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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 367/89

Transfer Application No:
xxxxxxxxxxxxxxxxxxxxxxxxxxxx

DATE OF DECISION 6.4.1993

Shri Appa Saheb Jalke Petitioner

Shri G.K.Masand Advocate for the Petitioners

Versus

Union of India & Ors. Respondent


Shri N.K.Srinivasan Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble ~~Shri~~ Ms.Usha Savara, 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 ?


(M.S.Deshpande)
Vice Chairman

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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OA.NO. 367/89

Shri Appa Saheb Jalke

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Ms.Usha Savara

Appearance

Shri G.K.Masand
Advocate
for the Applicant

Shri N.K.Srinivasan
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 6.4.1993

(PER: M.S.Deshpande, Vice Chairman)

The applicant by this application challenges the legality of the selection to the post of Chief Clerk notified vide letter dated 6.12.1988 and a direction to quash those selections and alternatively to consider the applicant afresh and to place him on the panel of Chief Clerk and secondly declare his reversion by the order dated 6.12.1988 as illegal and bad in law.

2. The applicant had joined as Junior Clerk on 12.12.1957. He belongs to Scheduled Caste and was promoted in 1976 to the post of Senior Clerk. On 28.1.1982 he was promoted as Head Clerk. On 4.8.1986 he was promoted as Chief Clerk on adhoc basis. On 6.8.1988 selection process was initiated for the post of Chief Clerk. On 26.9.1988 the list of persons found eligible to be subjected to written test was drawn up and written test was held on 5.10.1988. The result was notified on 8.11.1988. Two lists were drawn up for those who were called for interview. List 'A' consists of names of persons who came in merit and list 'B' consists



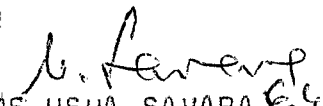
of employees who have not qualified in the written test, but are being called for viva-voce taking into account their seniority marks. The interviews were held on 29.11.1988 and the panel was published on 6.12.1988. The applicant's representation dated 17.12.1988 was rejected on 28.1.1989.


3. The contention of the applicant, firstly, is that the process of selection was arbitrary and those who were junior to him were selected and no credit has been given to him for the long period over which he held the Chief Clerk's post on ad hoc basis. Shri Srinivasan, the learned counsel for the respondents placed before us the entire record of the DPC. The eligibility to be called for interview on the basis of merit was 60% of the marks. In the brochure there is a relaxation in respect of the candidates belonging to the scheduled caste and while others have to earn ²¹~~25~~ out of 35 marks. Candidates belong to Scheduled Caste on the basis of relaxed standards were eligible to be called for interview if they got 10 marks out of 35 in the written test. We find that this relaxed standards were applied to the applicant.

4. Shri Masand, the learned counsel for the applicant urged that the entire record of the DPC was ~~presented~~^{produced} up for the purposes of this petition because in the reply given to the applicant's representation, there was no mention of the relaxed standard and it was for the first time that ⁱⁿ the reply filed by the respondents in this application the plea of relaxed standard was raised. The brochure which was placed before us shows that for a post while others have to obtain ²¹~~25~~ marks out of 35 marks in the written test for being called for interview, the marks for SC/ST candidates were 10 marks out of 35 marks. It is, therefore, not possible for us to accept that ^{the plea about} relaxed standards for the SC/ST candidates was ^{an}~~the~~ after thought. The applicant was eligible to be called for interview.

5. Considering the nature of the job which the applicant had to perform as Chief Clerk, ^{it} ~~this~~ does not appear to us that the marks allotted for viva voce test, namely, 15 out of 50 was disproportionately high. The grievance of the applicant that no rating has been given for seniority over the others does not appear to us to be valid because he was allotted 15 marks out of 50 for his seniority. The submission that some of the candidates who could not be considered on merit came to be considered on the basis of seniority rating does not appear to be sound because T.M.Sutar was given less marks than the applicant on the basis of the seniority. There is no material placed before us to justify the submission that the entire exercise on the viva voce examination was ~~fabricated~~ ^{prejudiced}, ^{biased} and arbitrary. No exception, therefore, ^{can} be taken to the marks allotted for the interview or the assessment of the applicant by the examiners at the viva voce test. The next submission was that since the applicant had put in two years as Chief Clerk, he could not have been reverted. This argument cannot now be contested in view of Full Bench decision in Suresh Chand Gautam vs. Union of India & Ors., where it was held that adhoc employee cannot be made regular unless he passes a selection test. It has further ruled that the employees could be reverted for appointment of a qualified candidate and in Jetha Nand's case the Full Bench had not stated that even when regularly selected and fully qualified person is available those who failed to qualify in the test should be regularised in Class III post.

6. In the result, we see no merit in the application. It is dismissed but without any order as to costs.


(MS.USHA SAVARA) F.4 32
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN