

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Monday the 2nd day of December 2002

Coram: Hon'ble Mr.Birendra Dikshit - Vice Chairman
Hon'ble Mr.B.N.Bahadur - Member (A)

(1) O.A.738 of 2000

Karbhari Ranganath Handure
& 4 others
(By Advocate Shri G.S.Walia) - Applicants

Versus

Union of India & 9 others
(By Advocate Shri V.S.Masurkar) - Respondents 1 & 2
By Advocate Shri S.Kumar) - Respondents 3 to 10

(2) O.A.778 of 2000

Pradeep D.Kale,
(By Advocate Shri K.B.Talreja) - Applicant

Versus

Union of India & 9 others
(By Advocate Shri V.S.Masurkar) - Respondents 1 & 2
By Advocate Shri Suresh Kumar) - Respondents 3 to 10

(3) O.A.779 of 2000

Ganesh Sudam Shirke,
(By Advocate Shri K.B.Talreja) - Applicant

Versus

Union of India & 9 others
(By Advocate Shri V.S.Masurkar) - Respondents 1 & 2
By Advocate Shri Suresh Kumar - Respondents 3 to 10

(4) O.A. 22 of 2001

Suresh Hari Thakur - Applicant
(None)

Versus

Union of India & others
(By Advocate Shri V.D.Vadhavkar) - Respondents 1 & 2
By Advocate Shri Suresh Kumar - Respondents 3 to 6

O R D E R

By Hon'ble Mr.B.N.Bahadur, Member (A) -

We have heard these four OAs together, in view of their similar nature and are disposing them of through this common order.. For the sake of convenience, the facts in OA 778/00 are being taken up. This case was argued by learned counsel for the

Applicant Shri G.S.Walia and for the Respondents by learned counsel Shri V.S.Masurkar.

2. The facts of this OA (778/00) are that the Applicants are aggrieved, in that they have been excluded from the empanelment for the post of Apprentice Mechanic in panel dated 28.9.2000. They state that a notification was issued on 12.11.2000 for recruitment of Apprentice Mechanic drawn from Skilled Artisans category of Artisans Mechanic for nine posts (Annexure-2). The Applicants were considered eligible and since they secured 60% (or more) marks, they were called for an interview held on 19.9.2000. They aver that they were seniormost employees and had expected to be included in the final panel, especially when they feel their service record is good. However, they were not included in the panel dated 28.9.2000. Further details are provided and the contention taken that selection was not conducted properly. It is also contended that rules have been violated and in this regard at para 4.10 it is stated that no officer from Mechanical Department, to which Applicants belong was present in the Selection Board and that this was an irregularity.

3. The Respondents have filed a written statement of reply, resisting the claims of the Applicants and taking the preliminary view that the Applicants had no case, since they have come up after failing in the selection process in which they have not

succeeded. The case law in the matter of madan Lal (JT 1995 (2) SC 295) is relied upon for this argument. It is further contended that the selection was conducted for recruitment of Apprentice Mechanics against 25% quota of Mechanical Department and that a notification was duly issued and all rules followed. Applicants had been examined in terms of Railway Board's letters of 26.11.1986 and 23.3.1990 (Annexures-R-1 and R-2) and Paras 215 and 219 of IREM, 10989. This procedure is then explained and the point made is that Applicants 1 to 4 failed in viva-voce, Applicant no.5 had passed but could not secure his name in the panel as he was junior to one Shri Kishore Dalvi who was empanelled. The requirements of marks is then explained.

4. Parawise comments are also made on averments in the OA. The stand is also taken regarding the requirements of one officer from the Mechanical Department and this point was argued at some length by both learned counsel. We have heard both counsel and have seen the papers in the case.

5. We have also heard learned Shri V.D.Vadhavkar who appears for the Respondents in OA 22 of 2001. Learned counsel Shri Walia who argued on behalf of the Applicants first made the point that the assessment of posts made was wrong. A bunching of vacancies had been made and this was an infirmity. It was also argued by him that the syllabus prescribed was not adhered to, and the

and the methods of assessing candidates was wrong as detailed in Para 5 (b) of the OA viz. that candidates were not assessed individually in the interview.

