

13

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.75 of 1991

Date of Decision: 21.09.1993

M.R. Redden

Applicant(s)

Versus

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.

Key 21.9.93

VICE-CHAIRMAN

Signature
MEMBER (ADMINISTRATIVE)
21 SEP 93

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 75 of 1991

Date of Decision: 21.09.1993

Versus

Union of India & Others Respondents

For the applicant: M/s. M.M. Basu
D.K. Patnaik,
Advocates

For the respondent Nos. Mr. Ashok Mohanty
1, 2 and 3 Standing Counsel
(Central Government)

For the respondent Nos. Mr. Susanta Kr. Das,
5 to 6 Advocates

C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE - CHAIRMAN

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

8

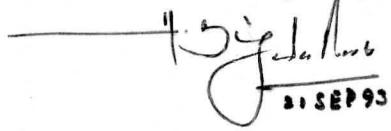
JUDGMENT.

MR.H.RAJENDRA PRASAD, MEMBER (A), In this application Shri M.R.Reddan, Electrical Foreman, South Eastern Railway, Cuttack, has questioned his non-inclusion in the panel of candidates selected for promotion to the post of Electrical Foreman/Asst. Shop Superintendent in the General Services Group of Electrical department in the S.E.Railway, and has prayed that the said panel issued vide Chief Personnel Officer, S.E.Railway, Calcutta, vide his Memo No.P/L/13>Select/ST/AEF/ASS dated 31.1.1991, be quashed on the ground that it is illegal and ultravires.

2. The applicant was initially appointed in 1956 and joined his duties on 20.11.1956. He was promoted to the post of Train Lighting Inspector on 16.8.1970, and again as Electrical Chargeman Grade-A on 18.2.1982. On 16.1.1984, a disciplinary proceeding was initiated against the applicant for imposition of a major penalty. The proceedings ended in the imposition of punishment of his removal from service. On appeal, the punishment of removal was modified to compulsory retirement by the appellate authority. The modified orders too were set aside by the Calcutta Bench of this Tribunal on 24.9.84 in T.A. No.1351 of 1986. The applicant was consequently reinstated in service on 23.10.1987. He approached this Bench with a complaint that, even though he had been reinstated in service in compliance with the direction of the Calcutta Bench of this Tribunal, he was not given the due legitimate benefits. This Bench, (O.A.no.358/88) allowed the application on 26.4.1990.

3. Next, the applicant became eligible, in the usual course, to be considered for promotion to the post of Electrical Foreman or Asstt. Shop Superintendent, the promotion to which is by a process of selection on the basis of (i) a written test, and (ii) an interview. The applicant accordingly appeared for the written test on 19.4.1990. When the results were declared, his name appeared at Sl. No. 14, along with 29 others, in a list of candidates who had qualified in the written test, and he was asked to appear for the viva-voce test to be held on 29.10.1990. The impugned memo contains the names of candidates who were finally selected for the said post, after the viva-voce was duly held. The name of the applicant does not figure in the list. And this is the main grievance of the applicant.

4. The applicant alleges that the Deputy Chief Electrical Engineer (works), S.E. Railway, who was one of the three members comprising the Selection Board, was heavily biased against him, having earlier issued the chargesheet for major penalty against him which has been referred to ⁱⁿ para-2 above. He asserts that this officer actually influenced the decision of others on the Selection Board and so 'dominated' its proceedings that his own prejudices ultimately came to the fore in the process of selection, ⁱⁿ resulting the applicant's failure. The applicant also questions "the validity, genuineness and correctness" of the


15/11/1993
21 SEP 93

12

panel and questions the right of the respondents to issue a provisional part panel for which there is no sanction or authority in the rules. Parallelly, he claims to have done exceedingly well in the written test and, to have been possessing a blemishless record of service. He attributes his failure solely to the grudge and prejudice entertained by Respondent No.4 and further apprehends that the respondents are contemplating to revert him. He alleges too that one Shri P.C.Mohapatra (Opp. Party No.5) was selected despite having an atrocious service record. On the basis of these contentions, the applicant prays that the selection, rooted, in his view, in an 'arbitrary, whimsical' viva-voce test, cannot be upheld and deserves to be set aside.

5. In their reply to the above pleadings, the respondents deny that the Railway Administration was in any way ill-disposed towards the applicant merely because he had approached law-courts in the past.

They are at pains to stress that none of the respondents connected with the selection process was in any manner prejudiced. As for initiation of disciplinary proceedings against the applicant, they say it just so happened that, at a particular point of time, Respondent-4 was the Controlling/Disciplinary Authority in respect of the applicant. This did not necessarily signify any personal bias against him since such proceedings are issued against various erring

- 4 -

officials from time to time, by some one or the other of the controlling officers and it cannot be argued on this sole ground that such officers come to harbour perennial personal grudges against the once delinquent or erring subordinates.

