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CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

~~CONFIDENTIAL~~

T.A. No. 466 of 1987.

198

DATE OF DECISION 18.4.90

S.V.Tayede and another

Petitioner

Shri D.V.Gangal,

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

Miss S.G.Shah


Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. M.Y.Priolkar, Member (Admn).

1. Whether Reporters of local papers may be allowed to see the Judgement ? ☒
2. To be referred to the Reporter or not ? ☒
3. Whether their Lordships wish to see the fair copy of the Judgement ? ☒
4. Whether it needs to be circulated to other Benches of the Tribunal ? ☒

  
18/4  
( G.Sreedharan Nair ).  
Vice Chairman.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : NEW BOMBAY BENCH  
NEW BOMBAY.

Tr. A.466 of 1987.

1.S.V.Tayedé,  
2. V.E.Rajguru ... Applicants.  
versus

Union of India and others ... Respondents.

P R E S E N T :

The Hon'ble Sri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Sri M.Y.Priolkar, Member(Admn).

For the applicants - Shri D.V.Gangai, Advocate.

For the respondents- Miss. S.G.Shah, Advocate for  
respondents 1 and 2.

Date of hearing - 16.4.90.

Date of Judgment and Order - 18.4.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

This relates to Writ Petition No. 2872 of 1982 in the High Court of Bombay, received on transfer. The two applicants were working as Driver 'C' from 1962. In the year 1973, a test was conducted for forming a panel for the posts of Loco Operating Supervisory cadre. The 2nd applicant appeared for the written test but failed. The applicants belong to the Scheduled Castes. It is alleged that since no employee belonging to the Scheduled Castes came out successful in the test only a provisional panel was published pursuant to the aforesaid test. On 31.8.1974, certain the Railway Board issued instructions to augment the in-take of employees belonging to the Scheduled Castes and Scheduled Tribes. It was directed that if during the selection proceedings the requisite number of

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Scheduled Castes and Scheduled Tribes candidates are not available for being placed on the panel in spite of the various relaxations already granted, the best among them, that is, who secured the highest marks should be earmarked for being placed on the panel, and such persons may be promoted on an adhoc basis for a period of six months against the vacancies reserved for them. It was further directed that during the said period of six months the administration should give them all facilities for improving their knowledge and at the end of the period a report regarding their work should be put-up to the General Manager for a review, so that those candidates who are found to have come up to the requisite standard would be included in the panel.

2. It is stated by the applicants that on 6.9.1976, a notice was issued inviting applications from the staff belonging to the Scheduled Castes and Scheduled Tribes for filling up the vacancies of the Loco Operating Supervisor on an ad hoc basis, pursuant to which the applicants applied and they appeared for the written test and viva voce and were declared successful in the screening held on 24.12.1976, following which they were appointed as Power Controllers in the year 1977.

3. It is alleged that on 7.7.1982 the first applicant has been reverted from the post of Power Controller and that steps are being taken to revert the second applicant as well. It is prayed that the order of reversion of the first applicant be quashed and that a declaration may be granted that the applicants are entitled to continue as Power Controllers. According to the respondents, the respondents have failed to follow the relevant instructions

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with respect to the concessions in favour of the employees belonging to the Scheduled Castes and Scheduled Tribes as no assessment regarding their working at the end of six months of their posting as Power Controllers has been made. It is also stated that as per extant orders no employee who has worked for more than 18 months in a post can be reverted without following the procedure laid down in the Railway Servants (Discipline & Appeal ) Rules.

4. In the reply filed by the respondents, it is stated that in the year 1973 volunteers were called for from the eligible categories for filling up the vacancies in the posts of Power Controller, as at that time there was a back-log of candidates from the Scheduled Castes and Scheduled Tribes. The second applicant appeared for written test but failed, and the first applicant did not offer himself for the selection. The panel was published strictly in accordance with the instructions of the Railway Board contained in the letter dated 31.8.1974. Shri P.O.Nannavare, a candidate belonging to the Scheduled Caste who appeared for the selection and secured the highest marks ~~was~~ was found the best among the failed candidates and was appointed on an adhoc basis and later his name was interpolated in the panel in terms of the instructions contained in the aforesaid letter. Since even after the selection in 1974, there was a shortfall of the Scheduled Castes and Scheduled Tribes candidates <sup>it</sup> ~~which~~ was proposed to consider ad-hoc promotion of employees belonging to the Scheduled Castes and Scheduled Tribes and accordingly, a notice dated 6.9.1976 was issued. It is contended that it was only

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<sup>Q</sup> ~~for the~~ process of screening by <sup>conducting</sup> ~~taking~~ an interview, and that there was no written test or viva voce as alleged by the applicants. It is stated that both the applicants were thus screened and alongwith some other employees belonging to the Scheduled Castes and Scheduled Tribes they were given ad-hoc posting as Loco Operating Supervisor. It is contended by the respondents that it was not considered necessary to give separate training to these applicants as they were allowed to work on adhoc basis as Loco Operating Supervisor. It is pointed out that in 1980-81 there was a selection for promotion to the posts of Power Controller when both the applicants appeared but failed to qualify in the written test.

