

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(12)

O.A. NO: 971/89

199

T.A. NO:

DATE OF DECISION 10.2.1992

Shri T.M.Patel & 5 ors.

Petitioner

Mr. G.K.Masand

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Mr. P.M.A.Nair & Mr.G.S.Walia

Advocate for the Respondent(s)


CORAM:

The Hon'ble Mr. Justice U.C.Srivastava, V/C

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 ?

mbm*


(U.C.Srivastava)
V/C

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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Original Application No.971/89

Shri T.M.Patel & 5 others ... Applicants

V/s

Union of India & Ors. ... Respondents

CORAM : Hon'ble Vice-Chairman, Shri Justice U.C.Srivastava
Hon'ble Member (A), Shri M.Y.Priolkar

Appearances:

Mr. G.K.Masand, Advocate
for the applicants,
Mr.P.M.A.Nair, Counsel for
respondents 1 & 2 and
Mr. G.S.Walia, Advocate for
respondents 3 & 4.

ORAL JUDGMENT:

Dated : 10.2.1992

(Per. U.C.Srivastava, Vice-Chairman)

The applicants, six in number, having failed to get promotion after selection to the post of Chief Clerk have approached the Tribunal praying that the impugned panel dated 15th September, 1989 shall be set aside and the respondents be directed to hold separate selection for each year or in the alternative respondents be directed to place them on the panel of 15th September, 1989. The applicants No. 1 & 2 are officiating as Chief Clerk on adhoc basis, applicant No.2 is also a member of Scheduled Caste community, while applicant Nos. 3 to 6 are working as Head Clerks. For the selection post of Chief Clerk a memorandum was issued on 20th March, 1989 whereby it was proposed to hold selection for forming a panel of 30 employees on which two posts were reserved for Scheduled Caste community and one post was reserved for Scheduled Tribe community. A list showing the names of employees who were eligible to appear in the selection and another list showing the additional names of employees who were eligible to appear in the test in case of a short call due to

absence of eligible candidates were also notified. The first list contained the names of 91 candidates and the other contained the names of 11 candidates. Although the written test was held and according to the applicants they were qualified in the written test but the viva-voce test was postponed for a number of times and ultimately the viva-voce test was held and when the list was finalised the names of the applicants were missing. The applicants have accordingly challenged the said selection on the ground that of course for viva-voce test only 12.2% marks would have been given and by giving more marks in the selection, Viva-voce test rules for arbitrary discrimination and favouratism still exist with the result that the above selection held is not valid. They have also challenged the selection on the ground that of course seven members of the scheduled caste community were allowed to appear although only two posts were reserved for them. The main ground on which they have challenged this selection is that of course no selection for the post of Chief Clerk were held in the years 1986, 1987 and 1988 and the posts of all these years were bunched together and a common selection was made and one panel was prepared. It has been asserted that the chances of the seniors to appear in the selection every year in respect of the vacancies occurring during the relevant ^{year} were denied.

2. The respondents, the Union of India and the Railway Administration have resisted the claim of the applicants though the private respondents have not filed any return but they have opposed the application. It has been pointed by the respondents that so far as the members of the Scheduled Caste communities are concerned they have not denied that the selection was to take place yearwise

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so far as the but/members of the Scheduled Caste community it has been said that they have come on merits and not in the reservation quota. Further that after viva-voce test a panel of 27 employees was notified and the applicants did not qualify in the said viva-voce test and that is why their names were not included in the panel dated 15.9.1989 and juniors qualified in the test and that is why some of the juniors were included in the panel. Regarding marks it has been pointed that the rules permit that the professional ability consist of 35% marks in written test and 15% marks in viva-voce and remaining 50% are distributed for personality, address, leadership record of service and the minimum qualifying mark is 60% and the applicants failed to get 60% marks and that is why their names were excluded from the panel. It has also been pointed out that the earlier Railway Board's letter was superseded by the Railway Board's letter dated 9.8.82 which/^{earlier} provided that so far as those who are working on ad-hoc basis they are not to be interviewed no longer exists. From the facts it is clear that although under the Railway Establishment Manual the life of the panel is two years or when the list is exhausted but the rules still provide that of course so far as the selection is concerned that should be held yearly and the Railway Board from time to time with/^{reference to} the provisions contained in the Railway Board's Establishment Manual has been issuing instructions and even though instructions/^{which} were issued in the year 1988 clearly provides that the selections should be held yearly. This means that in case the selection is held yearly/^{then} those who are ~~eligible~~ eligible in a particular year alone are entitled to appear. Although, there may be some inconsistency between the yearly examination and the life of the panel which is for two years but both can be assimilated. In

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case yearwise selection is held then candidates who are eligible in that particular year alone are entitled to appear in the same and the qualifying marks ~~or~~ the other marks are to be judged accordingly. But in case there is a bunching obviously the comparative merits of all those who appeared in the said selection will be taken. That was never the intention of the rule and that could never be the intention of the rule and if there is such a rule the rule will act unfairly and in the instant case the bunching has been done which obviously is not permissible as the bunching will go against the Railway Board's Establishment Manual rules which have been clarified from time to time that selections should be done annually and accordingly it can be safely concluded that the selection in this case was not in accordance with the rules. But the selection of those who have been already selected cannot be set aside on the ground as the applicants have been admittedly selected in some subsequent selection. On behalf of the private respondents the application has been opposed on the ground that the applicants did not challenge the eligibility lists as such they are estopped from challenging the list. It has not been stated anywhere that the eligibility has been brought to the notice of everyone and that they have a right to file an objection and if the objection is filed then the eligibility list can be changed. They have also not stated as to how the Railway Administration has been able to change this position because of nonfiling of the objection. The question of estopping the same as contended does not apply in such circumstances. Learned counsel for the private respondents further contended that when the life of the ~~xxx~~ panel is for a period of two years and the qualifying mark is 60% then the qualifying marks can be judged from taking the examination as a whole. That can also be done

yearwise because the standard examination or mode of examination may differ every time and that is no answer to the same and accordingly so far as the present selection is concerned, the selection cannot be said ^{to be} in accordance with the rules. Although the selection is not set aside but the respondents can hold a fresh selection of the applicants and in case they succeed in the same they can be given notional promotion with effect from the date those who ~~were~~ appeared in the year 1989 were given promotion. But they will get the actual promotion and the salary from the date they have been actually promoted. Let a review selection may take place so far as the applicants alone are concerned within a period of three months. This we are providing in view of the fact that the respondents have clearly asserted that the applicants failed to get 60% marks when the respective merits of eligible candidates of the three years were ~~judged~~ judged together. As we are allowing this application it is not necessary for us to enter into the question as to whether the marks which have been provided in the viva-voce test or the personality test of employees are excessive or lead to unfairness. The rule may be unfair but ~~we do not propose to enter~~ into this question as the same is not relevant for the purpose in this case. No order as to costs.



(M.Y. Priolkar)
Member(A)



(U.C. Srivastava)
Vice-Chairman