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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

TR 2/88.

O.A. No.
T.A. No.

198

DATE OF DECISION 29.8.90.

J.H. Sankhe Petitioner

Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Mr M.I. Sethna, Mr Nilkanth, Mr Advocate for the Respondent(s)
Masurkar

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

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 ? X
4. Whether it needs to be circulated to other Benches of the Tribunal ? yes

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G. Sreedharan Nair
Vice Chairman.

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

TR 2/88.

J.H.Sankho ... Applicant.
versus
Union of India and others... Respondents.

P R E S E N T :

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

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

For the applicant - Mr C. U. Singh, Advocate

For the respondents - Mr M.I.Sethna,
Mr Nilkanth
Mr Masurkar, Advocates.

Date of Order - 29.8.90.

O R D E R :

G.Sreedharan Nair, Vice Chairman :

The transferred application arises out of Writ Petition No.2666 of 1983 filed by the applicant before the High Court of Bombay which has been received on transfer.

2. The grievance of the applicant relates to his non-selection to the Indian Forest Service (I.F.S.) to fill in the strength of the cadre of initial recruitment from eligible officers of the State Government service. It is alleged that the Special Selection Board and the Central Government did not properly followed the Rules as a result of which the name of the applicant was not included in the Select List. It is contended that he has been discriminated against, and without any rational basis has been superseded by his juniors. He prays for cancellation of the Notification dated 31.1.1983 under which the respondents 19 onwards have been appointed to the IFS with effect from 1.10.1966.

3. The applicant filed MP 236/90 to direct the first respondent to allow him inspection of the entire selection proceedings and

and the records of the Special Selection Board held on 9.12.1981, as well as the correspondence and materials to indicate what all records were placed before the Board. It was also prayed to direct the second respondent to allow the applicant ~~the~~ inspection of his confidential rolls for the period upto 1.10.1966 as well as the confidential rolls of some of the respondents mentioned therein. A Bench of this Tribunal which heard the MP, by the order dated 24.4.1990, directed the respondents to bring all the documents mentioned in the petition on the date of final hearing and to show to the applicant in the first-half of that date such of the documents in respect of which they do not claim privilege.

4. On 23.8.90 when the Transferred Application came up for hearing Advocate Shri Masudkar appearing on behalf of the first respondent showed the counsel of the applicant page 10 of the proceedings of the Special Selection Board containing the reasons for holding that the applicant is not fit. In respect of the rest of the proceedings he relied upon the affidavit dated 21.8.1990 filed by Shri Mahesh Prasad, Secretary to the Government of India in the Ministry of Environment & Forests wherein privilege has been claimed under sections 123 and 124 of the Indian Evidence Act with respect to the remaining portion of the proceedings of the Special Selection Board and the correspondence portions on the ground that their disclosure would affect the freedom and candour of expression of opinion in the determination and execution of constitutional functions affecting public policy. It is further stated that they are unpublished official records relating to affairs of the State~~s~~ and public interest would suffer by the disclosure of those documents.

5. Counsel of the second respondent showed to the counsel of the applicant the confidential rolls of the applicant alone.

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With respect to the other confidential rolls of the concerned respondents, privilege has been claimed on the basis of the affidavit filed by Shri A.V.Gokak, Secretary to the Government of Maharashtra, Revenue and Forest Department, dated 23.8.90 stating that their disclosure would cause injury to public interest.

6. We have heard counsel on either side on the question as to whether the privilege claimed can be accepted. We are of the view that it is not open to the respondents 1 and 2 to claim privilege in respect of those documents.

7. The relevance of the documents cannot be doubted, in view of the specific averments in the writ petition. We cannot comprehend how the respondents 1 and 2 who have resisted the relief claimed by the applicant essentially on the basis of the proceedings of the Board and of the assessment of the Board with reference to the Confidential Rolls, can rely upon the same without the applicant being afforded an opportunity of seeing those documents for the purpose of supporting his allegations. It is to be underlined that the Confidential Rolls relate to the period of 1966 and the earlier years, and the proceedings of the Board are of the year 1981.

8. In this context, the following passage from the decision of this Tribunal in S.P.Banerjee v. Union of India (1986 ATR(PB) 16) may be usefully extracted :-

" While the assessment and recommendation may be confidential at the time when it is made, after the appointment is made, when the same is questioned before the judicial Tribunal, that record cannot be treated as 'Confidential'. When the validity of such a recommendation cannot be judged

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without pursuing the record, such record cannot be treated as one the confidentialities of which should be preserved. The Tribunal cannot withhold such record from the parties likely to be affected by its decision. In disclosing this material to the parties, to the litigation, no prejudice would be caused to the State or any of the officers concerned. The Members of the D.P.C. and the U.P.S.C. are highly placed authorities who will not be in any way embarrassed by such disclosure; nor is their freedom and candour of expression of opinion affected by such disclosure. In discharge of their official duties day in day out they assess the performance of several officer objectively. When their assessment or recommendations are challenged in appropriate judicial forums, any disclosure of that record, in our opinion, will not cause any injury to public interest. In our view, far from causing injury it would advance public interest and lend assurance to the public in general and the public servants in particular that they are being treated justly and fairly. No question of security of State is involved in these records now placed before us. The production of this file and the disclosure of its contents is necessary for a just decision of this case".

The aforesaid passage has been relied upon by the Full Bench of this Tribunal in B.N.Rangwani v. Union of India, (O.A. 279/86, decided on 28.3.1987).

9. Whether privilege can be claimed with respect to the Annual Confidential Reports and minutes of the Departmental Promotion Committee was considered by the High Court of Himachal Pradesh in State of Himachal Pradesh v. Manmohan Bhardwaj and ors (1983 (2) SLJ 54), wherein it was held that the records of the confidential reports cannot be said to relate to the affairs of the State and no privilege can be claimed against the production of the same. It was further held that as the minutes of the D.P.C. are generally based upon the Annual Confidential Reports, the reasons advanced for

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disallowing the privilege in respect of the latter would equally apply to the former also, and that such disclosure is not likely to cause any injury or prejudice to any public interest and is not likely to adversely affect the functioning of the public service.

10. Though counsel of the applicant also placed reliance on the landmark decision of the Supreme Court in S.P.Gupta and others vs. Union of India and others, (AIR 1982 SC 149), we do not think that a detailed reference to it is required in view of the position of law adverted to above, except to extract the following :-

" The concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Art. 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest bearing in mind all the time that disclosure also serves an important aspect of public interest."

11. We over-rule the privilege claimed and direct the respondents 1 and 2 to allow inspection of the documents on the next date of hearing, which is fixed on 20.12.1990.

12. Ordered accordingly.

Up
27.8.90
(M.Y.Priyolkar)
Member (Admn)

Henry
29.8.1990
(G.Sreedharan Nair)
Vice Chairman.

S.P.Singh
27.8.90.

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