

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 546/90  
TXXXXXX

DATE OF DECISION 30.4.90

M.Guruswamy and another Applicant (s)

M/s. B.Gopakumar, M.N.Soman Advocate for the Applicant (s)

Versus

Union of India represented by the General Respondent (s)  
Manager, Southern Railway, Madras -3 and four others.

M/s. M.C.Cherian, T.A.Rajan Advocate for the Respondent (s)  
Mr.P.Santhosh Kumar

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application filed on 5th July, 1990 the two applicants who have been working as Carpenter and Plumber in the grade of Highly Skilled I have challenged the promotion of respondents 3 to 5 to the grade of Mistries in the scale of Rs.1400-2300 and have prayed that respondents 3 to 5 may be declared to be not entitled to be appointed as Mistries till the applicants are also promoted by virtue of their seniority. Their further prayer is that the respondents 1 and 2 be directed to promote the applicants as Mistries from the cadre of Highly Skilled I Artisans. The brief facts of the case are as follows.

2. The first applicant entered service as Carpenter on 1.12.1959 and the second applicant as Plumber on 19.12.1963. By virtue of their lesser service, the 3rd, 4th and 5th respondents are junior to the applicants. The feeder category for promotion to the post of Mistries in the scale of Rs.1400-2300 is Skilled Grade I Artisans to which the applicants belonged. The post of Mistries is a non-selection post. The applicants have passed all the trade tests and

are eligible for promotion as Mistries but respondents 1 and 2 promoted respondents 3 to 5 overlooking the seniority of the applicants. They have referred to the extracts of Railway Board's circular dated 29.9.87 at Annexure -A4 in support of their claim.

3. In the counter affidavit the respondents 1 and 2 have stated that the post of Mistries are promotion post from that of Artisans and B.T.Checkers. Promotions are made from the feeder category on the basis of suitability test. Volunteers were called for filling up of six vacancies of Works Mistries vide the notification dated 14.10.88 (Ext.R1(a)) and 70 persons including the applicants and respondents 3 to 5 volunteered. The written test was held on 25.3.89 and only four persons including respondents 3 to 5 ~~have~~ passed <sup>in</sup> the written test. The applicants have failed in the written test. The respondents have produced the full text of the Railway Board's circular dated 29.9.87 at Ext.R1(c) which permits existing promotional avenues to be continued till the same is reviewed. They have also produced a copy of the direction given by the Chief Personnel Officer , Southern Railway dated 31.1.90 at Ext.R1(d) clarifying that 'the selection for the post of Works Mistries which had already been conducted under the old procedure, is allowed and there is no need to cancel the selection already initiated' They have also argued that the applicants having participated in the written test and having failed therein, have no locus standi to challenge the same.

4. In the counter affidavit respondents 4 and 5 have stated that at the time of examination and viva the applicants fully knew that B.T.Checkers and M.T.Drivers have also been allowed to appear in the test. Having participated in the test, the applicants cannot raise objections at this stage. They have stated that M.T.Drivers and B.T. Checkers are included in the feeder category.

5. In the rejoinder the applicants have stated that Motor Trolley Drivers and B.T.Checkers cannot be held to be Artisans and thus respondents 4 and 5 are not eligible for promotion as Works Mistry. They have challenged the power of the Chief Personnel Officer to dilute or modify the orders of the Railway Board.

6. In the additional statement the respondents 1 and 2 have produced the Southern Railway's letter dated 18.7.62 at Ext.R1(f) wherein Ballast Checkers were included in the feeder category for promotion as Mistries . They have stated that a suitability test was found to be necessary for promotion as Mistries as the feeder category included different trades.

6. In the additional rejoinder the applicants have stated that Motor Trolley Drivers have not been included as a feeder category in the Railway Board's letter of 13.11.82 at Ext.R1(g) but they have conceded that Motor/Lorry Driver/JEEP Driver/Tempo Driver are included as Skilled workers.

7. In the additional counter affidavit respondents 4 and 5 have stated that the applicants had got less than 50 marks for the written examination whereas the respondents 4 and 5 got more than 50 marks. Accordingly the applicants did not qualify in the written examination. In support of their contention , a copy of the judgment of this Tribunal dated 12.8.1987 in O.A. 267/1986 has also been produced.

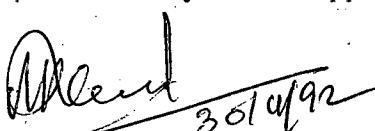
8. In the additional counter affidavit filed by respondents 1 and 2 they have stated that the applicants participated in the suitability test but they failed to qualify as the first applicant got only 6.5 marks and the 2nd applicant got only 40 marks out of 100 ,whereas respondents 3 to 5 obtained 65.5, 72.5 and 50 marks respectively in the written examination. They have also stated that in the final panel prepared after viva , the 5th respondent got 75.25 marks and 3rd and 4th respondents got 60 and 70.75 marks in the aggregate respectively. It has been averred that qualifying marks were fixed as 50% in the written examination and 60% in aggregate in conformity with the practice followed earlier. They have produced orders of 1965(Ext.R1(h)) and 1966 (Ext.R1(i) ) to support their contention that suitability tests were being held in the past also for the post of Works Mistry which was earlier known as Works Mate.

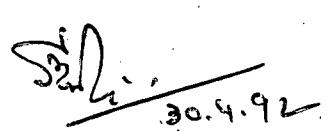
9. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We have seen the proceedings of the D.P.C and the answer books of the applicants

and respondents 3 to 5. Since the first applicant got 6.5 marks and the second applicant only 40 marks out of 100, they were rightly not called for the interview as the qualifying marks in the written examination was 50%. The fixing of qualifying marks as 50% in the written examination is supported by the additional affidavit filed by respondents 1 and 2 and by the judgment of the Madras Bench of the Tribunal dated 12.8.87 in O.A. 267/1986(Ext.R4(a)). In that very judgment in similar circumstances the 3rd respondent therein who was a Motor Trolley Driver and whose selection had been challenged, <sup>The selection</sup> was upheld and it was indicated that the applicant therein "does not have a right to be appointed as a Works Mistry inspite of his failing the written test". The holding of written test and viva was also upheld for promotion as Works Mistry, in that judgment. From the circular of the Southern Railway dated 18.7.62 at Ext.R1(f) it is clear that for recruitment to the post of Works Mistry, Ballast Checkers formed the feeder category and in absence of suitable staff Semiskilled and Unskilled employees are also made eligible. By the Railway Board's circular dated 13.11.82 (Ext.R1(g)), Motor/Lorry Driver/Jeep Driver were designated as Motor Driver and classified as Skilled. Thus there is no reason why M.T Drivers should be excluded from the feeder category.

10. The applicants had appeared in the written examination without any protest and having failed in the same to qualify, they are challenging it. This, they cannot be allowed to do.

11. In the above facts and circumstances we see no reason to intervene and reject the application without any order as to costs.

  
(A.V.HARIDASAN)  
JUDICIAL MEMBER

  
(S.P.MUKERJI)  
VICE CHAIRMAN