5. It is stated by the respondents that the first applicant who was working as Driver Grade 'C' prior to his ad hoc posting as Loco Operating Supervisor was promoted as Driver Grade 'A', and hence on 5.7.1982, the Chief Power Controller passed orders relieving him from the Control Office. According to the respondents, as the applicants did not get selected in the regular selection process for recruitment to the post of Loco Supervisor, they are liable to be reverted to their parent cadre as and when regularly selected persons are available.

6. The allegation of the applicants ~~is~~ that as they had worked for more than 18 months in the cadre of Loco Supervisor they cannot be reverted is disputed by the respondents, and it is pointed out that there is no such safeguard against reversion of a persons officiating

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in a higher post on adhoc basis who does not qualify in the selection and a duly selected person is accommodated.

7. Admittedly, both the applicants belong to the cadre of Driver. It was only on account of the shortfall of candidates belonging to the Scheduled Castes and Scheduled Tribes in the Loco Operating Supervisory cadre that the applicants were appointed to officiate as Loco Operating Supervisors. Recruitment to the post of Loco Operating Supervisor has to be made following a regular process of selection consisting of a written test and viva voce. In the year 1973, volunteers were called for from the eligible categories for filling up the vacancies by conducting a selection. The first applicant did not offer himself for the selection. The second applicant who took part in the selection failed in the written test. It was only in view of the shortfall even after the aforesaid selection that a few more candidates belonging to the Scheduled Castes and Scheduled Tribes were brought in to the post on adhoc basis without conducting a regular selection, <sup>but based</sup> ~~who passed~~ on a mere screening. As such, the applicants who have been so appointed to the post of Loco Operating Supervisor purely on ad hoc basis do not get a right to the posts.

8. It is not in dispute that during 1980-81 another regular selection was held when both the applicants appeared but failed to qualify in the <sup>written</sup> ~~regular~~ test. There is an averment in the application that the applicants appeared for the test under protest and that the test itself was illegal. There is no material on record to

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substantiate the averments that the applicants appeared for the test under protest. The plea that the test was illegal is also devoid of merit. This is not a case where the applicants had undergone a test earlier and came out successful. Merely because pursuant to a screening they were appointed to the post on ad hoc basis they cannot contend that the appointment has to be regularised without subjecting them to a regular selection. Admittedly, the post is a selection post to be filled up by a regular process of selection.

9. It was emphatically argued by the counsel of the applicants that in view of the instructions contained in the letter of the Railway Board dated 31.8.1974, if the requisite number of candidates belonging to the Scheduled Castes and Scheduled Tribes are not available for being placed in the panel, the best among them should be earmarked and promoted on an adhoc basis for a period of six months when they should be given the requisite training and at the end of the period a report should be sent to the General Manager assessing their work, and since the aforesaid procedure has not been followed in the case of the applicants they have a right to continue in the post. The respondents have stated in the reply that the procedure contemplated in the instructions has actually been complied with and the best among the Scheduled Castes and Scheduled Tribes candidates was so earmarked and promoted on adhoc basis and his name has also been interpolated in the panel. So far as the applicants are concerned, there is no question of giving them any training as they had already been allowed to work in the past as a result of the screening. Since there is nothing on

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record to hold that the applicants fall within the category of the best among the Scheduled ~~Castes~~ Castes and Scheduled Tribes candidates, there is no scope for earmarking them for being placed on the panel. The course open to the applicants was to get themselves selected in the regular selection or to fall within the best among the candidates belonging to the Scheduled Castes and Scheduled Tribes who were not able to come out successful in the selection. Since the applicants failed to satisfy either of the aforesaid requirements, they cannot insist that the adhoc arrangements made purely as a stop-gap arrangement on account of the <sup>short-fall of</sup> candidates belonging to the Scheduled Castes and Scheduled Tribes, is to be continued forever. When the regularly selected candidates are to be accommodated, the applicants are necessarily to be reverted to their substantive cadre of Driver.

10. The instructions regarding reversion of employees who had worked for more than 18 months continuously do not stand in the way of the reversion of the applicants, for the aforesaid instructions do not apply to an arrangement of this nature, where the appointment is to a post to be filled up by a regular process of selection and the regularly selected candidates are to be accommodated by putting an end to the stop-gap arrangement.

11. It is clear from the records that as regards the first applicant he has already been relieved from the Control Office since he has been promoted in his parent cadre to the post of Driver Grade 'A'. So long as the

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first applicant has not acquired ~~any~~ a right to the post in the Loco Operating Supervisory Cadre, the aforesaid action cannot be questioned.

12. It follows that the applicants are not entitled to the reliefs claimed. The application is dismissed.

*M.Y. Priolkar*  
( M.Y. Priolkar )  
Member (Admn)

*G. Sreedharan Nair*  
( G. Sreedharan Nair )  
Vice Chairman.

S.P. Singh/  
17.4.90.

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*Settlement/Order*  
dt. 18.4.90 sent  
Parties on 21.6.90.

*Settlement*

Judgement dt. 18.4.90  
Sent on App. lical  
on dt. 28.6.90  
No  
10/7/90