6. Shri Walia made the point that the post of Apprentice Mechanic was a non cadre post and hence there was no restriction on the zone of consideration. It is filled by inviting Applications, as was clear from the Notification of 12.1.2000 (Annexure A-2). It was also argued by him that the viva-voce was not conducted by a correctly constituted Committee as prescribed under Para 218 of IREM. In that no member from the Mechanical Department was included in the Committee. The requirement of a member from the Mechanical Department cannot be dispensed with and hence this could be treated as an example of presumed prejudice. He sought support from the case law in the matter of *Osivadas* (1992 JT 234).

7. Arguing the case on behalf of official respondents in OAs 778/02, 779/02, 738/02, Shri V.S. Masurkar first sought to meet vis-a-vis members from the Mechanical Department. He sought support from Para 115 in the Indian Railway Code for Mechanical Department a copy of which paragraph was provided. The paragraph reads as follows:

115. Electrical Engineers in the Mechanical Workshops - Electrical Engineers in the Mechanical Workshops work under administrative control of workshop incharge, and through him the

Chief Workshop Engineer. They are under the technical control of the Chief Electrical Engineer for technical aspects of electrical engineering and observance of Electricity Act rules and regulations.

The duties of Electrical Engineers attached to Mechanical Workshops include running of power house if one exists, the supply and distribution of electrical energy, the maintenance of all the electrical plants and machinery in the workshop and electrical repairs of rolling stock.'

Thus, it was urged that the original record produced could be seen for the composition of the Committee; Shri Manoj Goel covered the position.

8. Shri Masurkar then dealt with on para 17 of the Written Statement where the Respondents have tried to make this point that there is no specifically one officer from the Mechanical Department ought to be included in the Selection Board conducting the interview. He then dealt with argument that the selection being made for Apprentice Mechanic is by the LDCE concept and was not normal channel system being operated. Paras 218 and 219 of IREM was not applicable, in toto. He took us through the portion of the reply of the respondents at pages 33 to 35 of the OA 778/00 in this regard.

9. Shri Masurkar then recalled the argument taken regarding the ratio decided by the Hon'ble Supreme Court in the matter of Madan Lal Vs. J & K

He contended that having failed in the selection process and having accepted everything without demur they cannot now come up to challenge the selection process.

9.1. The matter in OA 778/00 and 779/00 was argued by the their learned counsel for the Applicant by Shri K.B.Talreja. He also referred to the number of posts notified and the rules contained in Para 215 tpo 219 of IREM and made a number of points which are recorded in gist below.

9.2 He stated that the Recruitment Rules were not followed and that there is bunching of vacancies. The last panel was drawn as far back as in 1992 and only in the year 2000 was the next panel drawn. The assessment of vacancies was wrong as per his arguments. Learned counsel stated that the syllabus was not followed and that Raj Bhasha was not shown. He then dealt upon the aspect of integrated seniority and that if this is followed then, the methodology followed by the Respondents would be shown to be wrong.

10. Miss Supriya Dhaware appearing on behalf of Shri Suresh Kumar for private Respondents in OA 738/00 and OA 22/01 adopted the argument taken by Shri Masurkar. In OA 22/01 Shri V.D.Vadhavkar who appeared for the official Respondents also adopted Shri Masurkar's arguments but made certain other points. He reiterated that having failed in the selection process, the Applicant's had no case in now coming up and questioning the composition of the Committee. At no point was the composition

questioned. He referred to Para 140 of the IREM and stated that this was not a usual type of promotion but drew from the 25% quota provided and that in fact there were no rules specifically made for this constitution of the Selection Board in LDCE type of selections.

11. Shri Vadhavkar referred to RBE 231/86 available in at page 35 in OA 738/00 (Exhibit R-1) and stated that it was clear that normal procedure was not to be followed. He contended that in fact that if normal procedure was allowed to be followed, the Applicant would perhaps not be eligible to take part in the selection. Shri Vadhavkar stated that only part of the rule was being taken selectively that served the purpose of the Applicant. The point of departmental remedy not being taken and that the relief sought involved the unsettling of settled position was also raised.

12. In his brief re-argument Shri Walia made the point that this selection process did not constitute direct recruitment by definition and since it was not direct recruitment, it had to be construed that the selection process was a selection process of promotion. He also made the point that Electrical Engineers do not belong to Mechanical Department and that they were only under administrative control of the Mechanical Department and hence it could be concluded that the Committee was wrongly constituted.

13. We have carefully considered all the papers in the four OAs and have also considered the arguments made by learned counsel. In the first place let us take up the point raised with reference to the case law in the matter of Madan Lal (supra). The ratio therein will have to be considered with reference to the case decided by Hon'ble Supreme Court distinguishing the former viz. in the matter of Raj Kumar Vs. Shakti Raj (1997 (9) SCC 527) = 1997 SCC (L&S) 1029. In Raj Kumar (supra) case it is stated that while the ratio in Madan Lal's case is true, the principle of estoppel would not have application in a case where glaring irregularities in procedure are observed on the part of the Government. Hence it is in this light that we will have to examine the present case also on this aspect.

14. The first point that needs to be seen is that the procedure is one of selection is not a process of normal promotion. It is an LDCE kind of selection which is clear from the notification in that Applications have been invited and, therefore the question of seniority list etc would not arise once the candidate who has applied satisfies the basic eligibility conditions. It is difficult to accept the arguments that just because this is not a direct recruitment, it is to be construed to be a normal promotional process. Further the type of selection of LDCE where competition is a process of selection but limited to the persons within a department is not a new concept in Government or a concept which has any flaw. In this regard therefore there can be no quarrel with the type of selection

process that was undertaken. etc. The Applicants had failed in the selection process and this fact will go against them. subject to the argument regarding constitution of the Committee will be discussed ahead. Before going to that aspect we must state that there is some strength in the argument taken by learned counsel Shri Vadhavkar that the Applicant cannot selectively choose the rule position for the purpose of argument and that if normal procedure was followed, it would need to be seen that the Applicant themselves would have come in the zone of promotion etc. It has been stated at one point by learned counsel Shri Talreja that Recruitment Rules were also infringed in view of the fact that there has been bunching of vacancies. No details regarding this have been provided and a charge of bunching is merely made will not be enough nor a mere statement that assessment of vacancies was wrong. It has to be shown as to how if separate yearly processes were taken up, the entire matter would undergo a change to adversely affect the Applicants. In the absence of these details, this point cannot be held against the Respondents.

15. I have seen the provisions of Para 218 of the Indian Railway Establishment Manual (IREM) as also provisions in Para 204 etc of the Manual and the papers referred to by both sides for support. Importantly, I have seen RBE -232/86 where the subject is titled "Selection Procedure for Apprenticeship Mechanics". It is a communication dated 26.11.1986, a copy of

which is available at page 35 of the Paper Book in OA 738 of 2000. A total reading of the communication shows that there is some merit in the argument raised by the Respondents' Counsel that this is a selection that cannot be governed merely by the promotion rules i.e. Para 218 of the Indian Railway Establishment Code. Even though the criteria regarding 60% marks and 80% marks as explained in Para 2 are followed. Therefore, the very strict procedure for promotion cannot be made a ground for a glaring irregularity.

17. In regard to the aspect regarding the composition of the Committee and the allegation that no person from Mechanical side was present in the Selection Committee, we have to assess the matter in the background of the above facts. Para 218 prescribes that Selection Board will consist of not less than three officers one of whom shall be the Personnel Officer and one of the Member should be from the Department other than that for which selection is held.

18. In the reply of the Respondents, i.e. Para 17 of the written statement in OA 738/2000, it has been stated that there is no specific rule about an officer from Mechanical Department necessarily having to be included in the Selection Board. It has been explained further that CWM Matunga, had nominated a Selection Board consisting of three Senior Scale Officers, one Personnel Officer, one SC/ST representing Officer and one Departmental Officer. In this case, the departmental officer was

himself representing the SC/ST community of officers but he was transferred and hence Headquarters was asked to nominate one officer to represent the SC/ST community of officers. Headquarter nominated SE (Con) HQs, CSTM to represent the SC/ST community of officers in the Selection Board who got nominated by CWM, Matunga in the Selection Board. The officer who had set the question paper could not be changed. Thus there are two points on which we can conclude that the Selection process cannot be set aside or, that there is a glaring violation of rules. Firstly, that it is not as though Para 218 is strictly to be followed and secondly the factual situation as described and the provisions of Para 115 of the Indian Railway Code for Mechanical Department and the background of the officers who constituted the Committee. It cannot be said that any prejudice caused to the Applicant in the selection process.

20. In view of the above discussions we are not persuaded to interfere in the matter. In the consequence, these four OAs (No.738/2000, No.778/2000, 779/2000 and No.22/2001) are hereby dismissed. No order as to costs.

(B.N.Bahadur)
Member (A)

(Birendra Dikshit)
Vice Chairman

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