

Plaintiff

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

R.A. NO. 29 of 1993 in
O.A. No. 708 of 1988
~~XXA NO.~~

DATE OF DECISION 29.09.1993.

Shri V. Bharmalingam

Petitioner

Shri Y.V.Shah

Advocate for the Petitioner(s)

Versus

Union of India and ors.

Respondent

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Member (J)

The Hon'ble Mr. M.R.Kolhatkar : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

: 2 :

V.Dharmalingam

....Applicant.

Versus

Union of India,
through the General Manager,
Western Railway, and
others.

...Respondents.

(BY Circulation).

O R D E R

R.A. 29 OF 1993 in
O.A.708 OF 1988.

Dated : 29.09.1993.

Per : Hon'ble Mr.M.R.Kolhatkar : Member (A)

1. I have considered Review Application No.29/93, in O.A./708/88, passed on 14.5.1993. The application purports to be under Section 22 (3) (f) of the Administrative Tribunals Act, 1985. I have also kept in view provisions of order 47 of C.P.C.

2. In 2 (A) it is stated that there are palpable apparent ~~errors~~ on the face of the record in passing the impugned order. This is a mere statement and needs no comments.

3. In 2 (B), it is stated that Tribunal ~~has~~ ^{has} no power/authority/ jurisdiction to quash and set aside the entry from service book. The entry in service book was quashed and set aside because it came before the Tribunal in the course of the

was hearing and /a matter in issue. The service benefits desired by original respondent no.3, present applicant, on the basis of the caste, viz., being called for trade ^{test} was in fact impugnd ^{by} the original applicant now respondent no.3. As the entry was ex facie illegal, the Tribunal was bound to quash it and set it aside. Why it was ex facie illegal has been explained in para 15 of the order.

4. In 2 (C) it is stated that Tribunal has no power to say that applicant is non-SC because he is born in SC Community from the wedlock of his parents. The ground is irrelevant. The wedlock of the parents of applicant ^{or his} nativity are not in dispute. The Tribunal has held that the evidence produced by applicant re :/ caste, - status was wrongly accepted by Railway Administration. The right of applicant to produce better evidence ^{is} not taken away.

5. In 2 (D) it is stated that respondent no.3, has[/] no right to be promoted as Motor Truck Driver, since he failed in the selection test. This is not factually ^{correct} It was the case of Railway Administration that against ~~xxx~~ ^{one} vacancy, only one senior employee is to be called for the trade test, vide para-7 of the order. Hence the applicant (original respondent no.3), was called for the trade test on 17.11.1988 and respondent no.3, (original applicant), was not called although he was ready to be tested on 23.5.1988, and was in possession of Driving Licence of Heavy Vehicles, vide para-2 of order. Railway Administration filed additional documents showing that

the applicant passed the requisite artisan test of M/T Driver vide Annexure-R/2. on the basis of which applicant was promoted as Lister Truck Driver on 29.1.1992, vide last sentence of para-2. The direction that applicant should be deemed to have been promoted is / based on the above facts and the perception of the Tribunal that although the applicant was eligible in all respects, he was unjustly denied the opportunity of appearing for trade test on 23.5.1988. In this connection reference may be made to our observations in para-12 and para 14 of the order. In para-12, we have stated "Instructions at para-10 of the brochuredo not apply to the instant case. These instructions do not warrant derailment of an on-going selection process in the face of the following circumstances :

(3) An SC employee who was senior enough to be considered ~~exempt~~ and who possessed driving licence was available and was actually asked to be in ~~maximum~~ readiness for the test."

Para. (14)

"We, therefore, consider that it was not in order for the respondents no.1 and 2 not to have proceeded with the interview of the applicant on 23.5.88. It would have been perfectly in order to permit respondent no.3 to compete as a general candidate and consider his case for reserved vacancy after he had established his status. Instead, the interview was postponed to 17.11.1988, i.e. by 6 months when respondent was selected. The whole narration gives an

appearance of action expressly taken to accommodate a particular person."

6. 2 (E) states that in view of Railway Administration's decision deciding applicant to be SC, he cannot be deprived of status of SC. Our reasons for holding that Railway Administration did not decide properly are contained in para 15 read with para 12.

7. Para 2 (F) states that the order is self contradictory because we have, while setting aside the entry in service Book also directed Railway Administration to make a further investigation ⁱⁿ to the matter, Para 18 contains the direction as well as the factors to be taken in to account. If after further investigation, Railway Administration comes to the conclusion that he belongs to SC, the earlier order does not become infructuous and non est and un-enforceable.

What happens is that that fresh certificate will take effect ~~from~~ from the date it is issued. In this connection, the applicant appears to be equating administrative order re : SC status passed prior to our order viz. service book entry on the basis of Railway Administration order dated 02.9.1988, and the ~~order~~ order re : community that might be passed after proper investigation. The service book entry based on Railway Administration order dated 02.9.1988, stands quashed by judicial determination and is therefore, illegal. The entry that will be made ~~for~~ after proper enquiry will have a

better legal standing and shall prevail unless judicially set aside but it does not take retrospective effect.

8. In para 2 (G) it is stated that Tribunal has failed to consider the that applicant being in the civil services of the union migration from Tamilnadu to Gujarat has no relevancy at all. This contention shows that applicant has not read our order at all. In para-5 (iii) of our order, we have referred to the contention of original applicant based on Railway Board's letter dated 28.10.1972, on the subject "SC/ST: change of status due to migration". In para-9, we have stated as below : "We also do not find substance in applicant's contention that that as a migrant, (original) respondent no.3, (now applicant) must produce a certificate from Gujarat authorities. Respondent no.3, is quite right in relying on the instructions in the Brouchure on page.19 quoted above"(i.e. quoted in para-8 of the order).

9. In para 2 (H) it is stated that omission to mention SC in the application does not an validate the birth of applicant as SC and that no occasion has arisen for applicant to claim privilege on SC prior to 16.5.1988. We have mentioned the failure of applicant to mention community in application although column was there as a relevant circumstance. Our orders are not based on such a failure. Other statements made in the para need no comment as they showed a complete ignorance of service rules including rules re : maintenance of service book.

10. In para 2 (I), it is stated that original applicant had not prayed that status of SC of applicant should be taken away and his promotion as Motor-truck Driver should be quashed. This Tribunal can pass appropriate orders to do justice. When the Tribunal was shown a service book entry which on the face of it was wrong and based on the assumption of a non-SC being SC, Tribunal had no option, but to quash it and issue appropriate direction for rectification especially when SC status was basis of promotion which was in issue. In any case vide para (5) of the rejoinder by the applicant (original) dated 6.1.1993, it was the contention of the applicant (original) that respondent no. 3 (now applicant) was not entitled to benefits of SC status.

11. In para 2 (J), it is stated without grounds that impugned order is illegal and perverse. This needs no comments.

The prayers are : (1) To review the order,
(2) To stay the order,
(3) To allow the review application.

12. In view of above discussion, there is no merit in the application, which shows that applicant has not even read our order carefully, whether under order 47 of CPC or otherwise, no case for review has been made out.

We are of the view that the application for Review should be disallowed. The application is accordingly rejected.

R.C.Bhatt
(R.C.Bhatt)
Member (A)

M.R.Kolhatkar
(M.R.Kolhatkar)
Member (J)