In any case, it is added on behalf of the respondent, the punishment of removal came to be issued under the signature, not of Respondent no.4, but by an other officer who had succeeded him in the meanwhile.

6. Next, it is averred by the respondents that the applicant had not done so excellently well as claimed by him but ^{had} actually secured less than 60 per cent marks in the written test. All his claims to the contrary ^{in their view,} are, little better than self-serving statements. Explaining the reason as to why, then, he was called to appear for the viva-voce test despite ^{such} unsatisfactory performance in the written test, it is stated that the Administration is vested with a certain measure of discretion in the matter, and is actually required, to call some of even those candidates who may have secured less than the minimum percentage of marks in the written test, to appear before the Selection Board provided that they are sufficiently senior in terms of service. The applicant, being a fairly senior member of/staff in his cadre, was accordingly called up for the viva voce test. They aver that the applicant was thus called-in, not because of any imagined excellence of performance in the written test, but merely because ^{the} of his seniority. There is also no truth in the

petitioner's claim that ^{he} ranked 14 places above respondent no.6 in the written test, quite simply because the names of the candidates called for the viva voce test were not arranged according to merit but in the order ^{their} of seniority.

7. Turning again to the allegation of bias on the part of Respondent no.4, the learned Standing Counsel for the Railways, Mr.Ashok Mohanty, explained at some length that there were only two Deputy Chief Electrical Engineers in the Zone, one each on the works and construction side. These two officers were the obvious choice for nomination to the Selection Board because they were the highest-ranking officers available with the requisite technical expertise. The third member of the Selection Committee was from the Personnel Department and all three held an identical senior rank. The question of any one of ^{these} officers influencing the other two members does not therefore arise, and to argue to the contrary would amount to mere churlishness. At any rate, when the committee was initially convened by the Chief Electrical Engineer, no one-whether the authority who so constituted the Committee, nor those who were nominated to serve on it -can have been even remotely aware or able to anticipate that the applicant would, after all, be one of the several candidates who might be called to face the Selection Committee. The

Presence of

respondent no.4 on the Selection

-6-

Committee is additionally accounted for by the fact that he was the only officer of requisite rank from the reserved communities who was available for the task; and since the rules require the induction of atleast one member of the Selection Committee from the reserved communities - and who, in this case, also happened to be the seniormost officer in his line - his detailment as Member of the Selection Committee was natural, logical and justified.

8. Moreover, it was authoritatively stated that there was nothing covert or clandestine about the issuance of the impugned provisional part panel. It was a wholly open document which was also circulated widely. Explaining as to why this had to be termed provisional, it was stated that it had to be necessarily so because of a number of individual cases which were pending in Courts involving many of the eligible officials and in view of a possibility that the panel may have to be recast, or suitably amended, in the event of any of the court-cases going against the department.

9. We turn next to the scheme of allotment of marks at the viva voce examination. The petitioner claims that 50% marks are earmarked, to be wholly awarded by the Selection Committee, for a candidate's professional ability, and because of this unfettered discretion which vests in the Committee, an element of arbitrariness cannot be ruled out. He, therefore, suspects that some

injustice has been meted out to him because the Committee, - on account of the alleged bias on the part of one of the Members on it, which he has made the main plank of his grievance in this case, - deliberately chose not to give him the full credit for his professional abilities and chose instead to purposely award inadequate number of marks ^{to him} on this score. When questioned about this particular aspect of the petitioner's plea, it was explained by Mr. Ashok Mohanty that the professional ability of a candidate is judged on the basis both of the written and the viva-voce tests @ 30 and 20 marks, respectively. Similarly, 15 marks each are earmarked for a candidate's record of service and seniority. In order precisely to avoid any arbitrariness or subjectivity in avoiding marks under these two heads, it has been laid down that specified number of marks be awarded according to the successive gradings in the CCRs of an official who is a candidate for selection to a promotional post. Thus, an outstanding official would get higher number of marks as against an officer who is rated very good, good and average. No caprice can, therefore, come into play in this matter.

10. Likewise, a specific and unambiguous marks-pattern has been prescribed for the relative seniority of officials. It is thus the case of the respondents that, such being the rationale and the clearly verifiable mechanics of marking, there could not have been any arbitrariness, ^{was any} or partiality possible

-8-

in awarding marks to different candidates. They assert that the petitioner's arguments in this regard are rooted in unfounded suspicions which are contrary to facts.

11. As regards the claim of the petitioner that his record of service has been " blemishless", the learned Standing Counsel, Mr.Mohanty, pointed out that it is a pointless assertion which does not bear serious scrutiny; an official may not have had any punishment ever imposed on him, nor any adverse entry recorded in his CRs. Nevertheless, for all the " blemishness" of such record, his overall performance would have to be ranked lower to that of an official with higher gradings like - good, very good or outstanding. The contest, in such a situation, would naturally be between a colourless-blemishless record-holder and one with ^{less} a better grade of blemishness. It is all a matter of choosing the better, or best, of the available lot and not merely of selecting every 'unblemished' worker.

