

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. /708/88
T.A. No.

DATE OF DECISION 14/5/1993

Shri Bhalabhai V.

Petitioner

Mr.K.K.Shah

Advocate for the Petitioner(s)

Versus

Union of India & others

Respondent

Mr.N.S.Shevde for resp.no.1& 2 Advocate for the Respondent(s)

Mr.M.M.Xavier for resp.no.3

CORAM :

The Hon'ble Mr. R.C.Bhatt

: Judicial Member

The Hon'ble Mr. M.R.Kolhatkar

: Administrative Member

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 ? ✗

(a)

Bhalabhai V.,

Working as a Khalasi in Stores Depot,
Western Railway,
Sabarmati,
Ahmedabad.

....APPLICANT

Advocate

Mr.K.K.Shah

versus

1. Union of India
(Notice to be served through
The General Manager,
Western Railways,
Churghgate,
BOMBAY.
2. The Deputy Controller of Stores,
Western Railway,
Sabarmati,
Ahmedabad-19.
3. Dharam Lingam V.,
Ticket No.189,
Stores Khalasi,
c/o.,General Stores Depot,
Western Railway,
Sabarmati,
Ahmedabad-19.

....RESPONDENTS

Advocate :

Mr.N.S.Shevde for Respondents
No. 1 and 2.
Mr. M.M.Xavier for Respondent
No.3.

J U D G M E N T

O.A./708/88

Date : 14/5/1993

Per : Hon'ble Shri M.R.Kolhatkar,
Administrative Member.

1. This is an original application under
section 19 of the Administrative Tribunals Act, 1985

requesting that the applicant may be considered by the respondents No.1 and 2 for the trade test of Motor Car Driver in the pay scale of Rs.950-1500/- as an SC employee, quashing the letter dated 31-10-88 (Annexure A/5) by which Respondent No.2 called Respondent No.3 to appear for the trade test to be held on 17-11-88. The applicant has also prayed for other and further orders and directions deemed fit in the interest of justice.

2. The facts of the case are ^{as} below :-

On 12-11-87, vide Annexure R/1, Deputy Controller of Stores, Western Railway, Sabarmati, called for applications from Group 'D' staff working in the District and possessing a driving licence of heavy vehicle to form a panel of suitable employees to the post of Truck Driver, skilled Gr.III in the pay scale of Rs.950-1500/-(RP) against 4 vacancies, one of which was reserved for scheduled caste candidates. The Applicants were to furnish information in a proforma of which sr.8. related to "Community whether SC/ST". According to the applicant, who is admittedly in possession of Motor Car Driving licence of heavy vehicles (vide Annexure A). He was asked to be in readiness to appear for the test on 23-5-88. The test was however, not held. It is submitted by the Respondents No. 1 and 2 that the test was ordered

to be cancelled on 21-5-88 because , on 16-5-88, the respondent no.3 had filed a provisional caste certificate (xerox copy of caste certificate) and the matter was under correspondence. It was only by the letter dated 26th August, 1988 from the Head of Quarters ~~for~~ the Western Railway (Annexure R/6) that respondent no.2 was given instructions to decide the SC status of the Respondent no.3 and on 2-9-88, respondent no.2 decided that the respondent no.3 belongs in SC community (Annexure R/7). The test was accordingly held for respondent no.3 on 17-11-88 and he was appointed to the reserved vacancy of Motor Truck Driver, skilled Gr.III. It also appears that since the Application was filed, the applicant has with effect from 29-1-92 taken over charge as Lister Truck Driver Gr.III in the scale of Rs.950-1500/- (vide Annexure R/4)

3. We have perused the record and heard the learned advocates for the Applicant and Respondents No. 1 and 2 and Respondent no.3.

4. We also obtained the service book of respondent no.3 which was ~~materially~~ ^{materially} relevant for deciding the question of SC status of Respondent no.3 (see also Annexure R/5).

