

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 533/89

Transfer Application No: ----

DATE OF DECISION 27-1-1993

Chhabbaram

Petitioner

Mr.G.S.Walia

Advocate for the Petitioners

Versus

Union of India and ors.

Respondent

Mr.Subodh Joshi

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice S.K.Dhaon, 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 ?

NO

S.K.DHAON
(S.K.DHAON)
VC

NS/MD

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

10

O.A.533/89

Chhabbaram,
Chargeman 'A'
C/o.G.S.Walia,
Advocate,
89/10, Western Railway
Employees' Colony,
Matunga Road,
Bombay - 400 019. .. Applicant

-versus-

1. Union of India
through
Central Railway's
General Manager,
Bombay V.T.
Bombay - 400 001.
2. Chief Workshop Manager,
Central Railway,
Parel Workshop,
Bombay - 400 012.

Coram: Hon'ble Shri Justice S.K.Dhaon
Vice-Chairman.

Hon'ble Ms.Usha Savara,
Member(A)

Appearances:

1. Mr.G.S.Walia
Advocate for the
Applicant.
2. Mr.Subodh Joshi
Advocate for the
Respondents.

ORAL JUDGMENT: Date: 27-1-1993
(Per S.K.Dhaon, Vice-Chairman)

The office order No.530/1988 dt.

5-11-1988 reverting the applicant to the post of Chargeman Gr.'A' from the post of Assistant Shop Superintendent is being impugned in the present application. A reply has been filed on behalf of the respondents though original record too have been placed before us.

2. On 4-9-1986 the Additional C.M.E. PR issued a notice pertaining to the selection ~~for~~ the post of Asstt. Shop Superintendent in the Millwright Trade Group of Parel Workshop.

This notice indicated that it had been decided to convene a selection board to select suitable candidates for the post of Asstt. Shop Superintendent, it also indicated that one post was reserved for the SC community and there were five posts for unreserved employees. Thus in all six vacant posts were notified. The Departmental Promotion Committee met and considered various candidates, the last candidate found suitable amongst the un-reserved category had been allotted 61 marks. The applicant was considered amongst the reserved category namely SC/ST and he was found suitable. He was allotted 52 marks, 9 marks were given to him under the head of seniority which ~~were~~ not taken into account.

3. On 25-3-1987 an order was passed by the Additional CME PR stating therein that, as a result of the selection, the Board in its meeting held on 9-12-1986, placed certain employees on the panel for appointment as Asstt. Shop Supdt. The applicant was shown amongst those employees and was placed at Sr. No. 5 in the order of merit.

4. On 29-10-1988 an Office Order No. 544/1988 was issued stating therein that the competent authority has accorded sanction for the promotion of certain persons, one of them being the applicant. The applicant was appointed to officiate as Asstt. Shop Supdt. vide Shri A.K. Kathuria. Thereafter the impugned order was passed.

5. The only defence taken on behalf of the respondent is that there was some mistake with respect to the number of candidate to be empanelled. Now, the case set up is that infact there were only five vacancies and none of them were reserved for either SC or ST candidates, in fact the quota of SC/ST candidates was full at that time. We have not been shown any ~~present~~ effective document to indicate as to at what stage the mistake was committed and who was responsible for the mistake. The fact remains that six vacancies were notified, the Departmental Promotion Committee was called upon to select six candidates, selection took place on that basis, the panel was announced and thereafter on that basis the appointments were made. In our opinion, it is too late in the day for the respondents to set up the plea of alleged mistake. In any view of the ~~fact~~ matter, they are estopped from raising such a plea of mistake.

6. There is no dispute that if a seat was reserved for SC or ST candidate, the applicant being a member of the SC and he having been found suitable by the Board, his appointment cannot be touched. Assuming there was no vacancy in the reserved seat, the position still is that there were six seats for the unreserved candidates. Therefore, in accordance with the relevant rules, the number of candidates to be considered for empanelment was 18 i.e. three times the number of vacancies. It is an admitted position that the applicant's position was 17 amongst

all the eligible candidates, the general candidates and SC/ST candidates combined. Had the applicant been treated as ^a general candidate, he would have been awarded 9 marks reserved ~~xxx~~ under the category of seniority and the total number of marks he would have been secured would have been 61. Therefore, the conclusion is inevitable that the applicant would have been found fit for empanelment on his own merit, independent of any reservation. The net result is that the impugned order of reversion is not sustainable.

7. The application succeeds and is allowed. The impugned order is quashed. The applicant shall be entitled to all consequential benefits which may flow as a result of our order.

8. There shall be no order as to costs.

U. Savarkar
(USHA SAVARKAR)
Member(A)

S.K. Dhaon
(S.K. DHAON)
Vice-Chairman

MD