

(10)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 507/86

199

T.A. NO:

DATE OF DECISION 22.7.1992

Shri M.K. ARAK

Petitioner

D.V. GANGAL

Advocate for the Petitioners

Versus

THE GENERAL MANAGER, CR, Bombay Respondent
and 152 o/s.

SHRI V.G. REGE, Adv.

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. JUSTICE S.K.DHAON, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, MEMBER (A)

- 1. Whether Reporters of local papers may be allowed to see the Judgement ?
- 2. To be referred to the Reporter or not ?
- 3. Whether their Lordships wish to see the fair copy of the Judgement ?
- 4. Whether it needs to be circulated to other Benches of the Tribunal ?

NO

S.K.
(S.K.DHAON)
V/C

mbm*

(19)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

T.A.No. 507/86

SHRI M.K.ARAK
and 21 ors.

.... Applicant

v/s

The General Manager,
Central Railway,
Bombay - VT.
and 152 others

.... Respondents

CORAM : HON'BLE MR.JUSTICE S.K.DHAON, Vice-Chairman
HON'BLE MEMBER SHIR M.Y.PRIOLKAR, MEMBER (A)

Appearance :

Shri D.V.Gangal, Adv.
for the applicant

Shri V.G.Rege, Adv.
for the applicant.

ORAL JUDGEMENT

22nd JUL 1992

(PER : JUSTICE S.K.DHAON, Vice-Chairman)

On or before 22nd April 1984, the applicants were employed as Khalasi. On that day a notification for employment of Group 'D' staff in Grade Rs.196-232(RS) in Electric Locomotive Workshop, C.Rly, Bhusaval was issued. By the said notification, applications were invited from the candidates desirous of being considered for placement on panel for temporary employment as Workshop Khalasi against existing and future vacancies in Electric Locomotive Workshop, Bhusaval. The qualification laid down was

that the candidate must possess necessary aptitude for service. He must have ~~attained~~ minimum education equivalent to VIII std. passed. It ~~was~~ also provided that I.T.I. and NCTVT course passed candidates will be given preference. The applicant and others applied. Selection commenced on 22.11.1984. However, the results were declared on 30.11.1985. The applicants were found not fit and, therefore, they were not empanelled. They feel aggrieved; hence this application.

2. The first point urged in support of this application is, that the notification of the communication dated 12-15/12/1977 made it clear that, except in Mechanical Workshops, there will be no direct recruitment of class IV staff in any department. Therefore, the selection process commenced for direct recruitment in the Electrical Workshop was void and no effect should be given to the same. Our attention has been invited to the subsequent communication dated 14.2.1978 from the Headquarters of the Central Railway. By this document the word 'Mechanical' as contained originally in paragraph 2(a) of the communication dated 12-15/12/1977 afore mentioned has been deleted. After deletion, the paragraph 2(a) will read that except in workshop there will be no direct recruitment. Admittedly, in the instant case, the direct recruitment took place in relation to a workshop. Therefore, the contention is devoid of any merit and is liable to be rejected.

3. We may note that the notification dated 22.4.1984 did not purport to fix any exact number of the candidates to be recruited or empanelled. On the contrary, the notification itself provided that the selection was taking place to fill up the existing vacancies and also the vacancies which may arise in future. The counsel for the respondents has placed before us the record which shows that, sometime in the month of September 1984, the number of vacancies for direct recruitment was assessed at 120. We have been informed at the Bar that, in fact, 145 candidates had been empanelled. At this stage, we may also note that it is not the case of the applicants that none of 145 candidates, who were successful and empanelled, apart from fulfilling the minimum academic qualification as laid down in the notification dated 22.4.1984, did not possess the technical qualification of I.T.I. or NCTVT. In other words, it is not the case of the applicants that any candidate who had not passed the course of I.T.I. or NCTVT had been empanelled. According to the applicants, the only requirement to be taken into account was that a candidate shall have passed the VIII class. This argument is not sound. We have already referred to the terms of notification wherein it is laid down that the preference would be given to those who possess the technical qualification. We have already indicated that no candidate who did not possess the technical qualification, had been empanelled.

We are not ignoring the fact that originally no number had been fixed but subsequently a number had been fixed. A minor deviation from the number fixed would not invalidate the proceedings. On the whole, we are satisfied that the applicants were not treated unfairly because preference had been given to those who, apart from possessing the minimum educational qualification, also possessed the technical qualification. It is apparent that the claim of the applicant was inferior to those found fit.

5. Counsel for the applicant also urged that, in fact, the communication dated 31.7.1985 which provided, that it was imperative that a candidate must possess the technical qualification was taken into account while giving the decision on 30.11.1985. It was emphasized that no explanation is forthcoming as to why the results were not announced till 30.11.1985. In the counter affidavit, it has been categorically averred that the direction dated 31.7.1985 was not taken into account and the selection has taken place strictly in accordance with the guidelines contained in the notification dated 22.4.1984. True, there had been some delay in declaring the result but no adverse inference can be drawn against the respondents merely on that account. Mere delay does not go to prove that the guidelines contained in the communication of 31.7.1985 were taken into account while dealing with the selection of the applicants as participants.

6. The last argument advanced was that in the cases of applicants No.2, 12, 13 and 18 compliance of the provision of Section 25 F of the Industrial Disputes Act, 1947 had not been done. The argument was that retrenchment compensation was not paid alongwith the notice by means of which the applicants were retrenched from service. In the counter affidavit filed, it is averred that full compliance was made. That apart, we find force in the submission made on behalf of the respondents that the applicants cannot make any grievance of non compliance of the provision of Section 25 F, as they have failed to implead the Divisional Electrical Engineer (Construction), Bhusaval, the officer who passed the order retrenching the aforesaid applicants from service, as one of the respondents to this original application. In our opinion, that officer alone is competent to inform us whether he had, in fact, complied with the Section 25 F. He is, therefore, a necessary party so far as this controversy is concerned.

7. Learnedcounsel for the respondents informed us that out of the applicants the services of eight of them have been regularised and now only the applicants No.2, 12, 13 and 18 remain to be considered for regularisation. We have no doubt that, if and when vacancies arise, the said applicants will be duly considered by the authority concerned and justice will be done to their cases.

8. The application fails, and is accordingly dismissed. There will be no order as to costs.


(M.Y.PRIOLKAR)
M/A


(S.K.DHAON)
V/C