

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1183/92

Date of Decision: 23.11.98

M. Subburathinam

.. Applicant

.. Advocate for
Applicant

-versus-

Union of India & Anr.

.. Respondent(s)

Shri V.G.Rege.

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

The Hon'ble Shri D.S.Baweja, Member(A).

(1) To be referred to the Reporter or not? *NO*

(2) Whether it needs to be circulated to *NO*
other Benches of the Tribunal?

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE - CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1183/1992.

Promised, this the 23rd day of November 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman
Hon'ble Shri D.S.Baweja, Member(A).

M.Subburathinam,
Central Railway Quarters No.D/54,
Railway Line,
Solapur.

... Applicant.

V/s.

1. General Manager,
Central Railway,
Bombay V.T.,
Bombay.
2. Union of India through
the Respondent No.1. ... Respondents.

(By Advocate Shri V.G.Rege)

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The Respondents have filed reply. We have heard the applicant who appeared in person and Mr.V.G.Rege, the learned Counsel for the Respondents.

2. The applicant is working as an Office Superintendent in the Central Railway. He is challenging his non-promotion to the post of Assistant Personnel Officer. The applicant was initially appointed in the Railways as a Junior Clerk in 1972. He has an unblemished service record. He got some promotions from time to time and he got the present post of Office Superintendent in 1984. He belongs to Scheduled Caste. The respondents took action to fill up 45 posts of Assistant Personnel Officer. The posts have to be filled up by two modes.

...2.

The first mode is by way of promotion up to 75% of the vacancies and the balance of 25% vacancies are to be filled up by the second mode viz. by holding Limited Departmental Competitive Examination (hereinafter referred to as LDCE). It is alleged that the respondents have not followed the reservation policy in the two modes of appointments for the post of A.P.O. 34 vacancies have to be filled up by promotions and 11 posts by LDCE. The respondents have not maintained the reservation policy in filling up these 45 vacancies. It is stated that the written test of LDCE was held in April, 1991. The applicant was successful in the written test. Then viva voce test was held on 15.6.1992. On the basis of written test and viva voce the respondents have published a provisional list of successful candidates as per the Notification dt.18.6.92 (Ex. 'A') which does not contain the name of the applicant. The respondents have violated the Railway Board's Circular dt. 16.6.1992 regarding the policy of reservation for filling up of the vacancies by SC/ST candidates. The panel notified by the respondents is contrary to the Railway Board's circular. Then some comment is made about the selection of one candidate G.R.Galgali on the ground that he was facing departmental enquiry for a major penalty charge sheet. There is also an allegation that the selection panel is bad on account of it being vitiated due to nepotism, favouritism, corrupt patronage and castism. There is no proper determination of SC/ST vacancies. The composition of the Selection Committee

...3.

is not as per rules. That the Selection Committee has given higher marks to some candidates to favour them. That applicant has been discriminated and he ^{not} has been included in the panel of select candidates. Hence he has approached this Tribunal for quashing the impugned panel of LDCE dt. 18.6.1992, for a direction to the respondents to promote the applicant w.e.f. 18.6.1992 with all consequential monetary benefits, for a direction to the respondents to fill up the regular vacancies of APO on the basis of seniority-cum-merit and by observing the reservation for the SC/ST candidates and for costs.

3. The respondents have filed a reply justifying the impugned panel dt. 18.6.1992. It is stated that the application is not maintainable. It is stated that 75% of the posts were filled up on the basis of seniority-cum-merit and the applicant could not be considered since he was nowhere under the zone of consideration, as per the seniority position. The applicant, it is stated, was quite junior and therefore he was far away from the zone of consideration and hence he could not be considered for promotion on the basis of the first mode of promotion viz. 75% by seniority-cum-merit. As far as the second mode of filling up of 25% vacancies by LDCE, it is stated that applicant volunteered for the selection and he was successful in the written test and he was called for the viva voce test, but the applicant failed in the viva voce since he could not get 60% of the marks under the caption of "Record of Service". As far as

following the reservation policy is concerned, it is stated that since more SC/ST candidates were already in service, the vacancies were calculated and that is how only one SC candidate was selected in the process. Since the applicant did not qualify in the selection process he could not be put on the panel list. The allegations of bias, prejudice, nepotism etc. are denied. It is also stated that the application is barred by the provisions of section 20 and 21 of the Administrative Tribunals Act. That no grounds are made out for interfering with the selection process or the panel prepared as a result of the selection process. It is denied that the applicant had an unblemished and good service record. It is stated that the applicant was charge sheeted on three occasions and was given minor penalties. The respondents could not follow the Railway Board's Circular dt. 16.6.1992 since it was received in the respondents office on 18.6.1992. It is submitted that the selection process became complete when the viva voce was held on 15.6.1992 and the panel was approved by the General Manager on 17.6.1992 even before the receipt of the Railway Board's Circular dt. 18.6.1992. That the applicant is not entitled to any of the reliefs prayed for. That the constitution of the selection committee was done by the General Manager as per rules. It is denied that the reservation policy has not been followed by the Respondents. It is therefore prayed that the application be dismissed with costs.

