

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

~~C.A. No.~~ 508/86 and 509/86 198
T.A. No.

DATE OF DECISION 23.7.92

Shri Eknath Dodhu Dhake Petitioner
Shri Prakash Nivrutti Sarode

Shri D.V.Gangal Advocate for the Petitioner(s)

Versus

The Asstt. Personnel Officer Respondent
Electric Loco Works,
Central Railway, Bhusawal & ors.

Shri V.G.Rege 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? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Transfer Application No. 508/86

Shri Eknath Dodhu Dhake

... Applicant.

V/s.

The Assistant Personnel Officer
Electric Loco Works,
Central Railway, Bhusawal & ors.

... Respondents.

Transfer Application No. 509/86

Shri Prakash Nivrutti Sarode

... Applicant.

V/s.

The Assistant Personnel Officer
Electric Loco Works,
Central Railway, Bhusawal & ors.

... Respondents.

CORAM: Hon'ble Shri Justice S.K. Dhaon, Vice Chairman
Hon'ble Shri M.Y. Priolkar, Member (A)

Appearance:

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

Shri V.G. Rege, counsel
for the respondents.

ORAL JUDGEMENT

DATED: 23.7.92

¶ Per Shri Justice S.K. Dhaon, Vice Chairman ¶

The controversy raised in these applications is similar, therefore, these two applications were heard together and they are being disposed of by a common order.

The two applicants were employed as Khalasi on casual basis. Steps were taken for making appointment to the post of casual workers Class IV in the Electric Locomotive Workshop at Bhusawal. The applicants and the other applied and were screened by the Selection Board. A selection list was drawn up and on 3rd June 1982 the Assistant Personnel Officer (ECW) issued a notice giving out list of slectees. He made it clear that the appointment would be offered as and when vacancies would be available.

: 2:

The applicant figured in the list. Some appointments were made from the select list, however applicants were not appointed. Meanwhile, some time in the year 1984, the competent authority took a decision that 120 vacancies were existing and therefore proceedings were initiated by ^anotification for empanelling the candidates for the purpose of filling up of said vacancy. In response to the invitation as contained in the notification, the applicants applied. They were considered by the selection board which commenced the selection process in the month of November 1984. Results of the new selection was declared in November '85. In this selection fortune did not favour the applicant. On 4.10.85 a decision was taken by a committee headed by Chief Electrical Engineer to the effect that the earlier panel of 1982 had become time barred and it should be treated as null and void. In the present application, the aforesaid decision dated 4.10.85 as well as the result of the selections declared in November '85 are being impugned.

Counter affidavit has been filed by Shri K.S. Rajendra Rao. Dy. Chief Electrical Engineer. In para 10 of this affidavit the material averments are these:-

On the basis of the selection held in the year 1982, till November 1983, 19 candidates were given appointment as per availability of post as per provisions of railway boards order under letter No. E(NG)II/67/CN/52 of 8.3.60 and No. E(NG)II/84/BC - 2/21 of 16.11.84 life of the panel prepared in 1982 being one year, it expired. Efforts were made to get sanction of additional posts and extension for the currency of the life of the said panel by one more year with the approval of the competent authority,

: 3 :

but in vain. For reasons beyond ~~control of the~~ the respondents they were helpless and, therefore, they could not make any further appointment for the remaining candidates who had been empanelled in 1982. It, therefore, became necessary, keeping in view, the directions of the higher authorities, to initiate fresh proceedings for preparing a fresh panel and that is how a fresh panel was prepared and the results of the selection were published on 30.11.85.

Learned counsel had contended that the decision of the higher authorities taken in 1984 that the normal life of the panel should be one year could not be given a retrospective effect in the case of the applicant, who had admittedly ~~competend~~ in the 1982 selection. We have already referred to para 10 of the counter affidavit of Shri Rao wherein there is a reference to a notification of 8.3.68. This matter was heard on 22.7.92 and kept part heard to enable the learned counsel for the respondents to produce the relevant record containing the said notification of 8.3.68. Today learned counsel is not in a position to produce the record. However, he had produced before us a book "styled as ~~"~~ "Guide to Railwaymen on Establishment Rules and Labour Laws," ~~.....~~ This is a 1991 edition and published by Nirmalendu Bhusan Bhattacharjee. On page 46 of this book the aforesaid notification of 8.3.68 is quoted. It reads :

" The names of selected candidates will be placed in a panel in order of merit. The list will contain as many names as are likely to be needed against the bars anticipated vacancies in the course of six months or one year following the selection. The panel will remain current for one year."

