

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. /35/90
~~**X.R.A.NO.**~~

DATE OF DECISION 31.3.2000

Raghunandan Lal **Petitioner**

Mr. K.K. Shah **Advocate for the Petitioner [s]**
Versus

Union of India **Respondent**

Mr. N.S. Shevde **Advocate for the Respondent [s]**

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C. Kannan, Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ? *✓*
2. To be referred to the Reporter or not ? *✓*
3. Whether their Lerdships wish to see the fair copy of the Judgment ? *✓*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *✓*

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Raghunandan Lal
A.I.E. II
Western Railway
Godhra, Baroda Division
Godhra

Address for service :
of Notice

Applicant

Advocate: Mr. K.K. Shah

Versus

The Union of India
Notice to be served through
The General Manager
Western Railway
Churchgate
Bombay- 400 020.

Respondent

Advocate: Mr. N.S. Shevde:

JUDGEMENT

IN

Dated 31st March 2000

O.A./35/90

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

The applicant a railway servant belonging to Scheduled Caste is aggrieved by the fact that he has not been promoted to the senior scale in the Civil Engineering Department of the Railways as Executive Engineer/ Divisional Engineer when a number of his juniors have been so promoted. He brings out that he was empanelled as Assistant E Engineer by an order dated 12th November 1986

wherein he is shown at Sr.No.33 whereas a number of persons who are below him in the merit order have been promoted to the senior scale on ad hoc basis by the order dated 2nd March 1989 and 1st September 1989 as at Annexure A-2. He contends that in particular Shri Parmar who also belongs to S.C. and who was at Sr.No.82 in the order dated 12th November 1986 has received promotion in the senior scale and has superseded him.

2. The respondents have contended that the applicant was considered by the duly constituted D.P.C.s. but was found unfit for such promotion. There is also an averment that Shri Parmar is not junior to the applicant and his seniority was subsequently revised showing him above the applicant.

3. We have heard Mr. K.K. Shah for the applicant and Mr. N.S. Shevde for the respondents. We have also gone through the copy of the proceedings of the D.P.C. and also an order of dated 4th November 1988 where the seniority of Parmar was upgraded above that of the applicant.

4. Mr. K.K. Shah submits that the posts in the senior scale are non-selection posts which are filled on the basis of seniority-cum-suitability. The applicant has not been communicated any

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adverse remarks and as he was senior at the level of Assistant Engineer, he should have been declared as suitable and promoted to the senior scale. The applicant belongs to the Scheduled Caste and as such is entitled to certain concessions in the matter of promotion to higher level. Mr. Shah draws attention particularly to provisions contained in the brochure on Reservation for S.Cs and S.Ts of the Govt. of India in the Department of Personnel and Training (7th Edition). He contends that in terms of para 9.2 (b) on page 112 and 113 if there is shortfall on the basis of roster points for SC and ST, the difference should be made up by selecting the candidates of these communities who are in the zone of consideration irrespective of merit but who are considered fit for promotion. He states that in the pleadings the applicant has brought out that there is a shortfall for S.Cs at the level of Senior scale. In such a situation, the applicant should have been promoted irrespective of merit. Mr. Shah also submits that there are some provisions for imparting additional training and coaching to the members of S.Cs and such training was not

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imparted to the applicant. He contends that the respondents have not given proper weightage to the fact that the applicant belongs to the S.C. He states that it is not clear whether the department followed 40 points roster or 100 point roster while filling up vacancies for the reserved categories. It is also his stand that as per Government instructions it is obligatory to have at least one Member who belongs to the SC/ST in the D.P.C. in order to ensure that their interests are safeguarded. He says that it is not clear from the copy of the D.P.C. proceedings as to whether this requirement was fulfilled as there is no indication against the name of any Member that he belongs to S.C. or S.T.