12. It is finally explained by the respondents that, of a total of 36 posts available, only 18 were available to be filled by officials of unreserved community, as against which 26 persons qualified in the written test. Out of these, only 18 could be selected and thus it came about that 8 candidates, including the petitioner, were not found good enough to be selected because the 18 persons so selected were perceived to

have been better suited for selection than these 8. It is noteworthy that none of these 8 candidates, with the exception of the petitioner, has come up with any complaint of arbitrariness or bias in the process of selection.

13. Regarding the apprehension of reversion expressed by the applicant, the respondents maintain that the applicant is merely officiating in an adhoc capacity in a promotional post, and if and when eligible selected officials become available, a reversion cannot be avoided or ruled out. They maintain that mere apprehensions cannot form the basis for seeking legal remedies.

14. The applicant, while pleading his case, has incidentally referred to two instances of selection to some other (lower posts), both made in a different context, well before the occurrence of the earliest event which forms a part of present original application. One concerns the selection of AEF/ELCA made in June, 1987, and, another, the selection of Electrical Supervisor for General Services in the Electrical Construction Department made during May, 1990. In the one, S/Shri P.C.Mohapatra, and D.Senapati were selected on the basis of a suitability test, and in the other, Shri D.Senapati was approved. It was pointedly brought out by the learned Standing Counsel that a reference to these two unconnected cases has been made by the petitioner apparently with a view to creating a deliberate confusion as neither of

those selections has even a remote bearing on the case under discussion. Both are totally irrelevant to the issues raised in the present case although, in each of these two instances also, the selection was based on valid grounds.

15. Shri B.C.Mohapatra (OP.No.5), in the counter-affidavit filed on his behalf points out that, although there were 20 other candidates in the selected provisional part panel, (besides the petitioner, O.P.Nos. 5 and 6), the petitioner, for some obscure reason, has chosen to name only two, viz., S/Shri Mohapatra and Senapati (Respondents 5 & 6) . This, the respondent would seem to imply, is a clear demonstration of hostility on the part of the applicant against the two of them. Next, the respondent points out that there cannot possibly be any comparison between his case and the claims of the petitioner because there is no fundamental parity between the two: he having appointed to a higher post even initially. Adverting to the petitioner's insinuation that he, viz., respondent No.5, had an atrocious service-record, he asserts that during his entire service, there was no penalty nor any adverse entry in his CCR except a lone warning.

16. Shri D. Senapati (Respondent No.6) submits in his counter-affidavit that his posting as Electrical Foreman in 17.5.1990 was approved by the Deputy Chief Engineer (Construction), whereas the allegation

of bias has been made by the applicant against Deputy Chief Electrical Engineer(Works). This, according to him, has been done deliberately to show misleading doubts and to inject confusion in the case, since two different authorities are involved in the earlier selections of Electrical Supervisor, whereas the deliberations of Selection Committee, unconnected with either of the earlier cases, are the subject-matter of the present case. As regards Annexure-4 to the application, viz., suitability-test for the post of AEF/ELCA, the respondent submits that the same, having been made in June, 1987, and also acquiesced in by the applicant, attracts limitation under Section 21 of the Administrative Tribunals Act, 1985.

17. In view of the ample light that has been shed on each point raised by the petitioner in his application, and the ^{clear} positions that have emerged on each aspect of the case during hearing, and on the basis of our own careful consideration of the adequately-explained facts, we hold that the application of the petitioner is misconceived on all counts. The petitioner has merely alleged a non-existent bias against his superior officer without having been able to establish the allegation, ^{and} has merely claimed on unproven excellence of performance in a departmental test without having been able to substantiate the claim.

-12-

We hold that nothing whimsical or arbitrary has been substantiated about the manner in which the *viva voce* test was conducted. There has been no evident injustice in the matter of awarding marks to the applicant for the ~~past~~ record of service, or of his seniority. The rationale of styling the resultsheet as part-provisional-panel has been fully indicated in the foot-notes given on the impugned panel itself. The assertion of the applicant that Respondent No.5 has had an extremely poor record is not borne out by facts. His attempt to link two entirely unconnected events involving respondent Nos.5 and 6 to the present case is unacceptable. The applicant has thus not been able to convincingly establish any of the points on which his claim was based.

18. We, therefore, hold that the impugned part provisional panel issued by the concerned authority is valid and in order. The application is disallowed. NO costs.

K. G. A. 21.9.93

VICE-CHAIRMAN.

T. J. H. MEMBER (ADMINISTRATIVE)

21 SEP 93

Central Administrative Tribunal,
Cuttack Bench, Cuttack/Hossain