5. The case of the applicant is that :-

(i) Respondent no.3 should not have been

called for the trade test since in response to the advertisement dated 12-11-87

(Annexure R/1) for which the last date was in the 3-12-87, he did not show ~~xxx~~ proforma
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column ~~xxx~~ that he belonged to SC community.

(ii) Even assuming for argument's sake~~x~~ that respondent no.3 was an SC candidate, Respondent no.2 ought to have called ~~for~~ at least 3 candidates including Applicant for the test as per the normal ratio 1 to 3. (for one post, 3 candidates)

(iii) Referring to the third edition of the " Brochure on Reservation for SC's and ST's in Railway Services, ^{" and} relying on Railway Board's letter dated 28-10-72 under the heading." SC/ST, change of status due to migration" (page-25), Applicant has argued that Respondent no.3 is migrant from Tamil Nadu to Gujarat and hence, his being SC has to be determined with reference to the scheduled~~d~~ pertaining to Gujarat and as such, he cannot enjoy the benefits of being an SC ^{on the strength of certificate from} ~~in~~ Tamil Nadu ^{authentic} for purposes of the post in question. The Applicant has relied

on the ratio of the following cases :-

*Manichandra v/s Dean SGS Medical College "(1990) 3 SCC 130. and

* Sirish Kumar Chaudhary v/s State of Tripura,"1990 Supp./SCC.221.

(iv) It is also one of the implicit contentions of the Applicant that applicant having filed SC certificate in 1980 and Respondent No.3 having filed SC certificate in 1988, the Applicant, qua SC employee, is senior to Respondent no.3. For this purpose, he has relied on Railway Board's letter dated 1-11-83 (Annexure A/4) to the effect that the benefit of belonging to SC/ST should be extended from the date of submission of such certificate by the concerned employee and not from the date of acceptance by the Railway Administration after necessary verification.

6. By way of consequential relief, the Applicant has requested for appointment to the post of Motor Truck Driver from the date Respondent no.3 was so appointed and grant of back wages. According to him, his present appointment as Lighter Truck Driver does not give him the experience of heavy Motor Truck Driver. The Applicant has also requested for grant of 12 % interest on back

wages for which he has cited several authorities viz.

1. "Surinder Singh v/s Union of India"
(1989)9 ATC 469.

2. "Shri Bakshis Singh v/s Union of India "
(1990) (1) (CAT) 151

3. "Mandhar Sitaram Mandanwar v/s Union of India"
1986 ATC 531, For the proposition that the

consequential benefits include back wages also, he has
relied on G.Nancharaiah v. Karuna Pillai (1992) 19 ATC Hyd
365.

7. Respondents no. 1 and 2 (Railway Administration)
have argued that the reason the Respondent no.3 was
called for interview was because Respondent no.3 was
senior to Applicant and on 16-5-88, he claimed that he
belonged to the SC community of Tamil Nadu state and it
was incumbent on the respondents to postpone the trade
test fixed on 23-5-88, in view of the instructions
contained in para-6 (a) of the chapter II at page-10
of the Brochure referred to earlier. The reasons why
Applicant was asked to be in readiness for the trade
test to be held on 23-5-88 was because one senior stores
Khalasi Shri Sanabhai K.T.No.537 belonging to SC
community who was senior to the Applicant was called
for the trade test but he failed therein. The contention
of the Applicant that persons three times the vacancies
are required to be called for test is refuted by the

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Respondents no. 1 and 2. It is stated that as ~~xx~~ per the procedure in/ vogue for the trade test for artisan~~x~~ category, against one vacancy only one senior employee is to be called for the trade test and if he fails therein, the next senior employee is to be called and that this is also mentioned in office circular dated 12-11-87 (Annexure R/1).

