

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 197/90
~~199~~
xxxxx No.

DATE OF DECISION 30.4.1991

P. Abdul Basheer Applicant (s)

M/s. P. Santhosh Kumar & Advocate for the Applicant (s)
P. Santhosh Kumar
Versus

Union of India, represented by the Respondent (s)
General Manager, Southern Railway, Madras and 2 others

M/s. M. C. Cherian, Saramma Cherian and Advocate for the Respondent (s)
T. A. Rajan

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? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

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

In this application dated 9.3.1990 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as B.T. Checker in the Divisional Office, Palghat of the Southern Railway has challenged the impugned order dated 10/15.11.1989 (Annexure-VIII) by which his representation for regular appointment as B.T. Checker through the selection conducted in 1986 was rejected. He has also challenged the circular dated 24.11.89 (Annexure-IX) inviting applications for appearing in the departmental test for promotion as B.T. Checker. His further challenge is against the communication dated 2.2.90 at Annexure-X by which his similar representation dated 5.12.89 was rejected and he was advised to participate in the selection initiated vide the impugned order at Annexure-IX. The brief facts of the case are as follows.

2. The applicant was initially engaged as casual labourer in 1977 and later absorbed as regular Gangman. He later worked as Store Watchman. The post of B.T. Checker is filled by inviting applications from Store Watchman, Senior Gangman, Gangman, Trolleyman etc. According to the applicant, in 1985 applications were invited for six posts of B.T. Checker, but the respondents prepared a panel of five ~~general~~ candidates wrongly keeping two posts reserved for Scheduled Caste/Scheduled Tribe. According to him, in accordance with the Railway Board's order if the number of posts is below nine, only one post is to be reserved for Scheduled Caste/Scheduled Tribe. According to him eight candidates including him qualified in the written examination and viva and the applicant was No. 6 in the order of seniority. The respondents have posted five employees including one Scheduled Caste as B.T. Checker but kept the 6th post reserved for Scheduled Tribe, whereas the applicant as a general candidate being the 6th, is entitled to be promoted as regular B.T. Checker. The applicant, however, was promoted as B.T. Checker only on an adhoc basis on 30.4.86 as according to him he was the next person deserving such promotion. His representations were rejected by Annexures-VIII and X. The applicant's plea is that on his representation a clarification was sought from the headquarters and in accordance with the said clarification dated 19.6.89 at Annexure-III if the number of posts is more than four but less than nine "only one post to be reserved for S.C and S.T point need not be reserved". In spite of further endorsement of the clarification at Annexure-IV the applicant has not been regularised as B.T. Checker against the 6th vacancy. The applicant conceded that pending consideration of his representation another selection was conducted in which the applicant also participated. However, he was not promoted because of his being junior and two candidates senior to him were appointed against the two available vacancies. He has challenged the impugned order at Annexure-VIII in which it was stated that he could not be appointed as he was not included in the panel because of his low seniority both in 1986 and the selection of 1988 and that he cannot be regularised unless he is empanelled. His plea is that if, as admitted by the respondents at Annexure-VIII, he had qualified for empanelment, he should have been included in the panel for the 6th vacancy which should not have been reserved for a Scheduled Tribe candidate

in view of the clarifications given at Annexures III and IV. His non-inclusion in the panel was due to the wrong reservation. The fact that he was promoted on an adhoc basis on the basis of the regular selection shows that he is entitled to regular selection by dereserving the wrongly reserved 6th post.

3. The respondents have argued that the applicant's plea that he should have been included in the panel of 1985-85 is belated because he had participated in the selection conducted in 1988 for filling up two vacancies of B.T. Checker, but again failed to be empanelled. They have clarified that there were a number of persons senior to the applicant who could not be empanelled for promotion as B.T. Checkers because of lack of vacancies. His regular promotion as B.T. Checker at this stage will be unfair to his seniors who are still waiting for such regular promotion. The applicant was given adhoc promotion because the adhoc promotion given to an S.T employee was not accepted by him. It had been made clear to him that adhoc promotion will not confer on him any right for retention in the grade or further promotion and he accepted the adhoc promotion on that basis. Later he appeared in 1988 for regular promotion but failed to get himself empanelled. The clarification was received in November 1986 whereas the selection was finalised in March 1986 and a panel of six persons was prepared with four general candidates, one Scheduled Caste and one Scheduled Tribe. The number of vacancies could not be enlarged after the panel had been prepared. The applicant's adhoc promotion as B.T. Checker was not on the basis of the panel because a number of persons senior to him in the feeder categories are still waiting to be promoted.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is not the case of the applicant that he was included in the panel for 1985-86. The respondents have filed a statement indicating that against the seven posts of B.T. Checkers, there were six vacancies including one reserved for Scheduled Caste and one for Scheduled Tribe. The applicant was a general candidate and four general candidates having been included in the panel, the applicant was not empanelled during 1985-86. He voluntarily participated in the selection of 1988 against

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two vacancies but again he was not empanelled because there were persons senior to him who were to be accommodated. Accordingly the applicant cannot claim any vacancy which ^{was} ~~were~~ filled up by the panel prepared for 1985-86. The applicant has heavily relied upon the communication dated 19.6.89 issued by the S.P.O (Engineering) Madras to S.P.O/D.P.O. Palghat at Annexure-III. It reads as follows:

"In terms of Railway Board's letter No.PC II/84/UPG/9 dated 16.11.84 circulated under this office letter No.P(S)171/I/P/RCPE/Vol.II dated 4.11.86, in a category wherever posts numbering four and above but less than nine exist, only one post to be reserved for S.C. and S.T. point need not be reserved."


We called for the Railway Board's letter dated 16.11.84 referred to in the aforesaid communication. The relevant para -6 of the Railway Board's letter reads as follows:

"6. The existing rules and orders in regard to reservation for SC/ST will continue to apply while filling up additional vacancies in the higher grades arising as a result of restructuring."


It is thus clear that nowhere did Railway Board give any instruction to the effect that where the number of posts is less than nine, there should not be reservation for Scheduled Tribe point. On the other hand 7 1/2 percent reservation for Scheduled Tribe as against seven posts of B.T.Checkers would warrant 0.525 number of vacancies to be reserved for Scheduled Tribes. This being more than 0.5 would warrant one post to be reserved for Scheduled Tribe. Thus we see nothing wrong in the respondents' reserving one post for S.C. and one post for S.T. in the 1985-86 selection for six vacancies against seven posts of B.T.Checkers.

5. Even if we concede that the ^{sixth} ~~fifth~~ vacancy could be available to general candidate there is nothing to show that the applicant can claim that vacancy because he was not included in the panel not only of 1985-86 but also of 1988. There were persons senior to him in the cadre who had better claims than the applicant's.

6. In the circumstances we do not see much force in the application and reject the same without any order as to costs.


(A.V. HARIDASAN)
Judicial Member

30/4/91


(S.P. MUKERJI)
Vice Chairman

30.4.1991

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