

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

~~THE BOMBAY HIGH COURT~~
Bombay Bench

O.A. NO.
T.A. NO.

148/81

199

DATE OF DECISION

12/11/91

Vidyala K. Naik

PETITIONER

Mr. C. Tejbalkrishnan

Advocate for the Petitioner(s)

Versus

Union of India & 12 others

RESPONDENT

Mr. V. G. Rege

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. A.B. Gaekwad, A.M.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether to be circulated to all other Benches?

GHANSHYAM

Amrapali

(6)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH

Registration O.A.No.148 of 1991

Vidyala K.Naidu Applicant

Versus

Union of India Through the
Secretary, Min. of Railways,
Central Railway, New Delhi,
and 12 Others. Respondents

Hon.Mr.Justice U.C.Srivastava, V.C.

Hon.Mr. A.B.Gorthi, Member (A)

Date 12/11/91

(By Hon.Mr.A.B.Gorthi, A.M.)

By means of this application under Section 19 of the Administrative Tribunals Act, 1985 Shri V.K.Naidu, Asstt. Engineer, Central Railway requests for a direction in the nature of mandamus directing the General Manager, Central Railway to promote the applicant to the post of Senior Scale Engineer from 17.8.90 or from any subsequent date and to give him all the consequential reliefs.

2. The applicant, who belongs to a Scheduled Tribe, joined Central Railway on 31.1.62 and was later promoted as Asstt. Engineer on adhoc basis with effect from 19.6.79 and on regular basis from 11.1.83. The applicant was amongst those who were empanelled for promotion to the Senior Scale Engineer on 8.8.90. His name appeared at the last but one place in the panel. Whereas all those above him were promoted, he was denied promotion on the plea that there was no vacancy. The learned counsel for the applicant contended that as per Gazetted Establishment dated 1.1.90 there were 68 posts of Senior Scale Engineers in the Engineering Department

of Central Railway. 17 of the posts were permanent and 51 temporary. Thus there should have been atleast five posts reserved for ST candidates out of the total number of 68 posts. The applicant, vide his representation dated 25.10.90, brought to the notice of the Chief Personnel Officer that as against the 5 posts reserved for ST candidates, only 4 were held by ST candidates and hence he should be promoted against 5th available post.

3. Most of the facts stated in the application are admitted by the respondents. Their main contention, however, is that out of the total number of 68 posts of the Senior Scale Engineers, 17 posts were permanent and 51 temporary; out of the temporary posts 19 only pertained to open line and the remaining 32 posts were in the Construction Organisation, a Work Charged Establishment. The Policy of Reservation has no applicability to the posts held in the Construction Organisation, as the said posts were created for the purpose of specific projects in hand and could be abolished when the project is completed. For the purpose of reservation in favour of SC/ST candidates, the cadre in the Senior Scale of Engineers is considered to comprise only 36 posts, i.e. 17 permanent and 19 temporary in the open line. In other words, the remaining 32 posts of Senior Scale Engineers were being filled by giving a go by to the Policy of Reservation.

4. The short question that emerges for our consideration in this case is whether the respondents

are justified in treating the 32 posts of Senior Scale Engineers of the Construction Organisation as pertaining to projects and thus keeping them outside the purview of the Policy of Reservation in favour of SC/ST candidates. Apparently, these 32 posts have been in existence for considerable length of time. The learned counsel for the applicant drew our attention to the judgement of the Supreme Court in the case of L. Robert D'Souza Vs Executive Engineer, Sourthern Railway (1982)1 SCC 645 wherein it was held that it would be doing violence to language if Construction Units are to be treated as Projects. The Construction Unit is a regular unit all over the Indian Railways. It is a permanent unit and cannot be ~~equated~~ to Project. In view of this settled position there can be no doubt that the 32 posts of Senior Scale Engineers in the Construction Organisation will have to be filled up in accordance with the Policy of Reservation. An extract of Railway Board's letter No.77(E)(SCT)/15/18 dated 22.7.1977 has been produced before us; it reads as under : -

"Sub: Intake of Scheduled Castes and Scheduled Tribes.

While reiterating the above instructions, the Board desire that the principle of reservation for Scheduled Castes and Scheduled Tribes should generally be suitably applied to the extent possible to work-charged establishments also as in the case of engagement of casual labour/ substitutes except in the case of those who are required for emergencies like flood relief work, accident restoration and relief etc."

5. There is nothing on record to show that the posts of Senior Scale Engineers in the Construction Organisation are meant only for emergencies like flood relief work, accident restoration and relief etc. Hence even as per the Railway Board's Policy the principle of

(a)

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reservation should be applied to the posts of Senior Scale Engineers in the Construction Organisation. This means that atleast two posts of Senior Scale Engineers in the Construction Organisation should be kept reserved for ST candidates.

6. The respondents have relied on the judgement of the High Court of Judicature at Allahabad in the case of J.C. Malik Vs. Union of India 1978 BLJ 401 and an interim order ~~was~~ passed by the Tribunal in T.A.No.154/86. In both these cases what has been laid down was that once the required number of candidates belonging to the SC/ST have been appointed to the cadre on the basis of merit, seniority or reservation, no further promotion of SC/ST candidates can be made by invoking the Policy of Reservation. In the instant case, the question is altogether different, namely whether the Policy of Reservation ought to be applied to the posts of Senior Scale Engineers in the Construction Organisation, hence the aforesaid cases will be of no ~~assistance~~ ^{assistance} to the respondents.

7. We are, therefore, of the considered view that the posts of Senior Scale Engineers in the Construction Organisation of Central Railway enjoyed no exemption from the salutary Policy of Reservation in favour of SC/ST candidates. Accordingly, atleast two out of the said 32 posts should be kept for absorption by eligible ST candidates. In that event, the applicant would become ~~eligible for~~ ^{entitled to} promotion against the Scheduled Tribes quota unless the quota has already been filled up by Scheduled Tribe candidates.

8. In the result, the petition is partly allowed and the respondents 1 to 4 are directed to take immediate steps to apply the Policy of Reservation to the posts of Senior Scale Engineers in the Construction Organisation and accordingly consider the case of the applicant against the available post reserved for Scheduled Tribe candidates. The applicant will also be entitled to all the consequential benefits, monetary or otherwise. The date of promotion and the resultant seniority of the applicant will be determined in accordance with the extant rules.

9. There will be no order as to costs.

transcript

Member (A)

U
Vice Chairman

Dated the 12th ^{Nov} October, 1991.

RKM

10-7-92

(12)

Mr. P. Shankaranarayanan, counsel for applicant.

Mr. V. G. Rege for respondents.

Reply has been filed on behalf of the respondents.

Counsel for applicant prays for a week's time to file rejoinder.

List on 9-9-92.

Mr. Savarkar. (S.K. DHAON) V.C.
(Ms. USHA SAVARKAR) M.A.)

9-9-92

Mr. P. Shankaranarayanan, counsel for applicant.

Mr. V.G. Rege, counsel for respondents.

A reply has been filed on behalf of respondents. Exhibit-A to the reply if read along with the relief claimed by the applicant in the O.A. makes it clear that the directions of this Tribunal as contained in paragraph 8 have been fully complied with.

NO occasion now, therefore, exists for continuing the contempt proceedings. The c.p.r.o 27/92 is rejected.

order/ 9/9/92 despatched
to Appellant, respondent(s)
on 15/9/92

M.Y. PRIOLCAR

by

M.A)

(S.K. DHAON) V.C.

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