

## (12) IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## BOMBAY BENCH

O.A. No. 293/86  
T.A. No. 300/87

198

DATE OF DECISION

13/9/91

SHRI B.J.KAWADE and others

Petitioner

Applicant in person

Advocate for the Petitioner (s)

Versus

The Union of India and ors

Respondent

Mr.V.G.Rege

Advocate for the Respondent (s)

## CORAM

The Hon'ble Mr. U.C.Srivastava, Vice-Chairman

The Hon'ble Mr.P.S.Chaudhuri, 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 ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether in needs to be circulated to other Benches of the Tribunal ?

) No

(13)  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

1. T.A. NO.300/87

2. O.A. NO.293/86

1. T.A. NO.300/87

1. Shri B.J.Kawade,  
Section Officer on  
deputation, C.R., Nagpur.
2. All India Scheduled Caste  
and Scheduled Tribe Tailway  
Employees Association, a Semi-recognised  
Union, through its Divisional Secretary  
Shri P.K.Moon, Guard-B, C.R.Nagpur

.... Applicants

V/s

1. The Union of India, through Ministry  
of Railways, Rail Bhavan, New Delhi.
2. General Manager, Central Railway,  
VT, Bombay.
3. Financial Advisor and Chief  
Accounts Officer, C.R.,V.T.  
Bombay.

.... Respondent

2. ORIGINAL APPLICATION NO. 293/86

1. Shri B.J.Kawade  
Assistant Accounts Officer(PC)  
Sr.Divl. Accounts Office,  
C.R.Bhusaval.
2. Shri P.K.Moon,  
Divisional Secretary, All India  
SC/ST Railway employees Association  
C.R., Nagpur Divn., Guard-Gr.A Special,  
C.R., Nagpur.

.... Applicants

V/s

1. The Union of India, through Min.of  
Railways, Rail Bhavan, New Delhi.
2. Secretary, Department of Personnel  
and Training, Ministry of Home affairs  
North Block, New Delhi.
3. General Manager, Central Railway,  
VT, Bombay.
4. Financial Adviser and Chief Accounts  
Officer, Central Railway, Victoria Terminus,  
Bombay.

14

5. Shri V.R.Shastry, Vigilance Officer,  
Accounts, C.R., VT,  
posted at Bombay.

6. Shri B.D.Notani, Visional Accounts  
Officer, C.R.Railday, Nagpur.

CORAM : HON'BLE JUSTICE SHRI U.C.SRIVASTAVA, Vice-Chairman,

HON'BLE SHRI P.S.CHAUDHURI, MEMBER (A)

Appearance:

Applicant in person

Mr. V.G. Rege for  
the respondents.

JUDGMENT

DATED: 13.9.1991

(PER : U.C.SRIVASTAVA, Vice-Chairman)

In original application No.293/86 under section 19 of the Administrative Tribunals Act, 1985 the first applicant who during the pendency of the case has retired from service has prayed that the Railway Board's letter dated 11.9.1985 dereserving the reserved posts, one for Scheduled Caste (SC) and one for Scheduled Tribes (ST), of 1978 examination in consultation with Department of Personnel and Training be quashed, that the final panel of 1978 examination declared on 4.10.1985 be quashed,

that promotion order dated 13.1.1986 to the extent of promotion to Senior Scale Accounts Officer in respect of respondents No.5 and 6 be quashed, that respondent No.5 be ordered seniority and promotion in class II and Senior Scale cadre as per 1980 examination and that the promotion of respondent No.5 in Class II and Senior Scale Cadre be quashed and for himself he has prayed that promotion to him as Assistant Accounts Officer from 19.3.1979 and Senior Scale Accounts Officer from 1.8.1984 be allowed together with circumstanced employees of the All India SC/ST Railway Employees Association Central Railway, Nagpur Division (which has joined with the first applicant as applicant No.2 to this application) with reference to their position. Arrears of salary with interest thereon have also been claimed. As prayed by the first applicant, this application has been connected and decided with a Writ Petition No.557/84 which was filed by him at Nagpur Bench of the Bombay High Court and after coming to the Tribunal by way of transfer from there, has been taken on the file of this Bench of the Tribunal as Transferred application No.300/87. In this transferred application the same applicants have prayed for the issue of writ of mandamus directing that the circular dated 31.8.1974 mentioned in Annexure 'C' to the Writ Petition be followed so that the respondents post the best among the failures

from SC and ST candidates against the reserved vacancies, to hold that till the Circular at Annexure 'C' was superseded by the circular dated 15.11.1983 at Annexure 'A' it was very much in force and was applicable and binding upon the Railway Administration and for a writ directing the respondents to make this empanelment with retrospective effect with consequential seniority and back wages from the date of empaneling. They have further prayed for stay of the examination which has since taken place.