Sny

It is clear that, according to the content of the aforesaid quoted passage, the panel of 1983 was to remain current for one year. Therefore, we do not find any substance in the contention advanced by the applicant that the 1984 notification could not be made applicable to the case of the applicants. It appears that the 1984 notification merely reiterated as to what was contained in the notification in the 1968. The 1984 notification, therefore, cannot be ignored so far the present controversy is concerned.

Shri Gangal, on behalf of applicant has vehemently argued that we cannot take judicial notice of the aforesaid notification of 1968 as contained in the aforesaid book. He contended that this is not an official copy. We see no reason as to why we should not place reliance on the said notification when the number of the notification and the date of the same tally with the number and date mentioned in para 10 of the counter affidavit of Shri Rao. However, we make it clear that it will be open to the applicant to approach the Tribunal again, by means of Review Application, if later on they (applicant) discover that the notification of March 1968, in fact, did not exist.

There is another aspect of the matter. We have already given the necessary facts and from them it is clear that after the 1982 selection a fresh selection had taken place in the year 1984 and for the purposes of that selection a figure of 120 vacancies was arrived at. It should be presumed that this figure comprised all the existing vacancies on the date of the decision. A fresh selection took place in 1984. The applicants participated in the selection. The results were also declared in the year 1984. Appointments

: 5 :

were made upon the panel drawn up in the year 1984. The question is as to whether, in these circumstances, we will be acting fairly and equitably, if we issue directions to the respondents to keep the selection list of 1982 alive in so far as the applicants are concerned. It is obvious that, if such a direction is given and carried out, those appointed on the basis of the selection of 1985 are bound to be displaced. Such a situation should be avoided, if it is permissible in law.

In State of U.P. Vs. Rafiquiddin and others (1987 5 ATC 257) in para 16 a some what similar controversy was dealt with by the Supreme Court. Their Lordships observed :

.... " If selected candidates are available for appointment on the basis of the competitive examinations of subsequent years, it would be unreasonable and unjust to revise the list of earlier examination by changing norms to fill up the vacancies as that would adversely affect the right of those selected at the subsequent examination in matters relating to their seniority under Rule 22. The 1970 Examination could not be utilised as a perennial source or inexhaustible reservoir for making appointments indefinitely. The result of a particular examination must come to an end at some point of time, like a " dead ball " in cricket....."

The next contention advanced by the learned counsel for the applicant is that persons mentioned in sl. 48, 49 and 50 of the select list were juniors to the applicant. They were given appointment while ignoring the claims of the applicants. In the counter affidavit, it is stated that the candidates at sl. No 48, 49 and 50 fell in the reserve category and, in view of the reservation policy, they had to be given preference over the other general candidates, including the applicant. It also stated in the counter affidavit that the said appointment of the aforesid three candidates were made after applying the principle of roster.


Suz

....6...

We now come to 1985 selection. In Tr. 508/86 the applicant Shri Dhake, not only fulfilled the minimum educational qualifications as required but also the technical qualifications as prescribed. In Tr. 509/86 the applicant, it is admitted, did not have any technical qualification at his back. So far as the applicant in 509/86 is concerned his case stands covered by the decision given by us on 22.7.92 in Tr. 507/86. We have held therein that neither any illegality had been committed or any injustice had been caused in the case of non selection of those candidates who did not possess the technical qualification.

As regards the applicant in 508/86 is concerned, the case set up by the respondents is that he was duly considered alongwith the other competitors but the selection board found his claim inferior to those selected. We cannot re-open the selection and sit in judgement over the decision of the Selection Board.

In the event, we find no substance in the two applications. They are accordingly rejected. but without any order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN