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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH.

Original Application No. **634/88**

~~Transfer Application No. XXXXXXXXXX~~

Date of decision 25.8.1993

Kum. S.B.Atre Petitioner

Shri S.B.Kasar Advocate for the Petitioner

Versus

Union of India & Ors. Respondent

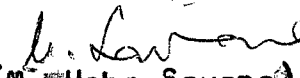
Shri J.G.Sawant Advocate for the Respondent(s)

Coram :

The Hon'ble Shri **Justice M.S.Deshpande, Vice Chairman**

The Hon'ble ~~xxx~~ **Ms. Usha Savara, Member (A)**

1. Whether the 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. Whether it needs to be circulated to other Benches of the Tribunal ? *NO*

  
(Ms. Usha Savara)  
Member (A)

  
(M.S. Deshpande)  
Vice Chairman

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

DA.NO. 634/88

Kum. Sunanda Baburao Atre ... Applicant

V/S:

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande  
Hon'ble Member (A) Ms. Usha Savara

Appearance

Shri S.B.Kasar  
Advocate  
for the Applicant

Shri J.G.Sawant  
Advocate  
for the Respondents

ORAL JUDGEMENT

Dated: 25.8.1993

(PER: M.S.Deshpande, Vice Chairman)

The applicant who had applied for a Class III post to be recruited from open market gave a viva voce examination medically on 20.12.1984 and was examined on 31.5.1985. By the letter dated 20.3.1987 the respondents informed the applicant that she was 9th in the waiting list of the physically handicapped candidates. However, on 17.2.1988 the applicant was informed that since the quota reserved for physically handicapped persons was completed, she could not be appointed. The applicant has, therefore, approached this Tribunal. It is not necessary for us to go into the other facts presented in the written statement except that in Para 7 of the reply it was mentioned that after the panel for 63 candidates who passed the medical examination was approved by the Divisional Railway Manager on 31.12.1985, 3 candidates out of 7 candidates who had not presented themselves for medical examination, subsequently appeared for medical examination and were found physically

(5)

handicapped. The names of these 3 candidates were put up for approval to Divisional Railway Manager, Bhusaval who approved the names on 29.3.1986 and directed that their names be interpolated in the panel of 63 candidates according to their respective ranking given by the Screening Committee. What follows is important and it is that two candidates, namely, Vasant Bhagwanji Thakare and Shri Aktar Hussain Rafiuddin Shaikh whose names appeared at Sr.No. 60 and 65 in the panel were juniors to the applicant were appointed as Gate Clerk and Announcer on 15.8.1986 and 9.3.1987 respectively. They were specifically recommended by the Screening Committee for appointment to the post of Gate Clerk and Announcer while the applicant was recommended only for the category of Clerk and that was the only post to which she has been recommended.

2. The respondents have produced the panel of physically handicapped persons selected for various Class III appointments at Bhusaval Division. The name of the applicant, Kum. Sunanda Baburao Atre appears at Sr.No. 54 in that panel and the nature of her disability has been described as Orthopaedic 40%. The Screening Committee found the applicant suitable for the post of Clerk. Vasant Bhagwanji Thakare was orthopaedically handicapped and his disability was 29% and he was recommended for Gate Clerk while Shaikh who was totally blind and his disability was 95% was found suitable for Announcer. It is true that it was open for the Screening Committee to evaluate the suitability of the candidates depending upon the physical disability for the appointment for which they could be found suitable. There is, however, no explanation why the applicant who had 40% disability and was found suitable as a Clerk should not have been found suitable as a Gate Clerk when Thakare at Sr.No. 60 with 29% orthopaedic disability was found suitable for the post of a Gate Clerk.

*W. S. D.*

(8)

The learned counsel for the respondents could not give any justification for preferring Thakare to Atre when the latter was senior in the list to Thakare. There is considerable force in the statement of the learned counsel for the applicant that the exercise in preferring Thakare to the applicant was arbitrary. On the basis of material produced before us, we find that the applicant was empanelled despite the reduction in the number of posts reserved for the physically handicapped persons and should have figured in the list of persons who should have been appointed. In view of the peculiar facts of this case, we find that the applicant is entitled to succeed.

3. In the result, we direct the respondents to give suitable appointment to the applicant. Since Thakare has already been selected and appointed, we will not issue any direction regarding him and he may be continued also. The appointment be given to the applicant within two months from the communication of the order to the respondents. No order as to costs.

  
(MS. USHA SAVARA)  
MEMBER (A)

  
(M.S. DESHPANDE)  
VICE CHAIRMAN

mrj.