2. The first applicant before his retirement had already appeared in the limited Departmental Competitive Examinations (LDCE) for the post of Assistant Accounts Officer which took place in 1978, 1979, 1980 and 1982 in which against the Class II posts reserved for SC and ST no one succeeded and so no one was empanelled. It appears that two persons not belonging to SC/ST were promoted on adhoc basis against the reserved quota on the basis of the 1978 examination. At that state, the posts were not de-reserved. These two persons, viz, S/Shri V.R.Shastry and B.D.Notani, appeared for LDCE, held for 6 posts, i.e. 4 General and one each for SC/ST, in 1978 and 6 persons from general community were found eligible. However, initially only 4 general candidates were empanelled and the remaining 2 eligible general candidates were included in 1985.

(17)

after the two reserved posts had been deserved. In the meantime Shri V.R.Shastry had also been empanelled as a result of 1980 examination. As in the subsequent examination also no candidate belonging to SC/ST was qualified the reservation was carried forward till the LDCE held in 1986-87. The dereservation of these posts took place only after necessary approval was conveyed by the Board after the same was sanctioned by the Department of Personnel and Training, Ministry of Home Affairs, Government of India. The deservation took place in the year 1985. The provisional panels were got finalised and notified on 4.10.1985 and promotion orders were issued on 13.1.1986. The dereservation took place as the channels to fill up the reserved quota had already been exhausted during these years and none of the candidates belonging to SC/ST qualified in the examination referred to above.

3. The Railway Board's letter dated 17th August, 1974 was in respect of reservation of SC/ST in post to be filled by promotion. In the Railway Board's letter dated 31st August, 1974 it was provided that if in the selection proceeding it is found that the requisite number of SC/ST candidates were not available for being placed on the panel inspite of the various relaxations already granted, the best among them, i.e. who secured the highest marks, should be earmarked for being placed on the panel to the extent vacancies have been reserved in their favour.

4. The applicant strenuously relies on the same in that as he secured the highest number of marks, he should have

been placed on the panel but despite this, this right was denied to him and in this connection he has placed reliance on the judgment of the Karnataka High Court in K.Narayanaswamy V. General Manager, Southern Railway and others (Writ Appeal No.2454/82) decided on 4.11.1982, in which its enforceability was upheld. It is true that in case his name would have been included, he would have got the promotion and he would have got certain benefits. But by the said Circular the question of regular promotion would have arisen only after he would have been found to be satisfactory after he had been appointed on adhoc basis for six months and a special report obtained on his working. As the applicant could not get an opportunity to prove his merit by working for a period of six months it may be thought that full justice has not been done and a complaint may be justified to the said extent, but he may not get any relief at this stage in view of the fact that no one could get any pay for work which has not been performed. The question would have arisen in case he would have been put out for a period of 6 months in terms of the said circular. Before this stage arose, the circular of 1983 putting an end to this practice was issued. As such, for the interim period no right or reliefs can be claimed by the applicant and that, too, at this stage. In this connection a reference may be made to the case of S.Krishnamurthy V. General Manager, S.Railway, AIR 1977 SC 1968 and Paluru Ramkrishnaiah V Union of India and another, etc etc, AIR 1990 SC 166.

5. In this view of the matter, we see no merit in either of the applications and are of the opinion that both the

(19)

applications deserve to be dismissed. So far as the dereservation is concerned, the dereservation was fully in accordance with the directives of the Government of India. Even if the dereservation was not there, the applicant cannot get any relief even if it would have been found to be uncalled for or not quite legal by us.

6. We accordingly dismiss both the applications. In the circumstances of the cases there will be no order as to costs.



(P.S.CHAUDHURI)  
MEMBER(A)



(U.C.SRIVASTAVA)  
VICE-CHAIRMAN

13.9.1991