

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(7)

O.A. NO. 377/90

DATE OF DECISION 07/04/1995

Mr. Zakir Ahmed Shaikh Petitioner

Mr. C.J. Vin Advocate for the Petitioner (s)

Versus

Union of India and Others Respondent

Mr. R.M. Vin Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. V. Radhakrishnan Member (A)

The Hon'ble Dr. R.K. Saxena 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 Lordships 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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Zakir Ahmed Shaikh
Railway Colony, Quarter No. 75/W
Surat.

Applicant.

Advocate Mr. C.J. Vin

Versus

1. Union of India
Notice to be served through
The General Manager
Western Railway
Churchgate Bombay.
2. Chief Singal and Telecommunication
Western Railway,
Churchgate, Bombay.
3. Chief Personnel Officer,
Western Railway, Bombay.

Respondents.

Advocate Mr. R.M. Vin

J U D G M E N T

In

Date: 07/04/1995.

O.A. 377/1990

Per Hon'ble Dr. R.K. Saxena

Member (J)

By filing this O.A. Shri Zakir Ahmed Shaikh has challenged the process of promotion to the post of Telecom Inspector Grade I in the scale of Rs. 2000-3200 (R.P).

2. The facts giving rise to this O.A. are that the applicant was working as Telecom Inspector Grade II under the respondents and he was eligible for being promoted to the post of Telecom Inspector Grade I. It is said that the department of

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Singal and Telecommunication of the Western Railway had issued the letter dated 5-4-1990, Annexure A, for selection of Telecommunication Inspector Grade I against 34 vacancies including 6 posts of Schedule Caste. As required, the list of eligible Telecom Inspector Grade II was also prepared with the direction that these candidates should be ready to appear in the written test which was likely to take place shortly. ^hThe ^AAnother list of Telecom Inspector Grade II who had shown un-willingness to appear in the selection test, was also prepared. The name of the applicant also found place at Sr. No. 46 of the first list in which the names of those employees who had shown willingness, were given. The written test took place and those who qualified the written test, were called for viva-voce, and finally promotions were made. The applicant could ^{not} be selected and therefore he has come to challenge the entire process of selection.

3. The case of the applicant is that there were 34 vacancies including 6 vacancies reserved for Schedule Caste employees. As such, the eligibility list was prepared and according to the Rules the eligibility list should contain names of employees who were three times to the vacancies required to be filled in. According to the applicant, the posts reserved for Schedule Caste were 6 and thus 18 Schedule Caste employees should have found place in the eligibility list. The remaining vacancies were 28 belonging to the General Category

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and thus 84 employees of General Category ought to have been shown in the said eligibility list. It is further contended that no doubt the eligibility list of willing employees was of 102 persons but when bifucation of names of General and Reserved Category of candidates is made, it is transpired that only 16 employees of Reserved Category were shown. It is also the case of the applicant that according to the letter about selection for the post of Telecom Inspector Grade I Annexure A 6 posts were to be filled in from amongst the candidates of Schedule Caste but the eligibility list included not only the names of employees who belonged to Schedule Caste Category but also of those who belonged to Schedule Tribe. It is therefore, urged that the eligibility list was not prepared according to the Rules inasmuch as that the employees of General Category were shown in excess of the requisite number and the employees belonging to the category of Schedule Tribe were included.

4. It is also the case of the applicant that the names of Shri Dayaram Passi was not shown in the eligibility list yet he was shown successful in the selection test and was placed on the panel. Similarly Shri T.S. Pillai who had failed in written test was ultimately shown in the panel of the successful candidates. Besides, during arguments, it is also contended that Sarva Shri B.N. Sahiya and K.T.Kariambu had failed in the test yet their names found place in the

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final selection and were placed in the panel. Accordingly, the contention of the applicant is that the entire process of selection was unfair and therefore, empanelment done by the respondents should be declared illegal and bad in law and fresh selection be ordered to be made.

5. The respondents contested the case on the grounds that the application is misconceived, that the selection was made fairly and according to the Rules or instructions given in the circular. It is also averred that the promotion to the post of Telecom Inspector Grade I cannot be done merely on the basis of seniority but the employee had to pass the written test. The eligibility list was prepared according to seniority and contained the names of employees three times to the total number of vacancies. It is denied that eligibility list should have included only 93 employees as was contended in para 6 of the O.A.

