

(22)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 159/86.

~~Original Application No:~~

DATE OF DECISION: 26.10.96

Patras Gokul,

Petitioner

Shri D. V. Gangal,

Advocate for the Petitioners

Versus

Union Of India & Others, Respondent

Shri V. G. Rege,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B. S. Hegde, Member (J).

The Hon'ble Shri M. R. Kolhatkar, Member (A).

1. To be referred to the Reporter or not?

2. Whether it needs to be circulated to other Benches of the Tribunal?


(B. S. HEGDE)
MEMBER (J).

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNALBOMBAY BENCH.O.A. NO. : 159/86.

Patras Gokul ... Applicant

Versus

Union Of India & Others ... Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :1. Shri D. V. Gangal,
Counsel for the Applicant.2. Shri V. G. Rege,
Counsel for the Respondents.JUDGEMENT :DATED : 26-10-91

I Per. Shri B. S. Hegde, Member (J) I.

1. Heard the arguments of Shri D. V. Gangal,
Counsel for the Applicant and Shri V. G. Rege, Counsel
for the Respondents.

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2. The short point for consideration is whether the applicant is eligible to be considered for the post of Projectionist in the grade of Rs. 330-560 since 1979. Simultaneously, he is also claiming that he is entitled to the post of 'Junior Clerk' since that date. Later on, the applicant has modified the prayer clause by stating that the Applicant is entitled to be promoted to

the post of Junior Clerk with effect from 09.03.1983 or alternatively hold and declare that the applicant is entitled to be promoted to the post of 'Projectionist' with effect from 07.05.1986.

3. The brief facts are that, the applicant joined the service as a Malaria Khalasi on 17.01.1960 in the Central Railway. He worked in that capacity for a period of seven years. Thereafter, he was transferred as a Peon and worked in the Office of the Chief Medical Officer, Central Railway, Bombay V.T. There, he worked as an Attendant to the Project Operator from 1967 to 1969. The post of Attendant to the Project Operator was abolished and again he was transferred as a Peon under the Divisional Medical Officer, Central Railway, Kalyan. In the year 1977, he was called for a Suitability Test for the post of 'Projectionist-cum-Mechanic', grade Rs. 425-600. He attended the Suitability Test in 1986 (Annexure-D) and was not declared successful at the viva-voce test. Similarly, he was called for a Suitability/Written test for the post of 'Junior Clerk' in the year 1983 and is being shown at Sl. No. 16 in the Seniority List.

4. In the reply, the Respondents have stated that the applicant is not entitled to be promoted either to the post of 'Junior Clerk' or to the post of 'Projectionist', grade Rs. 330-560. The applicant can be appointed to the post of Junior Clerk if he is selected in the test prescribed in that behalf. The applicant appeared for the Selection

viz. the written test on 29th April, 1979. He however, failed to secure the requisite number of marks to become eligible for being called for the viva-voce test. The applicant, being a Scheduled Caste person, is required to obtain the minimum 30% marks in the Written Test, but he failed to secure the same. As a result, he is not entitled for appointment to the post of 'Junior Clerk'. Later on, pursuant to the directions given by this Tribunal in 1986, he was asked to appear for the exam, but he did not appear for the same.

5. We have heard the rival contentions of the parties and have perused the pleadings carefully. As stated earlier, the question is for considering, whether the applicant is eligible to be considered for the post of 'Projectionist'. In this connection, the Respondents have filed Annexure-A to their reply, vide dated 03.05.1983, wherein the cadre of Family Welfare Organisation on Railways are filled up in the following manner :-

Method of Recruitment .. Direct Recruitment through Railway Service Commission.

Qualification Prescribed. .. Matriculate.

Admittedly, the applicant has studied 9th Standard, and not a matriculate. Therefore, even if the Medical Authorities have recommended him for selection, he cannot be appointed as a 'Projectionist', which is to be filled by way of Direct Recruitment and not by promotion, thereby, his claim for the post of 'Projectionist' is not sustainable and the same is rejected. Alternatively, he is seeking promotion

to the post of 'Junior Clerk'. The stand of the Respondents is that, though he was called for a Suitability Test in the year 1979, he failed to secure the requisite number of marks, thereby, he could not be called for viva-voce test. Later on, pursuant to the directions of the Tribunal, he has been again called for the test in the year 1986, but he did not appear for the same. In the circumstances, the question of considering him for the post of 'Junior Clerk' does not arise. The contention of the applicant that the post of 'Projectionist' is a promotional post, is found to be not correct and the said contention is not based on documentary proof. Therefore, we are of the view, the contentions raised in the O.A. are irrelevant and the same is not sustainable. The mere fact that he has been called for Suitability/Written Test either for the post of 'Projectionist' or for the post of 'Junior Clerk' by itself, does not enable him to seek for promotion, unless he is found to have passed both in written as well as viva-voce test and the same has been communicated to him. Therefore, it is wrong to say that he has been declared successful in the test. On the other hand, the Applicant was not appointed, as he was not successful in the test held for the purpose of selecting persons for appointment to the post of 'Junior Clerk' held in 1979.

6. It is well settled principle of law that whenever promotion to a higher post is to be made on the basis of merit, no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone

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with effect from the date on which his juniors are promoted. An officer may be capable of discharging the duties of the post held by him satisfactorily but he may not be fit for the higher post. Before any such promotion can be effected, it is the duty of the Management to consider the case of the officer concerned on the basis of the relevant materials. If the promotion has been denied arbitrarily or without any reason ordinarily, the Court can issue a direction to the Management to consider the case of the officer concerned for promotion but it cannot issue a direction to promote the officer concerned to the higher post without giving an opportunity to the management to consider the question of promotion. However, Courts have held, that before giving promotion, it is incumbent on the part of the department to consider the cases of deserving officers on the basis of their seniority, qualifications and other relevant facts and circumstances but not on the basis of individual assumptions or presumptions. The Supreme Court in State of M.P. Versus Sri Kant-Chaplekar (1993) 23 ATC 377 (SC) held that in a case where the Court/Tribunal comes to the conclusion that a person was not considered for promotion or the consideration was illegal, then the only direction which can be given is to get his case re-considered in accordance with the law. It would be hazarders for the Court to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled by selection, the method of selection can be examined by the Courts/Tribunal.

7. In the light of the above legal proposition laid down by the Supreme Court, applying the facts of this case as stated earlier, the Applicant is not eligible

to be considered for the post of 'Projectionist', which is to be filled up by way of direct recruitment.

Similarly, the post of 'Junior Clerk', though he has been called for Written Test, he did not come up-to the standard and failed in the test. Again, pursuant to the directions of the Tribunal, he has been called for the test in the year 1986, which he did not appear. In the circumstances, both his contentions fail and therefore, we are of the view, that the application is devoid of merit and the same is dismissed. No order as to costs.

M. R. Kolhatkar

(M. R. KOLHATKAR)

MEMBER (A).

B. S. Hegde

(B. S. HEGDE)

MEMBER (J).

OS*