

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH, LUCKNOW

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T.A. No. 1953/87

B.S. Jauhari

Applicant/Petitioner

versus

Union of India & ors.

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. A.B. Gorthi, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The petitioner initially filed a Writ Petition praying for issue of a writ of mandamus commanding the opposite parties to appoint him to the post of Senior Technical Assistant(Transportation) and rejecting the selection of opposite party No.3 to the said post and that the selection made on 20.9.85 may be quashed. After coming into force the Administrative Tribunals Act, 1985, the said Writ petition was transferred to the Tribunal.

2. The petitioner joined the services of Indian Railways on 1st of August, 1963 as Assistant Station Master and was appointed as Transportation Instructor in the scale of Rs 455-700(R.S.) and has been working since then as such. On 21.1.1985 one post for appointment of Senior Technical Assistant (Transportation) for Traffic Research Directorate of R.D.S.O. was advertised

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The qualification provided for the same was that candidates should have atleast 3 years experience of working in the scale of Rs 425-700 in the operating discipline. The petitioner applied for the same, being fully qualified, and was allowed to appear in the written test and was also called for interview. Only three candidates appeared in the written test. The petitioner and opposite party No. 3 alone were called for interview but the opposite party No. 2 was declared to have been succeeded in the same over and above the petitioner. The grievance of the petitioner is that the opposite party No. 2 lacked the basic qualification and he, not being qualified, could not have been appointed to the post in question, as he was promoted to the post of Relieving Station Master in the scale of Rs 425-700 only with effect from 1.8.82 and his experience was less than 3 years, not only when the advertisement was issued but also on the date of test and interview. The original panel was rejected subsequently but the re-advertisement was made for the said post only for Scheduled Caste and Scheduled Tribe candidates and this re-advertisement was also cancelled, yet the opposite party No. 3, being of the old panel was taken and appointed. The opposite parties 1 and 2 have assisted the claim petition by filing the counter affidavit, in which it was stated that although the re-advertisement took place on 28.6.85 i.e. after the test and interview and even against this notification/re-advertisement, no application from a Scheduled Caste

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Cast Candidate was received and therefore, the panel approving authority decided to approve the re-commendations of the selection conducted on 1st of May, 1985 in which the opposite party No. 3 was selected which has now become final. So far as the factual position is concerned, it has been stated that the requisite qualification of at least 3 years of experience in the grade of Rs 425-700 was relaxed in view of the poor response of the advertisement dated 25.1.85 and in this connection a reference has been made to the explanatory note No. 5 of the Revised R&P Rules of Staff of R.D.S.O., which reads as under:

"In case there is poor response from Railways or from open market in any category, the qualifications and experience can be relaxed by the members of Selection Board to meet the particular demand".

And it has also been pleaded that in advertisement notice it itself provided that staff having Bachelor Degree/experience in Research/in the working of operating department will be preferred. On this ground the opposite parties have tried to defend the selection of opposite party No. 3.

3. In case there was poor response of the advertisement and the requisite qualifications were to be relaxed, then fresh notification could have been issued so that others may also apply but that room was shut obviously to accommodate the respondent No. 3. This is

an arbitrary action and cannot stand on judicial scrutiny. Even otherwise the selection was to be made in terms of the advertisement and unless no corrigendum was issued, the selecting authority had no right or jurisdiction to import anything which did not find place in the advertisement, but in case they were interested in exercising this power, a corrigendum could have been issued modifying the terms of advertisement. It is the terms of the advertisement which alone were to prevail and no deviation from the same could have been made and that too in such a manner which cannot be justified on any ground. In this connection, a reference can be made to the case of Dr. Vinay Ram Pal vs. State of Jammu & Kashmir (1984) SCC (L&S) , 103). Such a view has also been taken in other cases also. Thus, the relaxation made was arbitrary and ^{was} ~~serves~~ an act of favouritism giving a go by even of cardinal principles of justice. So far as the other justification regarding the preferential qualification is concerned, the preference is given only when other things are equal, ^{to} ~~but~~ one who fulfilled one particular qualification. In the garb of preference, one who lacks the basic qualification or requisite qualification, cannot be appointed as preference does not over rule or bye-pass the basic qualifications which a candidate must necessarily fulfil. Even when the earlier selection was cancelled and the fresh notification for candidates belonging to Scheduled Cast was also cancelled, The cancellation could not have

been legally effected to when the selection was itself considered to be poor, there being no response to the advertisement. No rule, regulation or law could be pointed out to justify appointment out of the cancelled selection without resorting to fresh advertisement and allowing other candidates to apply. Thus, the selection and the appointment of the opposite party No. 3 is manifestly illegal, arbitrary and without any legal sanction and the same deserves to be quashed. Accordingly, the selection of opposite party No. 3 is quashed. It will be open for them to appoint the petitioner also against that post prior to or subsequent to ^{the} pending selection in view of the fact that after ~~exit~~ ^{exit} of the respondent No. 3, he alone remains in the field. The application is allowed in the above terms. There will be no order as to costs.

transcript

A.M.

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V.C.

Allahabad Dt. 15-3-1991.