

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A. 1422/1997

This the 17 th day of May, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Hon'ble Mr. K.V. Prahaladan, Member (A)

1. Gopal Seal, S/o Sri Ashutosh Seal, aged about 30 years, Unemployed, residing at 10/6, Unit 8, S.E. Rly., North Colony, Calcutta-43.
 2. Biswanath Hore, S/o Sri Monoranjan Hore, aged about 19 ½ yrs., unemployed, now residing in Block No. 11-C/10 Unit 6/D, S.E. Rly. North Colony, Calcutta-43.
 3. Shyam Charan Rajak, S/o Sri Dhunmun Rajak, living 73 Pump House Dhobi Ghat, S.E. Rly. Colony, Cal-43 aged about 26 ½ yrs., Unemployed.
 4. Ram Shre Dhanuk, S/o late Domi Dhanuk, aged about 30 years, Unemployed, now residing at 8, Mayur Bhanj Road, Calcutta-23.
 5. Sanjaya Kumar Nayak, S/o Dandapani Nayak, aged about 26 yrs., Unemployed, now residing at Block No. 97/1/17, Unit No. 2, S.E. Rly North Colony, Calcutta-43.
- Sudipta Das, s/o. Subodh ch. Das, l/o. SC, Kritibas Lane, P.O. Kalighat, Kol - 700 026.* Applicants.
(By Advocates Mr. K. Bandopadhyay and Ms. B. Banerjee)

Versus

1. Union of India, service through General Manager, S.E. Rly., Garden Reach, Calcutta-43.
2. General Manager, S.E. Rly., GRC, Calcutta-43.
3. Chief Personnel Officer, S.E. Rly., GRC, Cal-43.
4. Chief Medical Director, S.E. Rly., GRC, Cal-43.
5. Sri Manoj Kumar, S/o Ram Feran, Block-750E/1/8 Unit-4, S.E. Rly., South Colony, Garden Reach, Calcutta-43.
6. Smt. Sankin Debnath, D/o late Nakuleshwar Pal.... Respondents.

(By Advocate Mr. S. Choudhury)

ride on order 12-8-05 in PA 21105. (OA 1422/97) 22/5/05

ORDER

Hon'ble Mrs. Meera Chhibber, Member (J).

This O.A. has been filed by five applicants whose grievance in this case is that they had applied for the posts of Substitute Safaiwala in the Medical Department (Group 'D') at Garden Reach, Calcutta pursuant to Employment Notice dated 2.5.1996. They were called for interview/screening and since all the applicants fulfilled the requisites for the posts of Safaiwala, they were found successful and their names were also published in the panel dated 21.11.1997 for appointment as Substitute Safaiwalas. In another panel issued on the same date i.e. 21.11.1997 by the CPO, the names of applicants appeared at Serial Nos. 8,5,9,5 and 11 in the category of Hospital Cleaner and Safaiwala, respectively. They were directed to deposit a sum of Rs.16/- each for medical examination by the Railway Doctors which too was deposited by the applicants with the Chief Cashier, E.R. Railway, Garden Reach. Thereafter, they were waiting for their appointment but only one selected person, namely, Maheswar Gouda, who was at Item No. 14 in the panel dated 21.11.1997, was given offer of appointment but none of the other persons was given the appointment. On the contrary, applicants were surprised to find that two subsequent panels for the same category i.e. Safaiwala (Substitute) were published on 11.12.1997 in partial modification of the panel published vide CPO's Memo dated 21.11.1997, one for Substitute Safaiwala while other for Hospital Cleaner but in both these panels, the names of applicants were missing.

2. It is in these circumstances that applicants filed the present O.A on the ground that they were high in the merit list. Therefore, once they were selected, their names could not have been removed from the panel and persons who were junior to them in the merit could not have been added in the new panels as that amounts to denial of their valuable right of appointment and the action of the respondents is in gross violation of the principles of natural justice. Therefore, the subsequent panels dated 11.12.1997 be quashed and set aside and respondents be directed to implement the panel dated 21.11.1997, meaning

