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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 997/1999
AND 12/2001.
DATED THE 22ND DAY OF JUNE, 2001

CORAM: HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

Applicants in OA-997/1999

1. Purushottam Das Sharma
Working as Helper in
Power Establishment
(Electrical Department),
Posted at Churchgate Station,
Mumbai Division,
Western Railway,
Mumbai - 400 020.
2. Paresh M Dadarkar,
Presently working as
Junior Cler (Settlement Section),
DRM's Office,
Mumbai Division,
Western Railway,
Mumbai Central,
Mumbai - 400 008.

Applicants in OA-12/2001

1. Ajit Kumar Singh,
Working as
Constable
Under Sr.DSC, BCT,
Posted at Bandra,
Mumbai Division,
Western Railway,
Mumbai - 400 020.
2. Kashinath Ramdas Bedse,
Working as Khalasi,
Posted at SE/RAC/CCB
Division BCT,
Working Station-Churchgate,
Western Railway,
Mumbai

By Advocate Shri G.S.Walia

V/s.

1. Union of India through
General Manager,
Western Railway,
Head quarters Office,
Churchgate,
Mumbai - 400 020.

2. Divisional Railway Manager,
Mumbai Division,
Western Railway,
DRM's Office,
Mumbai Central,
Mumbai - 400 008.

... Respondents in both
the OAs

Ms.Rajani Kokot proxy for
Shri Suresh Kumar.

(ORAL)(ORDER)

Per Smt.Shanta Shastry, Member(A)

Applicants in both the OAs are seeking similar relief and the issue involved is also same. Therefore, we are proceeding to dispose of the same by a common order. Ms.Rajani Kokot appears on behalf of Shri Suresh Kumar for Respondents.

2. The applicants in both the OAs have challenged the procedure adopted by the respondents in conducting General Departmental Competitive Examination for filling up 25% posts of Assistant Station Master in the scale of Rs.4500-7000(RSRP). The learned counsel for the applicants submits that according to the rules laid down and as per the recruitment rules, the selection will comprise of a written test followed by viva voce and Psychological Test will be conducted for the where it is required or directed.

3. In the present case the respondents conducted the selection by holding a written test but without viva voce. The written test was followed by Psychological test and a panel of 112 successful employees selected on the basis of the written test held on 20/12/98 and the Psychological test held in August, 99 was published on 17/11/99. According to the learned counsel for the applicant, the selection is rendered invalid as one of the steps namely one of the tests i.e. conducting of viva voce

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was omitted and this is also evident both from the order dated 17/11/99 as well as from submissions made by respondents in their reply.

4. We have perused the circular of Western Railway dated 17/12/97 on the subject of General Departmental Competitive Examination in the categories to fill up 25% of Group 'C' direct recruit vacancies. Para-4 clearly lays down that the Government Departmental Competitive Selection will comprise of written test followed by viva voce. Thus, it is very clear that viva voce had to be conducted before conducting the Psychological test and finalising the selection.

5. Further, we find that the respondents have raised the plea that the applicants have not impleaded parties who will be affected if the applicants succeed in their OAs. To this the learned counsel for the applicant submits that the applicants are not challenging the selection of ~~candidates~~ candidates per se, but they are challenging the irregular procedure adopted by the respondents which amounts to a policy and therefore it is not necessary to implead the selected employees. In support of this, the learned counsel is relying on judgement of the Supreme Court in the case of V.P.Srivastava & Ors. V/s State of M.P. & Ors. 1996 SCC (L&S) 670.

The Relevant extract of para-14 of the judgement is reproduced below:-

It has been held by this Court in the case of G.M.South Central Railway v. A.V.R.Siddhantti (SCC pp.341-42, para 15).

"As regards the second objection, it is to be noted that the decisions of the Railway Board impugned in the writ petition contain administrative rules of general application,

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regulating absorption in permanent departments, fixation of seniority, pay etc. of the employees of the erstwhile Grain Shop Departments. The respondents petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servant is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals, pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the readjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of 16/10/1952, were, at the most proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition."

The learned counsel therefore urges that the present matter is similar and is covered by this judgement and therefore it is not necessary to implead the selected employees as respondents.

6. We have perused the judgement and we agree with the learned counsel for the applicants.

7. When the learned counsel for the applicants had concluded his submissions and arguments, the proxy counsel for Shri Suresh Kumar for the Respondents stood up requesting for time to file a sur-rejoinder to the rejoinder filed by the applicants. She could have mentioned this at the beginning when the arguments had just commenced. In view of this we decided to proceed with the matter on merits based on the available pleadings and have rejected the request for filing of the sur-rejoinder.

8. After careful consideration of the pleadings, we find that the grievance of the applicants that the selection was not conducted properly has to be upheld. Accordingly, we quash and set aside the selection proceedings concluding in the publishing of the panel of selected employees on 17/11/99 and direct the respondents to hold a fresh selection strictly according to the procedure and ~~rules~~ laid down in the matter. Both the OAs are allowed. No order as to costs.

MEMBER(A)

CHAIRMAN

abp