mistries. However, till the existing Gr-I Artisans remain available, promotion quota in the post of Chargeman etc. will continue to be filled through selection from amongst Gr.I Artisans and Mistries based on their integrated seniority."

7. We have carefully perused the Rejoinder Affidavit. The applicant had represented on 29.10.1992, 17.08.1993, 04.02.1994 and 24.03.1994 against the action of the respondents. The Deputy Chief Electrical Engineer initiated enquiry regarding eligibility of the applicants and CPO (Headquarter Office i.e. GMP) North Eastern Railway Gorakhpur, vide order dated 28.03.1995 (RA-1) gave the decision that the applicants were eligible. For convenience sake the letter dated 28.03.1995 issued by GMP (RA-1) is reproduced below:-

"The eligibility conditions for selection of staff against 25% - Inter Apprentices Quota as contained in Para 140 (ii) of Indian Rly. Estt. Manual 1989 Edition, does not deprive a Mistry for being called for the selection. It only lays down that the candidate should be Matriculate, should have worked for 3 years in skilled grade and should be below 45 years of age."

The above ruling given by CPO has set right the controversy which erupted unnecessarily because of irregular/illegal action of the respondents. Therefore, we have no hesitation to hold that the applicants were eligible to appear in the selection and they were deprived of their rights. While we would not like to quash the panel dated 21.11.1992 at this stage as the same was operated upon way back in 1995, But we would certainly like to give the relief to the applicants.

8. In the facts and circumstances and our aforesaid discussions, the O.A. is finally disposed of with the following directions:-

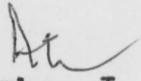
1) In case the applicants have already been promoted to

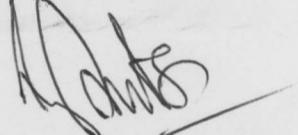


higher posts including the Charge man 'B', they shall be entitled for notional seniority from the date their junior was promoted in respect of each promotion.

ii) In case the applicant have still not been promoted the respondents shall organise the selection test for Intermediate Apprentice Mechanic (Electrical) against the 25% quota ear-marked for serving Matriculate employees, for both the applicants and if they qualify in the test they shall be promoted giving them the notional seniority from the date their juniors were promoted in 1995. They shall also be entitled further promotions as per Rules by assigning them the notional seniority in respect of each promotion post, as per rules.

9. There shall be no order as to costs.


Member-J


Member-A

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