

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW~~ BOMBAY BENCH

O.A. No. 652/1988
T.A. No.

198

DATE OF DECISION August 20, 1991.

Shri N. Sudhakaran and Ors

Petitioner_s.

CA 714/1990.

Shri Kashinath G. Raut & Ors.

Advocate for the Petitioner (s)

~~Shri G.S. Walia~~

Versus

Union of India & Ors

Respondent_s.

Shri R.K. Shetty,

Advocate for the Respondent (s)

(CA 652/88)

Shri N.K. Srinivasan,
(CA 714/1990).

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. G. Sreedharan Nair, Vice-Chairman (J).

The Hon'ble Mr. I.K. Rasgotra, 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*

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)
20.8.1991.

(12)
CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
BOMBAY

O.A. No.652/1988. Date of decision: August 20, 1991.

Shri N.Sudhakaran and Ors. .. Applicants.
Vs.
Union of India & Ors. ... Respondents.

O.A. No.714/1990.

Shri Kashinath G.Raut & Ors. ... Applicants.
Vs.
Union of India and Ors. ... Respondents.

CORAM:

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

HON'BLE MR. G. SREEDHARAN NAIR, VICE-CHAIRMAN(J).

HON'BLE MR. I.K. RASGOTRA, MEMBER (A).

For the applicants ... Shri G. S.Walia,
Advocate.
For the respondents ... Shri R.K.Shetty,
Advocate (OA 652/88)
Shri N.K.Srinivasan,
Advocate(OA 714/90).

(Judgment of the Full Bench delivered by
Hon'ble Mr. Justice Amitav Banerji, Chairman).

A Division Bench of the Tribunal (Hon. U.C.Srivastava,
V.C. and Hon. M.Y.Priolkar, AM) by their order dated
24th April, 1991, doubted the correctness of the decision
of a Division Bench at Hyderabad in the case of T. NAGESHWARA
RAO Vs. UNION OF INDIA (1988)(2)ATLT (CAT) 25) and
have referred the following question to be decided by a
larger Bench:

" whether under para 215 of Indian railway
Establishment Manual it is necessary that
at least 3 officers of junior administrative
rank should be included in the selection Boards
for posts of Rs.350-475 and above, or whether

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it would suffice to have only two officers of junior administrative grade and one personnel officer in the senior scale. "

The Hyderabad Bench of the Tribunal in the above case, was considering the question whether the Selection board should consist of not less than three officers of junior administrative rank. It was of the view that the Selection Board should consist of 3 officers of junior administrative rank in interpreting para 215 of the Indian Railway Establishment Manual (I.R.E.M.). The Division Bench at Hyderabad concluded as follows:

"We have examined the contentions of the parties and we are of the opinion that since the constitution of the selection board was in violation of para 215 of the Indian Railway Establishment Manual, it was illegal ab-initio as any selection made by an illegal selection board cannot be upheld."

Consequently, the impugned panel was quashed and the respondents were directed to prepare a fresh panel.

The relevant factual position, not in dispute, are as follows:

In O.A. 652/1988, N. Sudhakaran and 7 others, all employees in the Western Railways have complained that their names were not included in a panel prepared by a Selection Board for the post of Traction Foreman (T.R.D.) in the grade of Rs.2000-3200 (RPS). Their grievance is that the Selection Board was not properly constituted as required under paragraph 215 of the I.R.E.M. Applicants S/Shri N. Sudhakaran, C.U. Raj, A. Gladwin, Prabhu Singh and Om Prakash Sharma were working as Supervisors, Assistant Traction Foreman (scale 550-750/1600-2600) (RPS)

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on ad-hoc basis. It is also stated that the applicants appeared in an interview/viva voce test. The applicants have also alleged that juniormost employees have been selected due to favouritism and extraneous consideration and hence the panel is liable to be quashed and set aside.