8. Regarding the Respondent no.3 not being an eligible SC employee being a migrant. Counsel for Respondent no.3 invited our attention to instructions of the Brochure of Railway Board dated 6th July, 1960 (at page-19) / which clearly state as below :-

" However, a person who by virtue of being a resident in the localities specified in the aforesaid order, is a member of SC/ST, as the case may be, does not lose that character merely by going to another locality temporarily in search of employment or for the purpose of registering himself, as a candidate for employment." Respondent reliance no.3 has also placed :/ on the precedent of " Union of India v/s Ramchandra Prasad " ATR (1989 (1) CAT.127) for the proposition that the responsibility of verification of such claims is cast~~x~~ not only on the person claiming himself to belong to SC/ST community, but also on the employer.

9. In our view, one distinguishing feature of this case in interpretation of instructions re: SC/ST is that it is a case in which the claims of two SC employees (or at least one SC employee and another employee claiming himself to be SC) are pitted against each other. Therefore, the applicability of instructions which bear on the normal situations where claims of SC's and non.SC's are pitted against each other need to be scrutinized properly. At the outset, however, we wish to dispose of the contention of the Applicant that the seniority as an SC employee is related to the date of submission of caste certificate by the Railway Employee. There can be no two seniority lists. Merely, because Applicant's SC status was accepted in 1980 does not make him a senior SC employee. vis-a-vis another SC employee whose SC status is accepted later but who is otherwise senior to him. If the Respondent no.3's SC status is accepted in 1988, it does not make him junior. Once it is accepted that Respondent no.3 belongs to SC, his SC status relates back to the date of his entry in service and since he is otherwise senior to Applicant, he would rank as such. We also do not find substance in the Applicant's contention that as a migrant, ~~he~~ ^{the Respondent No.3} must produce a certificate from Gujarat authorities. Respondent No.3 is quite right, in relying on the instructions in the Brochure on

page-19 quoted above.

10. Coming back to the question of interpretation, Respondent has relied on para 6(d) of chapter II at page 10 at the Brochure in Reservation reproduced below :-

" 6(d) where a candidate belonging to Scheduled Caste or Scheduled Tribe is unable to produce certificate from any of the prescribed authority he may be appointed provisionally on the basis of, where ever prima facia proof including certificate issued by members of parliament, Member of Legislative Assemblies, he is able to produce in support of his claims subject to his furnishing the prescribed ^{certificate} within a reasonable time or if there is genuine difficulty in his obtaining certificate, the appointing authority should itself verify his claim through the District Magistrate concerned

Now, this instruction makes it incumbent on the appointing authority to verify the caste claims. This is also ^{the} ratio of Ramchandra Prasad's case, But this instruction is designed to ensure that the claims of SC candidate are not unjustly, ignored. To apply it to a situation where there is already an SC candidate whose caste status is undoubted, for denying to him the selection on the ground that there is another person who earlier did not claim to be SC but who belatedly makes a claim in that regard, amounts to misinterpretation of the instructions giving rise to the surmise of extraneous consideration at work.

11. In our view, the basic issue in this case is whether Respondent no.3 ~~was~~ was entitled to be called for interview in the circumstances of the case.

12. The applications for the post in question were called by the circular dated 12-11-87, the last date for sending applications was 3-12-87 and there was a specific column about SC/ST status. It is not indispute that prior to 16-5-88, Respondent no.3 had never claimed to be an SC employee . His service book shows his date of entry in service as 22-1-66 and caste as "PARAYAN". Till the entry ~~re~~ re: caste certificate in terms of General Manager's orders dated 26-8-88 with note dated 2-9-88 (R/6 and R/7) he was being treated as non.SC. It was only on 16-5-88, that he, for the first time, made the claim of belonging to SC. Why the claim was made belatedly i-.e.. 22 years after entry in service was never explained to us. It was this representation which derailed the normal selection process. The explanations of respondents no.1 and 2 in this regard are not satisfactory. First, it is said that the instructions at page-10 of the Brochure made it obligatory. But as we observed earlier, these instructions do not apply to the instant case. These instructions do not warrant derailment of on going selection process in the face of following circumstances :

1. The employee did not claim to be SC at the time of entry in service or shortly thereafter, he slept for 22 years.
2. The employee did not claim to be SC in the proforma application in response to advertisement notice dated 12-11-87.
3. An SC employee who was senior enough to be considered and who possessed driving licence was available and was actually asked to be in readiness for the test.