6. The respondents made an averment that the name of Shri Dayaram Passi was inadvertently left out of the eligibility list and when it came to notice, he was directed for pre-selection along with others. The contention of the applicant that Shri T.S. Pillai had failed and yet he was called for viva voce test is denied and it is averred that Shri T.S. Pillai had passed but his name could not be shown in the list and for that reason his name and the name of Shri Jaikishan were subsequently added in hand-writing before the result was despatched to concerned persons.

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7. We have heard the learned counsel Shri C.J.Vin for the applicant and Shri R.M. Vin learned counsel for the respondents. The material on record has also been perused.

8. The main point in the case is whether the selection was fair or not, and if it was not fair whether the entire selection process could be quashed. It is important to note that on the basis of the selection test, the selected persons were given appointment and they were working under the respondents. The applicant had not opted to implead those promotees as respondents. The case of the applicant is not that he was denied selection or he was not given an opportunity to participate in the selection process. As a matter of fact, the eligibility list of the employees of Telecom Inspector Grade II was prepared and the applicant was shown at Sr. No. 46. He appeared in the written test but he could not qualify. He was therefore, not called for viva-voce and was not ultimately placed on the panel of promotees. In such a situation, he does not have any personal cause to challenge the process of selection.

9. He has pointed out in the O.A. that the eligibility list was prepared of 102 candidates in which the number of General Category candidates exceeded whereas the list of Schedule Caste candidates was reduced from requisite number because the candidates belonging to Schedule Tribe were added. He has drawn our attention to the fact that the letter dated 5-4-1990, Annexure A, dealing with the selection process for

34 posts of Telecom Inspector Grade I indicated only 6 posts of Schedule Caste. Accordingly, his contention is that the candidates of Schedule Tribe should not have been brought on the eligibility list. We are not convinced with this argument. Generally, whenever Reserved quota of Schedule Caste or Schedule Tribe is shown, it includes both of them unless of course there is deficiency in the number of candidates of either of the Reserved Categories. It is not the case of the applicant or the department that the candidates only of Schedule Caste Category were deficient and for that ^{reason} this kind of interpretation could be made. Any way, this fact alone will not make the selection process invalid or illegal

10. The learned counsel for the applicant also pointed out that the name of Shri Dayaram Passi was not shown in the eligibility list and he was allowed to appear in the test. The contention of the respondents in this respect is that the name of Shri Dayaram Passi was inadvertently left out, and when the mistake came to the notice, he was directed to appear in the written test. In the light of this explanation which could not be controverted by the applicant, we do not find any force even in this ground. Similar ground is with respect to Mr. T.S. Pillai who ^{allegedly} had failed in the written test. This fact has been categorically denied by the respondents and it is contended that Shri T.S. Pillai had qualified in the written test along with - other 43 employees. In view of this fact which again goes uncontroverted, we

do not find any force in this ground also.


11. During arguments, the learned counsel for the applicant made a submission that Shri B.N. Sahiya and Shri K.T. Kariambu were brought on panel illegally. It was also contended that the names of these two candidates were not shown in the eligibility list but from the perusal of the list we find this contention incorrect. Shri B.N. Sahiya is shown at Sr. No.5 while Shri K.T. Kariambu at Sr. No.23. It appears that the applicant is trying to challenge the selection for the simple reason that he could not be selected. It was necessary on the part of the applicant to have impleaded those persons who were promoted on the basis of this selection. Since they have not been arrayed as respondents, they have been denied of personal hearing and for that reason no order about illegality of selection which is of course not borne out from the facts on record, could be passed, in their absence. The question of making promotees as necessary parties in the writ, had come up for consideration before their Lordships of Supreme Court in the case Ishwar Singh Ajay Kumar and Others Vs. Kuldip Singh and Others Raghbir Singh and Others, (1995)2 ATC 144. Their Lordships held that the promotees were ~~were~~^h necessary parties. The relevant portion reads:


" It is not disputed by the learned counsel for the parties that except Ishwar Singh, no other selected candidate was impleaded before the High Court. The selection and the appointments have been quashed entirely at their back. It is further stated that even Ishwar Singh, one of the selected candidates who was a party, had not been served and as such was not heard by the High Court

We are of the view that the High Court was not justified in hearing the writ petition in the absence of the selected candidates especially when they had already been appointed. We, therefore, set aside the judgment of the High Court

In view of the law laid down by their Lordships in Ishwar Singh's case and the fact being that the promotees were not made parties, the selection process cannot be challenged by the applicant.

12. On the consideration of above facts and legal position, we come to the conclusion that there is no merit in the application and therefore, it is rejected. No order as to costs.


(Dr. R.K. Saxena)
Member (J)


(V. Radhakrishnan)
Member (A)

*AS.