similar is the position in the case of Kashinath G. Raut and Others (OA 714/1990). Applicant No.1 was and working as officiating Junior Shop superintendent, / applicants 2 and 3 were working as Chargemen Grade 'A' under Chief Workshop Manager,, Western Railway, Lower Parel, Bombay. The pay scale of Junior Shop Supdt. is Rs.2000-3200 (RP) and the pay scale of Chargeman Grade 'A' is Rs.1600-2600 (RP). The applicants were eligible for the written test in connection with the selection for the post of Junior shop Supdt. (Carp.). Respondents had called 12 employees for the purpose of holding the written test on 7.8.1990. On 23.8.1990 the result of the said written test was declared and the names of the applicants were not included there. Hence they were not called for viva voce test and they were excluded from selection. The letter dated 23.8.1990 (Annexure 'C') issued by the Chief Workshop Manager indicated that their names were not included in the list of those who had qualified in the written test. The applicants are aggrieved and have alleged that the selection board was not duly constituted. This case is also referred to the larger Bench for consideration of the same question as in O.A. 652/1988.

We have heard Shri G.S. Walia, learned counsel

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for the applicants in the aforementioned two O.As and Shri R.K.Shetty, for respondents in OA 652/1988 and Shri N.K.Srinivasan, for respondents in OA 714/1990.

In the referring order, the Division Bench referred to the decision of the Hyderabad Bench in the case of T. NAGESWARA RAO (supra) and to the provisions of the paragraph 215 of the I.R.E.M. The Hyderabad Bench held that the selection made by the Selection Board in that case which had only two officers of junior administrative rank and one Personnel Officer in the senior scale was illegal ab-initio as the constitution of the selection board was defective. The Hyderabad Bench took the view that selection board should have consisted of not less than 3 officers of junior administrative rank, as required in para 215 of the I.R.E.M. Unable to accept the above view, the Division Bench observed as follows:

"In our view, however, while clause (a) of para 215 states that Selection Boards shall consist of not less than 3 officers, under clause (c) of the same para, the provision made that in case the Selection Board includes a personnel officer in the next lower rank, i.e. senior scale, he shall nevertheless be an equal member of selection board, permits the constitution of selection boards for such posts consisting of two officers of the junior administrative grade and one personnel officer of the senior scale. It appears to us that the Hyderabad Bench failed to take into account the second part of clause (c) of para 215 before giving its decision."

In short, the question before us is whether the constitution of the selection board with 2 junior administrative rank officers and one personnel officer of the senior scale is in consonance with the provisions of

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paragraph 215 of the I.R.E.M.

Shri Walia, learned counsel for the applicants argued that paragraph 215 of the I.R.E.M. pertains to the 'Constitution of selection Boards' and the Selection Board is to consist of not less than 3 officers and none of them should be subordinate to any other member and it further provides that it will consist of officers of junior administrative rank for selection posts of Rs.350-475 and above. He urged that there is a provision for having a Personnel Officer of senior scale as a member of the selection board but he could only be the fourth member and could not be included as the third member. He laid great emphasis on first sentence of clause (c) of paragraph 215: "For selection posts of Rs.350-475 and above, the Selection Board will consist of officers of Junior Administrative rank." He also relied on clause (a) of paragraph 215 of the I.R.E.M. which reads:

"selection boards shall consist of not less than three officers. "

Reading these two sub-clauses he urged that it was imperative that the selection board consisted of 3 junior administrative rank officers for selection to posts carrying a pay scale of Rs.350-475 and above. He further urged that a Personnel Officer should be a member of the selection board but he could not replace any junior administrative rank officer.

He urged that the view taken by the Hyderabad Bench of the Tribunal was correct and the view expressed to the contrary in the referring order was not in keeping with

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the provisions of paragraph 215 of the I.R.E.M.

Another line of argument was that para 215 is substantive law and third sentence in clause (c) of paragraph 215 could not be read as proviso to the earlier two sentences. He, therefore, urged that first sentence of clause (c) of paragraph 215 was complete by itself and was not qualified by the third sentence of the same clause. He lastly urged that on a correct interpretation of paragraph 215 of the I.R.E.M. it was imperative that there should be at least 3 junior administrative rank officers and if this was not complied with, then there would be a violation of the provisions of paragraph 215 and the selection board would not be deemed to be constituted in accordance with law and hence the selection made by them has to be quashed.

