

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

~~XXXXXX~~

198

T.A. No. 213/87

(14)

DATE OF DECISION 17.10.1989George Mathew PetitionerMr.P.T.Abraham Advocate for the Petitioner(s)

Versus

Union of India RespondentMr.R.K.Shetty Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B.Mujumdar, Member(J)

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

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

✓

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr.213/87

George Mathew,
B-3,
Ashoka Apartment,
No.3, Naylor Road,
Pune - 1.

(15)
.. Applicant

vs.

1. The Union of India
2. General Manager,
High Explosives Factory,
Kirkee,
Pune - 411 003.
3. The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta 700 001.

and Eight Others

.. Respondents

Coram: Hon'ble Member(J) Shri M.B. Mujumdar
Hon'ble Member(A) Shri M.Y. Priolkar

Appearances:

1. Mr.P.T.Abraham
Advocate for the
Applicant.
2. Mr.R.K.Shetty
Advocate for the
Respondents.

ORAL JUDGMENT
(Per M.B. Mujumdar, Member(J))

Date: 17.10.1989

The applicant George Mathew had filed Writ Petition No: 1437/87 in the High Court of Judicature at Bombay on 11.3.1987 and it is transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985.

2. Before narrating the relevant facts we will state the legal position because that will help in understanding the dispute. One Mr. Abraham who hailed from the state of Kerala had applied for one of the posts of the Auditors(U.D.C.) advertised by the Director of Audit, Defence Services, in June, 1971. He appeared for the written test held for the said post in May, 1972 and

16

having successfully passed in the test he received a call for interview on 29.9.1972. He had secured higher marks than 16 other candidates who were successful and hailed from states other than Kerala. These 16 persons were appointed as Auditors on 24.9.1973 while Mr. Abraham's appointment was delayed till 13.3.1974. Though he was appointed later, he was given seniority over the 16 persons who were below him in the merit list. Mr. Abraham's representations for not appointing him earlier were of no avail. Hence he filed Writ Petition No. 1462/80 in the High Court of Judicature at Bombay. At the time of the hearing it was found that in respect of candidates from Kerala such as Mr. Abraham, a special procedure was being followed, viz. they were not appointed till their character and antecedents were verified, whereas in respect of candidates from other States the verification of their character and antecedents was made after their appointment. Moreover, it was found that the verification of character and antecedents of candidates from other states was made from local authorities but in the case of candidates from Kerala, in addition to the verification from local authorities, the Government of India itself carried out enquiries through its agencies. In result the candidates from Kerala always got their appointment orders much later than the candidates from other states. Mr. Justice Sawant (incidentally, he is recently appointed as Judge of the Supreme Court) in his judgment delivered on 7.1.1985 held that this practice was discriminatory and without any justification. In result he allowed the petition of Mr. Abraham and directed the concerned respondents to pay to him the salary from 24.9.1973 (that is the date on which 16 successful candidates were appointed) till 12.3.1974 (that is the date on which Mr. Abraham was appointed),

on the basis that he was in their employment during that period. He was also ^{given} ~~entitled~~ to all other benefits including increments on that basis.

3. The concerned respondents in that case had preferred appeal No.174/89 before the Division Bench of the High Court. But it was dismissed. They had preferred SLP to appeal bearing No.SLP/(Civil)No.8642/85 in the Supreme Court. It was disposed on 26.8.1986 by passing the following order:

"There is no ground for interference with the judgment of the High Court. We entirely agree with the reasoning and conclusion arrived at by the learned Single Judge as upheld by the Division Bench, that the practice evolved by the Central Government for special verification of character and antecedents of the candidates from the State of Kerala for recruitment to the central services, was violative of Art.14 of the Constitution. It appears that candidates from the States of West Bengal and Tripura for recruitment to the Central services are also being subjected to similar special verification which is per as discriminatory.

We are wedded to a parliamentary system of Government. Ours is a free society where all citizens are entitled to be treated alike irrespective of the state of origin or birth. There is no justification for such discriminatory treatment.

The Special Leave Petition is accordingly dismissed. "

4. Coming to the facts of this case, the applicant Mr.George Mathew was born, brought up and educated in Kerala. His father was employed in the Railways and hence he came to Maharashtra in search of a job. After coming to Pune he registered his name in the Employment Exchange at Pune. The Employment Exchange at Pune sponsored his name for the post of Supervisor'B'(Chemist) in the High Explosive Factory at Kirkee. He was interviewed and selected for

(18)

that post in November, 1984 along with 10 other candidates. In the merit list his name stood at Sr.No.4, just above one Mr.M.H.Jejurikar. Out of the other 10 persons, two persons either did not join or left service after receiving appointment. The remaining 8 persons were appointed in April/May, 1985. They are respondents No.4 to 11. We may point out that Mr.Jejurikar who was just below the applicant in the merit list was appointed on 12.4.1985.

5. The applicant, however, could not be appointed along with Mr.Jejurikar because he was from Kerala and a detailed police verification report was required to be obtained through the Ministry of Home Affairs (IB) as per the then existing orders. The police verification reports of local candidates were received in time and hence they were appointed in April/May 1985. The detailed police verification report regarding the applicant was received on 23.7.1985. But just two months before that, orders were received from the Government imposing total ban on filling up of operational and non operational posts. However, after obtaining special permission the applicant is appointed as Supervisor 'B' (Chemist) on 26.4.1988. In view of this appointment, applicant's prayer for appointment does not survive. But it is his case that he is entitled to salary and other consequential benefits with effect from 12.4.1985, i.e. the date on which his junior Mr.Jejurikar was appointed. He has also requested for seniority on the basis of the merit list.

6. We may point out that after the decision of the Supreme Court on 26.8.1986 confirming the decision of the Single Judge of the Bombay High Court which was

upheld by the Division Bench, the policy of dual verification in respect of candidates hailing from Kerala, West Bengal, and Tripura is withdrawn by the Department of Personnel and Training letter dtd. 4.9.1986. But at the time of appointment of the applicant that policy was in force and that had delayed his appointment by about three years. But in view of the judgment of the Supreme Court it is clear that, that policy was unconstitutional. Hence like Mr.P.T.Abraham, who was the petitioner in Writ Petition No.1462 of 1980 before the Bombay High Court, the applicant will be entitled to the benefits which he is deprived of due to the enforcement of that policy.

7. Therefore, in the first place, the applicant will be entitled to his seniority according to the merit list and consequently he will be entitled to salary and allowances and other consequential benefits from the date on which his junior Mr.Jejurikar was appointed. Mr.Abraham, learned advocate for the applicant (incidentally, who was the petitioner before the Bombay High Court) ^{stated} ~~spoken~~ that the applicant was employed for some period before his appointment on 26.4.1988 and the salary which he has received for that period may be deducted from the amounts due to him. In result we pass the following order:

- (i) The applicant should be given the seniority according to the ranking given to him in the merit list which was prepared on the basis of the interviews for the post of Supervisor 'B'(Chemist) held on 16th & 17th of November, 1984.
- (ii) Respondents No.1 to 3 are directed to pay to the applicant his salary and other allowances from 12.4.1985 till

till 25.4.1988(both days inclusive), on the basis that he was in service as Supervisor 'B' (Chemist) during that period. He should also be given other benefits including increments on that basis.

(iii)


However, the applicant shall file an affidavit before the General Manager of the High Explosive Factory at Kirkee stating the period from which he was in service between 12.4.1985 to 25.4.1988, the names and addresses of his employers and salary & other allowances which he received. Respondents No.1 to 3 may verify the details about the particulars given in the affidavit and deduct the total amount of salary and allowances which the applicant has received during 12.4.1985 to 25.4.1988 from the amount due to him on the basis of the direction given in clause(ii) above;


(iv)

The applicant to file his affidavit within two months from today and the respondents shall pay the arrears to the applicant within three months from the date of filing of the affidavit, after verifying the particulars given in the affidavit if they so want.

(v)

Parties to bear their own cost.


(M.Y. PRIOLKAR)
Member(A)


(M.E. MUJUMDAR)
Member(J)