

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 28th day of May, 2004.

QUORUM : HON. MR. D. C. VERMA, V.C.

HON. MR. D. R. TIWARI, A.M.

O.A. No. 976 of 2003

Balwant Singh Yadav S/O Shri Ram Surat Yadav R/O 3 R.K.
Puram, Havelia, Jhusi, Allahabad.

.....

.....Applicant.

Counsel for applicant : Sri A.K. Singh.

Versus

1. Union of India through its G.M., North Central, Allahabad.
2. Chairman, Railway Recruitment Board, North Central
Railway, D.R.M. Office Complex, Nawab Yusuf Road,
Allahabad.
3. Assistant Secretary, Railway Recruitment Board, N.C.R.,
D.R.M. Office, Complex Nawab Yusuf Road, Allahabad.

.....

.....Respondents.

Counsel for respondents : Sri A.K. Gaur.

O R D E R

BY HON. MR. D. R. TIWARI, A.M.

By this O.A. instituted under section 19 of the
A.T. Act, 1985, the applicant has prayed for the following
relief :-

- i) To issue a writ order or direction in the
nature of certiorary to quashing the impugned
order dated 24.4.2003 passed by respondent No.2.
- ii) To issue a writ order or direction in the nature
of mandamus commanding the respondents to allow
the form of the applicant and to allow the
applicant to appear in the examination of the
aforesaid vacancy.
- iii) To issue any other and suitable order or
direction which this Hon'ble Court may deem fit
and proper in the circumstances of the case to
meet the end of justice.
- iv) Award the cost of the original application to
the applicant.

Adm

2. The facts of the case, in brief, are that in pursuance of advertisement published in Employment News dated 8.9.2001 (Annexure-1) by the Railway Recruitment Board, Allahabad, the applicant applied for the post of Section Enginner (Mechanical) and filled up the proper form and submitted to Respondent No.3 i.e. Assistant Secretary, Railway Recruitment Board, Allahabad. In his application form, he has indicated that he belongs to Bac-kward class but he could not attach the caste certificate with the form. He received a letter dated 23.4.2003 by w-hich he was informed that his form has been rejected on the ground that along with the fom, his caste certificate was not attached (Annexure-2). Consequently he filed an O.A. in this Tribunal and by interim order dated 25.8.2003, the respondents were directed to allow the applicant to appear in the written examination provisionally. The interim order also provided that his appearence in the examination and the result shall be subject to order passed in this regard by the Tribunal. The interim order was passed because page 2 of the advertisement was not attached.

3. The applicant has challenged the impugned order mainly on two grounds :-

- i) He has stated that paragraph 1.8 under the heading 'general instructions' of advertisement, it has been mentioned that candidates belonging to SC/ST/OBC, even if they are applying for general post, they should attach caste certificate issued by the competent authority. In the absence of a caste certificate they will be treated as a general candidate. He contends that all that it meant was that in the absence of caste certificate he could have, at the most, be treated as a general candidate but that would not be a ground for rejecting his candidature.
- ii) He has contended that before rejecting the form of applicant, he was not afforded opportunity of submitting the caste certificate which violates the fundamental rights of the applicant. Thus, he assails the order as illegal and arbitrary.

Dhair

4. The respondents, on the other hand, have opposed the contention of the applicant by filing the counter affidavit. They have submitted that the application of the applicant was rejected on the ground of non-submission of the caste certificate. It is true that in para 1.8 of the general instruction in the advertisement, it is specified that if the candidate does not reveal his proper community in the application form, he would be treated as general candidate and no subsequent change will be made. However, this instruction must be read with para 9(vii) which clearly brings out as specific ground of rejection that certificate not attached with application form will be a solid ground of rejection. They have further submitted that the applicant was well aware that he has submitted an incomplete application. Copy of para 9 of advertisement No.01-2001 has been annexed as C.R.-1.

5. We have heard the counsel for both the parties and perused the pleadings. We have given our anxious consideration to the submissions made at the bar.

6. In order to resolve the controversy, it is necessary to quote the following provisions contained in the advertisement :-

"1. General instructions :

1.1 to 1.7.

1.8 - The candidates belonging to SC/ST/OBC should clearly indicate the same in the application (even when applying for U.R. vacancy) and should attach caste certificate from competent authorities as proof of the same in the specified format failing which they will be treated as unreserved and subsequent representations for change of community status will not be entertained.

In case of OBC.....

9. Invalid Application :-

(i) to (vi)

(vii) Without proper caste certificate in respect of SC/ST/OBC."



7. During the course of the argument, Sri A.K. Singh, counsel appearing on behalf of the applicant, relying on para 1.8 of the advertisement, strongly contended that non-submission of the caste certificate would not lead to rejection of the application. All it could mean was that the applicant could be treated as unreserved candidate and to that extent his application is valid and could appear in the examination. He further argued that the respondents were not entitled to reject the application without providing an opportunity and/or without notice and hearing. Sri A.K. Gaur, the learned counsel for the respondents has opposed the contention of the applicant and he has placed reliance on the following judgments of the Apex Court :-

- i) Karnataka Public Service Commission Vs. B.M. Vijay Shankar, AIR 1992 SC 952.
- ii) Union of India & others Vs. Tarun K. Singh & others 204 SCC (L&S) 316.

8. Sri Gaur has argued that the applicant's reliance on para 1.8 is not proper and has pointed out that para 9(vii) of the advertisement has been conveniently ignored by the applicant. He even stated across the bar that the applicant has attached only the first page of the advertisement which contains only the general instructions. He has tried to conceal the material fact which finds place in para 9(vii) of the Employment News under the heading invalid application and on this ground alone, his application deserves to be dismissed in view of the decision reported in 2000(6) SCC 120. We have gone through the judgments cited by Sri Gaur and find that the case of Tarun K. Singh (Supra) does not assist him as that relates to cancellation of selection process on grounds of mal-practices adopted therein.

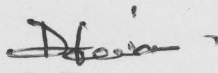
9. After taking into consideration the rival contention of the parties, we are persuaded to agree with the respondent's counsel. It is admitted fact that applicant has indicated in his application that he belongs to OBC category.

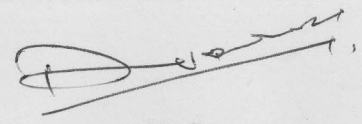
Dfesa

Once he has done so, it is mandatory on his part to submit the caste certificate. Failure to do so attracts the provision contained in para 9(vii) under the heading invalid application. Para 1.8 clearly provides that candidates belonging to SC/ST/OBC should invariably submit the caste certificate even if they wish to be considered against the unreserved vacancy. The fallacy of the argument of the applicant lies in the fact that non-submission of the caste certificate may not disentitle him for being considered as general candidate. He also ignores totally the provisions contained in para 9(vii) of the advertisement. The plea of the applicant regarding affording of opportunity of hearing or following principles of natural justice cannot be sustained in view of the facts of this case. We get support for our views from the decision of the Apex Court in the case of B.M. Vijay Shanker (Supra) wherein it has been held that natural justice is a concept which has succeeded in keeping the arbitrary action within limits.....Since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending it to situations where it would cause more injustice than justice. In view of this legal position, the O.A. is liable to be dismissed.

10. In view of the discussions held in preceding paras, the O.A. is devoid of merit and is accordingly dismissed. There is no justification to interfere with the order passed by the respondents.

No order as to costs.


A.M.


V.C.

Asthana/