Learned counsel for the applicants was not able to cite any case apart from the case of T. NAGESWARA RAO (supra) in support of his contention that it is imperative to have 3 junior administrative rank officers in such selection board. The learned counsel has cited the case of M/S. APHALI PHARMACEUTICALS LTD. Vs. STATE OF MAHARASHTRA AND OTHERS ((1989)4 SCC 378). He argued that it is a well settled rule of construction that no part of a statute is taken as superfluous or redundant. He also cited the case of M/S. RAMNARAYAN & SONS LTD. Vs. ASSISTANT COMMISSIONER OF SALES TAX (AIR 1955 SC 765). in respect of a proviso and its interpretation.

Shri R.K. Shetty, learned counsel for the respondents relied on the written arguments he has filed in the O.A.

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No.652/1988. He urged that paragraph 215 of the I.R.E.M. is not a substantive law but only a procedure. The Indian Railway Establishment Manual is not a rule made under Article 309 of the Constitution of India but only lays down a procedure as framed by the Railway Board. He stated that in interpreting the provision of paragraph 215, no part of clauses (a) and (c) are superfluous or redundant and has to be read as a whole and interpreted in accordance with the known canons of interpretation. The third sentence in clause (c) of paragraph 215 makes the position abundantly clear for it says " In either case the selection board may include a Personnel Officer in the next lower rank who shall, nevertheless, be an equal member of the selection board. The presence of a Personnel Officer on a selection board is very desirable but not compulsory." According to him, the Personnel Officer who is included in the selection board is to be treated as an equal member of the selection board. In any event, this was an exception to the first sentence of clause (c) of paragraph 215 of the I.R.E.M. and if there was a senior scale officer and he was a Personnel Officer, then in that event the constitution of the selection board along with 2 other junior administrative rank officers would be a full compliance with the provisions of paragraph 215 of the I.R.E.M. He urged that the use of the phrases "in either case" and "nevertheless" are there and are significant in this context. He stressed that the provisions in the various clauses of paragraph 215

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of the I.R.E.M. have to be read together and a harmonious interpretation is to be had so as to achieve the objective for which the provisions were issued and not to defeat the same. Lastly, he submitted that the decision in the case of T. NAGESWARA RAO (supra) did not lay down good law and is liable to be overruled.

Shri N.K.Srinivasan appearing for the respondents in OA 714/1990 adopted the arguments of Shri R.K.Shetty and reiterated that the decision in T. NAGESWARA RAO's case (supra) did not lay down the correct law.

Before we proceed further to consider the matter, it will be necessary to reproduce in whole the paragraph 215 of the I.R.E.M., which is as under:

"215. Constitution of Selection Boards:-

- (a) Selection boards shall consist of not less than three officers.
- (b) When a selection board consists of only three officers, none of the members should, if possible, be directly subordinate to any other.
- (c) For selection posts of Rs.350-475 and above, the Selection Board will consist of officers of Junior Administrative rank. For all other selection posts, the selection board will consist of officers not lower in rank than senior scale. In either case the selection board may include a Personnel Officer in the next lower rank who shall, nevertheless, be an equal member of the selection board. The presence of a Personnel Officer on a selection board is very desirable but not compulsory.
- (d) If for any reason the competent authority is unable to comply with the provisions of this paragraph, it should make a report of the facts of the General Manager."

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At the outset, it has to be noted that paragraph 215 of the I.R.E.M. incorporates the administrative orders for the constitution of the selection boards which are to be entrusted with the function of making recommendations for the purpose of promotion to selection posts. There are four clauses in paragraph 215 of the I.R.E.M. None of these clauses is to be read in isolation; the various clauses are to be read in conjunction so as to achieve the objective behind the issue of the orders. Clause (a) enjoins that a selection board shall not consist ^{of} less than three officers. According to clause (b) if there are only three officers in the selection Board, none should, if possible, be directly subordinate to any other. The former portion of clause (c) lays down that in the matter of selection posts of Rs.350-475 and above the board will consist of officers of Junior Administrative rank, while for all other selection posts, the Board is to be constituted of officers not lower in rank than in senior scale. Provision is made in the latter portion of the clause for the inclusion of a Personnel Officer in the next lower rank in either of the aforesaid cases, and despite his rank, by a fiction, he is deemed as an equal member of the Board. The clause winds up with the provision that the presence of a Personnel Officer on a Board is very desirable, but not compulsory.