3. Respondents, on the other hand, submitted that as per the employment notification, only such of the candidates could be considered whose applications were sponsored by local Employment Exchange except in cases of wards and immediate dependents as per pass rule of the serving railway employees in whose case the applications could be dropped in the box placed in the Medical Staff Section of CPO's office at Garden Reach. They have explained that Sri Gopal Seal, Sri Biswanath Hore, Sri Shyam Charan Rajak and Sri Sanjoy Kr. Nayak are not the wards of serving railway employees but of retired railway employees and retired railway employees' wards have been treated at par with outsiders in the sense that the applications of their wards cannot be considered if they are dropped in the box. As far as Sri Ram Shree Dhanuk is concerned, he is neither the ward of railway employee nor was sponsored by local Employment Exchange. Therefore, the applicants could not be considered for the above mentioned posts. They have denied that the names of applicants had been published in the panel for appointment as Substitute Safaiwalas and Substitute Hospital Cleaners vide Memorandum dated 21.11.1997. There were as many as 14267 applications received by the Medical Staff Section for scrutiny in response to the Employment Notification dated 2.5.1996 and 18.7.1996 and it was only a pure clerical error that these applicants found their place in the list of eligible candidates, which was forwarded to the Screening Committee for conducting the screening. They have further explained that none of the applicants have been given the offer of appointment, therefore, the question of their depositing Rs.16/- each for medical examination does not arise at all and if they had deposited Rs.16/-, it must be on their own. Only one candidate Shri Maheswar Gouda had been issued offer of appointment on 24.11.1997, who was directed for medical examination by the Administration. Since he was an eligible candidate being ward of serving railway employee, therefore, there is nothing wrong that he was given the offer of appointment.

4. They have further submitted that after the panel was published on 21.11.1997, it came to the notice of administration that some of the empanelled

... continued in the employment

notice dated 2.5.1996 and 18.6.1996 and they were wrongly declared as eligible for screening by the clerical staff of CPO's Medical Staff Section. Therefore, their names had to be deleted from the panel dated 21.11.1997. Thereafter, only such of the candidates who fulfilled the eligibility criteria were included in the panel by going down in the merit list. They have thus prayed that the O.A. may be dismissed.

5. After this reply was filed, applicants amended their O.A. They challenged the classification between wards of serving employees and retired employees, which was stipulated in circular dated 2.5.1996 by stating that the circular which approves of eligibility of only the wards and immediate dependents of serving railway employees, to apply through a box even though they are not sponsored candidates through the Employment Exchange, is totally arbitrary, mala fide, and made de hors the provisions of equality before law and equality of opportunity in the matters of public employment, as envisaged under Articles 14 and 16 of the Constitution of India as it amounts to create a class within a class, that too without any basis, rhyme or reason. Such classification being not based on any intelligible differentia is bad in the eyes of law. As such, it is liable to be quashed.

6. Counsel for the applicant submitted that micro compartmentalization between the serving and retired employees of railways, and thereby depriving the wards of retired railway employees from being considered along with wards of serving railway employees is highly discriminatory and opposed to public policy and if such a circular is upheld, it would mean that applicants would be disqualified from getting their appointment only on the ground that they were wards of dependents of the railway retired employees and had not applied through employment exchange, therefore, they would not be considered even though eligible otherwise such an approach cannot be permitted because admittedly they were higher in the merit on examination of their documents by the Screening Committee. Moreover, subsequently the respondents themselves issued a letter dated 4.10.1996 to all concerned when the matter was

applications of the wards/dependents of the retired railway employees, covered under Pass Rules at par with the serving railway employees for submission of the same directly against open market recruitment in Group 'D' posts on South Eastern Railway. After examining the matter, it was decided that henceforth applications from the wards/dependents of retired railway employees under Pass Rules may also be accepted directly from any open market recruitment in Group 'D' category.

7. We have heard both the counsel and perused the pleadings as well. Counsel for the applicant relied on the judgments of the Hon'ble Supreme Court in the case of The State of Jammu & Kashmir Vs. Triloki Nath Khosa and Ors. reported in AIR 1974 SC page 1 and Vijay Lakshmi Vs. Punjab University & Ors. (2003 (8) SCC 440) while counsel for respondents relied on Para 179 (8) (b) of IREM Vol. I and the judgment given by Hon'ble Supreme Court in the case of Govt. of Orissa Vs. Har Prasad Das reported in 1998 (1) SCC 487.

