

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH.

Original Application No. 551/89

Transfer Application No.

Date of decision 1.12.1993

Shri R.S.Kori & Anr.

Petitioner

Shri G.S.Walia.

Advocate for the Petitioner

Versus

Union of India & Anr.

Respondent

Advocate for the Respondent(s)

Coram :

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

The Hon'ble Shri M.R.Kolhatkar, Member(A).

1. Whether the Reporters of local papers may be allowed to see the Judgement?

2. To be referred to the Reporter or not? *Yes*

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*

  
(M.S.DESHPANDE)  
VICE-CHAIRMAN.

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

Original Application No.551/89.

Shri R.S.Kori & Anr.

.... Applicants.

V/s.

Union of India & Anr.

.... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,  
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearance:-

Applicants by Shri G.S.Walia.

Oral Judgment:-

¶Per Shri M.S.Deshpande, Vice-Chairman Dt. 1.12.1993.

The applicants grievance is against their not being empanelled for the promotion of Chargeman Gr.'B'. The applicants No.1 and 2 were working as Chargeman Gr.'B' on ad hoc basis respectively from 1.4.1986 and 1.9.1986 and both belonged to SC community. The selections were held for filling up the post on ad hoc basis. Both the applicants were qualified in the written test on 11.5.1989 having secured marks exceeding 60% in the written test and were called for viva voce test. Their names were not included in the panel that was framed after the viva voce test. The applicants grievance is that the fact that they had been working on ad hoc basis satisfactorily since the year 1986 was not taken into consideration while excluding them from the panel that was formed. Reliance was placed in this respect on the observations of the Ahmedabad Bench of the Tribunal in Abdul Wahabkhan Abdul Gafarkhan V/s. UOI & Ors. (A.T.R. 1989(1) 96) where the Tribunal considered the Railway Board's letter dt. 23.12.1976. The relevant portion of that letter which was quoted runs

thus:

"Panels should be formed for selection posts in time to avoid ad-hoc promotions. Care should be taken to see, while forming panels that employees who have been working in the posts on ad hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment.

In para 2 of the quotation the Board desires that the above instructions should be strictly complied with, particularly in regard to S.C./S.T. employees.

The Ahmedabad Bench of the Tribunal took into consideration these instructions and pointed out that such guidelines are laid down not for ~~nothing~~ but to remain only on paper-they are well considered modes for regulating the promotion for the purpose of ruling out any kind of injustice, harassment and prejudice to any employee. It also observed that the management cannot get away with these directives by simply saying they are not mandatory and they are not imperatively bound by it-any departure from it must be sufficiently explained-which had not been done in ~~that~~ case.

2. In pursuance of the directions which we had given earlier the relevant record of the D.P.C. was produced before us. The respondents contention is that the instructions to which reference was made in the above case have been modified by the Railway Board's letter dt. 9.8.1982. Para 2 thereof clearly says thus:

"It would appear that the instructions referred to above have led to the normal rules and procedure of selection as contained in the Indian Railway Establishment Manual and other cognate orders issued from time to time not being followed in some cases. With a view to ensuring that such departure do not take place, it is hereby clarified that the intention of the instructions conveyed in the Board's letter of 25.1.1976 referred

to above was not to bypass or supersede in any manner, the normal rules of selection as contained in the Indian Railway Establishment Manual and other orders issued from time to time but only to serve as a broad guideline for the Departmental Promotion Committees and the authorities who are required to consider and approve employees for promotion. In any case, there was no intention to confer any right on employees officiating on ad hoc basis in higher posts to be selected and included in panels for these posts. You are requested to issue instructions to all concerned accordingly."

The emphasis was placed in the Board's letter dt. 9.8.82 itself that employees officiating on ad hoc basis cannot confer any right to be selected and included in the panels by side-stepping the norms. Subsequently, the instructions clearly shows that the Railway Board modified its policy and it is the modified policy <sup>which is</sup> to guide the D.P.C. in making the selections on the basis of the viva voce tests. The authority of Abdul Wahabkhan Abdul Gafarkhan's case is now considerably diluted on the basis of the modified instructions issued by the Railway Board.

3. The Respondents have stated in their affidavit that they were aware of the instructions issued by the Railway Board earlier and they have taken them into consideration with a view to find out whether the instructions have been properly followed. We went through the proceedings of the D.P.C. which were produced by the Respondents employee Shri Chinnaswamy before us. We find that the applicants' performance at the viva voce test was rated low by the DPC and they were found to be unsuitable on the basis of the tests employed. In these circumstances, we see no merit in the application. It is dismissed. (Interim orders vacated.)

*M.R.Kolhatkar*

(M.R.KOLHATKAR)  
MEMBER(A)

*M.S.Deshpande*  
(M.S.DESHPANDE)  
VICE-CHAIRMAN