The posts involved in the present O.As being in the pre revised pay scale of Rs.350-475 and above, the selection board according to clause (c) will consist of

officers of Junior Administrative rank and may include a Personnel Officer in the next lower rank, who shall nevertheless be an equal member of the board.

The submission of the counsel for the applicants that in case a Personnel Officer in the next lower rank is to be included in the selection board, it can be done only as a fourth member, after providing for three officers of junior administrative rank has to be rejected, for a harmonious reading of the provisions contained in clauses(a) and (c) of paragraph 215 of the I.R.E.M. does not warrant this submission. What is required under clause (a) is only the existence of not less than three officers in the selection board. No doubt it is provided in clause (c) that for selection posts of Rs.350-475 and above, the board shall consist of officers of junior administrative rank. However, when the inclusion of a Personnel Officer in a next lower rank is permitted by clause (c) itself and the Personnel Officer is conferred an equal status as the member of the Board, despite his lower rank, it cannot be said that if a Board is actually constituted of two officers of junior administrative rank and a Personnel Officer in the next lower rank, there is any infraction of the provisions of paragraph 215 of the I.R.E.M.

It may also be noticed that clause (a) of paragraph 215 of the I.R.E.M. uses the word "shall consist of not less than three officers.". This means that the selection board shall in any case ^{may} consist of not less than 3 officers but include a larger number also. This clause does not indicate

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the rank or the status of the officers who shall constitute the selection board. That provision is to be found in clause (c). The first sentence significantly uses the word "will" and not "shall". It reads: "For selection posts of Rs.350-475 and above, the Selection Board will consist of officers of Junior Administrative rank." This is significant, for it does not make it imperative that all the 3 officers of the selection board must be of the junior administrative rank. Further clause (c) has to be read as a whole. No part of it should be taken as superfluous or redundant. Consequently, the argument that the selection board has necessarily to consist of 3 junior administrative rank officers is unacceptable. An argument that the Personnel Officer of the senior scale can only be the fourth officer and not among the 3 members of the selection board, is also untenable.

We have already noticed that the learned counsel for the applicants has not been able to cite any other case in support of his contention about the constitution of the selection board with a minimum of 3 junior administrative rank officers except to cite the case of T. NAGESWARA RAO (supra). We have gone through the decision of the Hyderabad Bench. With great respect, we are unable to agree with the view taken by the Hyderabad Bench in the case of T. NAGESWARA RAO (supra) for it appears to us that the said Bench had not considered the provisions of clause (c) of paragraph 215 of the I.R.E.M. As indicated above, in the decision of the supreme court that in interpreting a statutory provision

or a Rule, no part of it is to be ignored or treated as superfluous. The entire provisions of clause (c) of paragraph 215 of the I.R.E.M. had to be read as a whole and interpreted keeping in view the known and accepted principles of interpretation. If a decision does not take into consideration the relevant provision of the statute or rules, that interpretation is not a correct interpretation. The same analogy would apply to the interpretation of the paragraph 215 of the I.R.E.M. The decision of the Hyderabad Bench in the case of T. NAGESWARA RAO (supra), therefore, suffers from the error of not considering the provisions of clause (c) of paragraph 215 of the I.R.E.M. Consequently, we say, with great respect, that the decision in the case of T. NAGESWARA RAO (supra) does not lay down good law and must be over-ruled.

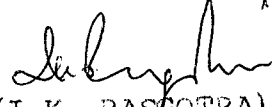
In the result, the question referred is answered as below:-

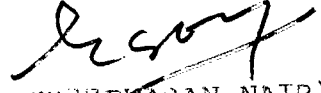
"In a case where the selection board constituted under paragraph 215 of the I.R.E.M. consists of two officers of Junior Administrative rank and a Personnel Officer in the next lower rank, there is compliance with the provisions of paragraph 215 of


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the Manual and as such, there is no illegality."

The O.As may now be placed before the Division Bench for necessary orders.



(I.K. RASGOTRA)
MEMBER (A)
20.8.1991.


(G. SREEDHARAN NAIR)
VICE-CHAIRMAN (J)
20.8.1991.


20/8/91
(AMITAV BANERJI)
CHAIRMAN
20.8.1991.

SKS

Pronounced by me in
open court.


(I.K. Rasgotra)
Member (A)
20.8.1991.