8. The controversy involved in this case is very short, namely, whether the persons could be denied consideration for appointment simply on the ground that they were not the wards of serving employees and were not sponsored by the Employment Exchange, therefore, could not have applied directly. Counsel for the applicants strongly argued that there cannot be a sub-classification of the class, that too without there being any nexus between the two for an object sought to be achieved. Classification is permissible only if it is reasonable. According to him, Hon'ble Supreme Court had laid down the principles in the case of Vijay Lakshmi (supra) to test the question of reasonableness for classification which should be as follows:

- (1) Article 14 does not bar rational classification;
- (2) Reasonable discrimination between female and male for an object sought to be achieved is permissible;
- (3) Question of unequal treatment does not arise if there are different sets of circumstances;
- (4) Equality of opportunity for unequals can only mean aggravation of

- (5) Equality of opportunity admits discrimination with reasons and prohibits discrimination without reason. Discrimination with reasons means rational classification for differential treatment having nexus with constitutionality permissible objects. Equality means the relative equality, namely, the principle to treat equally what are equal and unequally what are unequal. To treat unequals differently according to their inequality is not only permitted but required;
- (6) Sex is a sound basis for classification;
- (7) Article 15 (3) categorically empowers the State to make special provision for women and children.
- (8) Articles 14, 15 and 16 are to be read conjointly.

He thus submitted that in the instant case to deny appointment to the applicants only on this ground that they were not the wards of serving railway employees as such their applications could not accepted directly is clearly violative of Articles 14 and 16 of the Constitution as there is no reasonable nexus for this classification nor there is any object which is sought to be achieved with mini classification. The respondents, on the other hand, submitted that simply because the names of applicants had been included in the select list, it does not give them any indefeasible right to claim appointment, as it is entirely the sole discretion of the Government to decide whether the posts are needed to be filled or not. Moreover, since applicants were not found eligible as per the notification, therefore, they were ineligible and there is nothing wrong if ineligible persons' names were deleted from the panel for correcting a wrong committed by the clerical staff.

9. We do not think this case calls for any lengthy arguments to be gone into as according to us the point before us is already settled by the Hon'ble Supreme Court in the case of Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Ors. (1996 (6) SCC 216) wherein it was held that it is not proper to restrict the selection only to the candidates sponsored by

... at exchange. In addition to requisitioning the names from employment

exchange, names should also be called for by publication in newspapers, having wide circulation, and display on office note boards or announcement on radio, television and employment news bulletins. It was held that such a procedure subserve fairplay. After noting down the contentions of both the sides, Hon'ble Supreme Court observed as follows in the above said case:

".....we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered to appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates".

10. According to us, the facts in the present case are fully covered by the law laid down by the Hon'ble Supreme Court in the above mentioned case. Therefore, even those persons who had applied directly had to be considered as eligible candidates. The candidature of applicants would not be ignored, on the ground that they were not sponsored by the Employment Exchange or that they could not have applied directly to the department. Moreover, subsequently respondents themselves removed this restriction vide letter dated 4.10.1996 and clarified that the applications of the wards and dependents of the retired railway employees covered under Pass Rules shall also be treated at par with serving railway employees for submission of their applications directly against open market recruitment in Group 'D' post of South Eastern Railway. It is also not

disputed by the respondents and is evident from the documents annexed by the applicants that applicants' applications were received and their names were considered by the Screening Committee and that they were high up in the merit list meaning thereby that if the restriction imposed by the respondents while ignoring the claim of applicants is removed, applicants would have a right to be appointed as Substitute Safaiwalas or Hospital Cleaners. Moreover, it is seen that when applicants had approached this Tribunal initially this Tribunal had passed an interim order on 17.12.1997 giving directions to the respondents that they shall not give any employment on the basis of impugned panel till the disposal of O.A. Subsequently, the interim order was modified on 1.12.2000 whereby respondents were directed to keep five posts vacant for the applicants and other appointments were made subject to the final outcome of the O.A. meaning thereby that five posts are still lying vacant as per the court's directions. Even otherwise, it would be relevant to mention here that some private respondents were impleaded by the applicants, who were sent notices also but they preferred not to file any reply. In any case, since appointments were made subject to final outcome of the O.A., any order passed now would not affect the right of other persons.

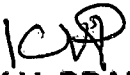
11. In view of the facts as explained above, the present O.A. has to be allowed as under:

- (1) Respondents are directed to treat the applicants as eligible candidates in view of the law laid down by the Hon'ble Supreme Court, as referred to above;
- (2) Since all the applicants were high up in the merit after selection by the Selection Committee, their names could not have been deleted from the panel;
- (3) Applicants are declared to have been selected by the respondents;
- (4) Respondents are directed to issue necessary orders in favour of the applicants in accordance with the panel dated 21.11.1997

and five posts kept vacant vide order dated 1.12.2000. It is,

however, clarified that applicants would not be entitled to get any back wages as they had not actually performed the duties.

12. With the above directions, this O.A. is allowed. No order as to costs.


(K.V. PRAHALADAN)
MEMBER (A)


(MRS. MEERA CHHIBBER)
MEMBER (J)

'SRD'