Mr. Shah submits that at one stage the respondents have taken the line ^{that} ~~with~~ the relevant file could not be produced as it was before the Jabalpur Bench of the Tribunal. They have now furnished some copies of the D.P.C. proceedings. When copies can be taken out, there is no reason as to why the entire file itself could not be produced. He states that the proceedings of the Selection Committee did not give the date at the top and the date is given only below the signature of the Members. He doubts

the authenticity of the copy of the D.P.C. proceedings. In the proceedings of the D.P.C. it is stated to have been held in February 1988 there is a mention in para 3 that the Committee took into account the confidential note of the C.P.O. dated 27.1.88. The C.P.O. was a member of the D.P.C. and it would seem that entire proceedings were already pre-determined without due application of mind. He has also contended that orders dated 2nd March 1989 and 1st Septr. 1989 have not given the senior scale e to some of the promoted officers but has allowed them only special pay in addition to their pay in Class II. He wonders as to why such a procedure should have been followed. According to him, the entire process seems to be peculiar and not done objectively in bona fide exercise of powers. Mr. K.K. Shah contends that no doubt some proceedings were initiated against the applicant but they had ended in infliction of minor penalty of withholding of stoppage of one set of privilege passes. He states that this penalty cannot stand in the way of the applicant's promotion. The penalty imposed by order dated 8.1.88 was stoppage of one set of privilege pass. This cannot come in the way of his promotion as this is not a case of

withholding of increment or any higher penalty when during the currency of the penalty the Govt. servant could not be promoted.

5. Mr. Shevde for the respondents resists the application. He says that the applicant had right to be considered for promotion and this was done. A duly constituted D.P.C. had examined his records and held him unsuitable for promotion. He says that there has been no violation of the Govt. instructions with regard to concessions to be given to the members of the S.C. and in fact, the Committee had recommended some persons belonging to the reserved categories even though the applicant was not one of them. Mr. Shevde says that there is an averment by the Railways that the D.P.C. consisted of a Member belonging to the reserved community and the entire exercise was objective. He submits that it is not obligatory to depute the applicant for any training. The applicant has a right to be considered and it was duly done but the D.P.C. held him unsuitable for promotion at this level. He denies the charge of discrimination against the members of the reserved community particularly in view of the fact that a number of persons belonging to the S.Cs have been promoted by the department. Mr. Shevde also states

that the applicant was considered again later and was promoted as Divisional Engineer w.e.f. 7.9.91.

6. We have considered the contentions of both sides.

7. We may initially refer to the stand of the Railways that the contention of the applicant that N.K. Parmar who belongs to the S.C. is junior to him is not correct as his seniority was subsequently upgraded. The Railways have shown a copy of the order dated 4th November 1988 where it was decided to allow Shri Parmar's seniority to be upgraded from that of Sr.No.79-A to Sr.No. 31-A in the panel of A.Es. circulated on 12.11.86. In that panel the applicant's position was Sr.No.33. In view of this order, Shri Parmar no doubt became senior to the applicant but this upgradation took place only when the order was issued on 4th November 1988 whereas the D.P.C. had met on 10th February 1988 and 26th July 1988. The D.P.C.s would not have been aware of the subsequent development of upgradation of Parmar's seniority. We find from the D.P.C. proceedings that in fact the D.P.C. had gone on the basis that Parmar was junior to the applicant as there is a specific statement in para 5 of the proceedings dated 10.2.88 that Parmar's promotion would involve the supersession of some SC/ST candidates who are

considered ^{not} suitable for promotion and this included the applicant.

8. The main grounds adduced in support of the O.A. are that, firstly the posts in the senior scale in the Civil Engineering Department are non-selection posts and that the applicant was not communicated any adverse remarks, he should have been considered suitable for promotion and his supersession is not justified and secondly the concessions and benefits admissible to the S.Cs have not been taken into account while considering the case of the promotion of the applicant.

9. As regards the first contention, the applicant has assumed that in the case of non-selection post, there is an automatic right for promotion based on seniority if there are no adverse remarks in the A.C.R. This assumption is not correct.

We may refer to the relevant provisions in Department of Personnel O.M. dated 10th April 1989 which are the consolidated instructions regarding D.P.C. Para 7 of this O.M. says that:

" 7. Where the promotions are to be made on 'non-selection' basis according to Recruitment Rules, the DPC need not make a comparative assessment of the records of officers and it should categorise the officers as 'fit' or 'not yet fit' for promotion on the basis of assessment of their record of service. While considering an officer 'fit', guidelines in para 6.1.4 should be borne in mind. The officers categorised as 'fit' should be placed in the panel in the order of their seniority in the grade from which promotions are to be made."

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In view of the reference to para 6.1.4 in this para we may reproduce para 6.1.4 as follows:-

"6.1.4 Government also desires to clear the misconception about 'Average' performance. While "Average" may not be taken as adverse remark in respect of an officer, at the same time, it cannot be regarded as complimentary to the officer, as "Average" performance should be regarded as routine and undistinguished. It is only performance that is above average and performance that is really noteworthy which should entitle an officer to recognition and suitable rewards in the matter of promotion".

If the Government servant's performance is only average, the same need not be communicated to him as it is not technically adverse but it can stand in the way of promotion. This circular has not been challenged in the present O.A. As such the fact that merely because no adverse remarks have been communicated it would not mean that there is an automatic right for promotion even if it is to a non-selection post. If the D.P.C. assesses the performance of the Govt. servant as routine or undistinguished or average, it may decide not to recommend his promotion holding that such a person is not entitled to any recognition or reward. In such cases it is not for the Tribunal to substitute its judgement to that of the D.P.C. We may refer to the decision of the Supreme Court in the case of *Dalpat Abasaheb Solunke vs. Dr. B.S. Mahajan etc.* AIR 1990 SC 434. It has laid down the law with regard

to the role of Courts and Tribunals in such matters.

We may reproduce Head Note 'C' which is as follows:-

" (C) Constitution of India, Art. 133-
Powers under- Appointment by University- Selection
Committee- It is not the function of Court to hear
appeals over decisions of Selection Committee and
scrutinize relative merits of candidates.

S.P. Nos. 3363 and 3364 of 1981, D/-9-3-1987
(Bom), Reversed.

Appointment- Selection Committee- Decision
on comparative merits of candidates by it- Cannot be
interfered with by Court.

It is not the function of the Court to hear
appeals over the decisions of the Selection
Committees and to scrutinize the relative merits
of the candidates. Whether a candidate is fit
for a particular post or not has to be decided by
the duly constituted Selection Committee which has
the expertise on the subject. The Court has no
such expertise. The decision of the Selection
Committee can be interfered with only on limited
grounds, such as illegality or patent material
irregularity in the constitution of the committee
or its procedure vitiating the selection, or proved
mala fides affecting the selection etc. It is not
disputed that in the instant case the University
had constituted the Committee in due compliance
with the relevant Statutes. The Committee consisted
of experts and it selected the candidates
after going through all the relevant materials
before it. Therefore setting aside the selection
on the ground of the so called comparative merits of
the candidates, as assessed by the Court while
sitting in appeal over selection so made would not
be permissible."

Also in the case of Durga Devi vs. State of
Himachal Pradesh AIR 1997 S.C. 2618 the Supreme Court
has observed that the power to judge comparative
merits of candidates and fitness for post is the
function of the duly constituted Selection Committee.

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10. The other contention of Mr. Shah is that there is serious doubt regarding the objectivity of the entire process and also the authenticity of certain documents produced. There is an allegation that action of the department is discriminatory. In particular there is a mention that the relevant instructions for giving preference to SC/ST candidates have not been followed.

11. As regards the allegation that copies of the D.P.C. proceedings submitted before the Court and which were also shown to Mr. K.K. Shah are not authentic, this is based on the contention that the Railways have failed to produce the entire file and secondly the D.P.C. proceedings did not carry the date of the meeting at the top and the date is mentioned only below the signature of the officers. We do not see any substance in this allegation. The Railways have not produced the entire file but they have given attested copies of the D.P.C. proceedings. These are photo copies of which shows the signature of the Members, of the D.P.C. and also of the General Manager, approving the recommendations of the D.P.C. There is no basis for the assumption that these are concocted documents when we find that the proceedings have been duly attested by the Secretary (Confidential) of the

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Western Railway and the signatures of the Members of the D.P.C. as also the General Manager are quite distinct and legible. We therefore reject this contention.

12. There is also a reference to the confidential note given by the C.P.O. which was taken into account by the D.P.C. Presumably this is a written note with regard to integrity etc. In any case the D.P.C. consisted of senior officers like Chief Engineer besides C.S.S. or CPTS belonging to the Reserved category in addition to the C.P.O. and its proceedings are also approved by the General Manager. There is nothing to show that the members of the D.P.C. or the General Manager had any prejudice against the applicant or that the DPC had not considered his case objectively while making its recommendations. The contention that its recommendation were taken as pre-determined is rejected.

13. Mr. Shah has argued that the applicant was not given benefits admissible to S.C. and says that it is not definite whether any Member w of the Reserved Category was present in the D.P.C. Meeting. He also says that when there is a shortage of vacancies for reserved categories, persons should be promoted irrespective of merit as per the instructions in the Brochure. He has contended

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that training should have been given to the applicant. According to him these instructions have not been followed. He has also expressed some doubts as to whether the respondents followed 40 points roster or 100 points roster.

14. We find from para 5 of the respondent's reply statement dated 7.10.94 that the selection Committee consisted of Chief Engineer, Chief Personnel Officer and another officer belonging to Reserved category. From the copy of the D.P.C. proceedings furnished by the Railways it is seen that on 10th February 1988 the Committee consisted of Chief Engineer, Chief Personnel Officer and Chief Shop Superintendent (C.S.S.). In the meeting held on 26.7.88. C.P.T.S. was Member alongwith C.E. and C.P.O. From the reply statement of the Railways it can be taken that C.S.S. and C.P.T.S. were Members of the Reserved Community. Nothing has been produced to rebut this stand of the Railways. We therefore hold that this part of the instructions of the Govt. have been followed.

15. It is also clear from the proceedings of the Selection Committee that while calculating the reserved category points they have taken into account the roster points based on the 40 points roster which is applicable in the present case. In the DPC

proceedings for 2/88 there is a clear statement that roster points involved are 40 and 1 to 9 of which 1 and 8 are reserved points. It is clear that 40 point roster was in operation. The D.P.C. which met in July 1988 also refers to the reservation for SC and ST 15% and 7½% respectively and refers to roster points 14, 22 and 17. There is no reference to any point above 40. It is clear from these, that the D.P.C.s has gone on the basis of 40 points roster which is applicable in the present case.

16. Mr. Shah has laid stress on the fact that when there is shortage of reserved candidates the difference should be made up by selecting candidates in zone of consideration irrespective of merit. The respondents do not clearly admit that there was a shortage. Even if there is a shortage, the relevant instructions provides that difference should be made up by selecting candidates of those communities who were in the zone of consideration irrespective of merit but who are considered fit for promotion. (emphasis supplied).

In the present case, the applicant was in the zone of consideration. He was also considered but he was not considered fit for promotion and as such there is no breach of these instructions.

17. Mr. Shah also refers to the provisions of para 17.8 of the brochure which deals with training. These instructions provided that SC and ST candidates who are selected in the various competitive examinations by relaxed standard should be given extra-training to enable them to come up to the standard of other candidates. It further brings out that the Lal Bahadur Shastri Academy of Administration, Mussoorie, the National Police Academy, Hyderabad and the Institute of Secretariat Training and Management, New Delhi have accordingly been advised to provide facilities of additional tutorial classes to the Scheduled Castes and Scheduled Tribes trainees at the institution in the subjects in which Scheduled Caste/~~S~~ Tribe candidates are lacking. The applicant had not come up through competitive examination by relaxed standards. The purpose of the instructions is that when there ~~are~~ training courses conducted by the department, the cases of SC/ST officials should be considered sympathetically for deputing them for such training. There is an allegation that the applicant was transferred frequently even after successfully completing his training.

✓ The applicant has alleged that when he met the concerned authority regarding his non-promotion he was informed that he has to undergo training

and that he was sent for training from 17.4.89 to 30.6.89. He successfully completed the training but alleges that even after such training he was subjected to frequent transfers. The respondents have denied this allegation. They say that no such oral statement had been made by the concerned authority that the applicant had to undergo training for qualifying for promotion to Senior scale. They state that no training is imparted in such cases in the department for qualifying the Govt. servants for promotion to senior scale and it is not a fact that the applicant was sent for training for such a purpose. They also state that the training which was given to the applicant at Pune is a ~~routine training~~ prescribed which has nothing to do with promotion to the senior scale. This statement of the Railways have remained unrebutted.

18. The allegation that the applicant belonging to S.C. has been discriminated against is ~~thus~~ found to be baseless.

19. In the light of the foregoing discussion, we hold that the O.A. is devoid of merit and we dismiss the same with no orders as to costs.

P.C.Kannan

(P.C.Kannan)
Member (J)

V.Ramakrishnan

(V.Ramakrishnan)
Vice Chairman