13. Moreover, respondents no. 1 and 2 have not explained why Senior Stores Khalasi Shri Sanabhai K.T.No.537 who was senior to Applicant was called for interview when it is not alleged that he was senior to Respondent no.3.

14. We, therefore, consider that it was not in order for the respondents no. 1 and 2x 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 17-11-93 i.e. by 6 months when respondent was selected. The whole, narration gives an appearance of action expressly taken to accommodate a particular person.

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15. To complete the narration, our perusal of service book and the certificate show that the scheduled caste as claimed and notified is "PARAYAN" whereas the caste entry ^{in the Service Book} relates to "PARAYAN". There is therefore, clearly an error in holding that respondent no.3, as a matter of fact, belonged to SC community.

16. We therefore, set aside the order appointing Respondent no.3 to the post of Motor Truck Driver. We further direct that the applicant may be deemed to have been appointed to the post from the 23-5-88 on which date, but for the various developments mentioned by us, selection ~~process~~ ^{process} would have been completed. We also hold him entitled to back wages from the date but we are not satisfied that this is a case where grant of any interest is justified.

17. The reason we give him the benefit of the date of 23-5-88 and not 17-11-88, is because that ^{viz 23-5-88} date has some administrative justification. So far as the date of 17-11-88 is concerned, it was a fortuitous date viz a date when the claim of Respondent no.3 for SC status was verified and selection process completed. The date could, as well, have been earlier or later. In our view, our order re: back wages is justified with reference to " Union of India v/s K.V.Janakiram (AIR 1991 SC 2010) . That case related

to " sealed cover procedure " but the observations of the SC in that case re: the circumstances in which back wages are permissible in the case of delayed promotion for an employee who is exonerated and who was ready and willing to be promoted do apply ⁱⁿ ~~to~~ the instant case. In this case, we note that not only was applicant fully qualified but he was ~~ready~~ ready to be tested on 23-5-88 and made repeated representations viz.

08/7/1988 (Annexure A/2)

05/9/1988 (Annexure A/2) and

04/10/1988 (Annexure A/2) until Respondent no.2 gave a reply on 10/10/1988 (Annexure A/3)

18. So far as respondent no.3 is concerned, we hold that there is a patent error on the part of Respondent No.2 in holding that he belonged to SC. We have, therefore, no alternative but to quash the entry in the service book relating to the SC status of the Applicant. We direct respondents no. 1 and 2 to make further investigation into the matter to establish caste status of the Respondent no.3, especially whether he belongs to SC. While doing so, the reasons as to why he remained passive between entry in service (21-1-66) and the first claim to SC status (16/5/88), ⁽¹⁾ whether "PARAYAN" and "PARAYAR" are the same caste, ⁽²⁾ and ⁽³⁾ if PARAYAR which is the caste entered by respondent no.3


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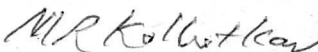
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in service record is not SC, why he made a false
claim ⁽⁴⁾ and the circumstances under which ^{the claim} ~~it~~ was accepted.
We therefore, pass the following order.

O R D E R

Application is allowed. Appointment of ~~x~~
Respondent no.3 to the post of Motor Truck Driver
from 17/11/88 quashed and set aside. Applicant is deemed
to be promoted as Motor Truck Driver w.e.from 23-5-88
with entitlement to back wages. Service book entry of
Respondent no.3 relating to his being SC is quashed and
set aside. Respondents no. 1 and 2 ^{directed to} investigate the matter
of Respondent no.3's caste status ^{per detailed} further as directed ^{with} ~~as~~.
The respondents no.1 and 2 are directed to comply with this
order within 4 months from the date of receipt of this
order. No order as to costs.


(R.C.Bhatt)
Member(J)


(M.R.Kolahatkar)
Member(A)