4. The applicant who appeared in person contended that the preparation of the select panel is bad and that the respondents have not followed the reservation policy in calculating the number of vacancies. That the applicant had done ~~very well~~ in the viva voce and he has been made to fail in viva voce. He submitted that he had a very good service record. He also commented on the delay on the part of the respondents in producing the records before the Tribunal. The learned counsel for the respondents has produced the concerned record before us. He contended that the applicant could not be empanelled since he failed to get 60% of marks on the caption of "Record of Service". He also maintained that vacancies have been calculated as per rules and since there were already ~~number of~~ SC/ST candidates in service, only one SC candidate was selected in the impugned selection process.

5. We have already seen that for the promotion to the post of APO there are two modes. One is by direct promotion and another through departmental competitive examination.

As far as regular promotion on the basis of seniority-cum-merit is concerned, the normal rule is that ~~an~~ if official is promoted on the basis of seniority unless he has a bad record of service. The respondents have clearly stated that applicant could not be considered for the regular promotion since he was junior and he was nowhere near the zone of consideration. The applicant has not placed any material before us to

show as to what was his position in the seniority list as on the date of promotion and he does not even allege that any of his juniors were promoted under the mode of regular promotion. If the applicant is nowhere near the zone of consideration then he cannot have any grievance about selection of candidates ~~for~~ regular promotion. The applicant has not prayed for quashing the panel of regularly promoted candidates. What is more, the regularly promoted candidates are not made parties to this O.A. The applicant has not placed any material to show ~~their~~ ^{his} seniority position and other circumstances to claim the benefit of regular promotion. Most of the allegations in the O.A. and the prayers in the O.A. are about the applicant's non-selection in the second mode viz. through LDCE.

6. Now coming to the second mode of promotion, it is through a limited departmental competitive examination. The applicant had passed in the written test, but he has failed in the viva voce. The applicant has made bald allegations about nepotism, corruption, castism etc. in the application. He has not given any particulars. A mere bald or general allegation is not sufficient to cancel a select panel. If the applicant wants to say the members of the selection committee were bias or prejudiced and they committed irregularities like nepotism etc. then the members of the selection committee should have been made respondents in their personal names so that they would have an opportunity of meeting the case of the applicant.

Then, what is more, the panel candidates are not made parties to this O.A. The main prayer in the O.A.

is to quash the panel dt. 18.6.1992. This panel is at page 24 of the paper book which shows that ~~the then~~^{ten} candidates having put on panel by the selection committee for promotion to the post of Group 'B' Officers called APO through LDCE. If this panel is to be quashed then the officials shown there should have been made party respondents. How can we quash the panel of 18.6.1992 when 10 candidates ^{who} were selected there are not made parties to the present application. Even if we accept the argument of the applicant that there were some irregularities, nepotism etc. still we cannot quash the panel dt. 18.6.1992 (Ex. A to the OA) without hearing the persons who are likely to be affected by our order. Principles of natural justice require that a person to be affected should be heard before any order is passed. Hence without hearing the candidates ^{who} are selected in the panel dt. 18.6.1992 we cannot quash the said panel. The applicant has not made the candidates selected as party respondents and hence on ^{the} short ground the applicant's main prayer for quashing the panel dt. 18.6.1992 has to be rejected. Further, in the absence of making the selection committee members as party respondents, we cannot go into the question of alleged mala fides, ^{or} nepotism alleged against the selection committee members. Even otherwise no particulars are given except bald statements which cannot be considered by a Court or Tribunal.

7. Now the question is whether applicant has not been selected on the basis of merit. The grievance of

the applicant is that he had got very good record of service and he had passed in the written test and he has been failed in the viva voce.

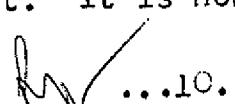
The learned counsel for the respondents has placed before us the proceedings of the selection committee. We have perused the same. The Selection Committee ~~consisted~~ of senior officers including a Scheduled Caste Officer. The Selection Committee has been constituted by the General Manager as per Rules. We do not find ~~any~~ illegality or irregularity in the nomination of the members of the Selection Committee.

Then we come to the actual proceedings of the selection committee held on 15.6.1992 when the candidates were interviewed by them. The record shows that 27 candidates were interviewed by the committee. The applicant's name is shown at Sl.No.18, he has passed in the written test, but against the caption of 'Record of Service' he has obtained only 28 marks out of 50. The requirement of Rule is that he must get minimum 30 marks or 60% for being selected, under each caption.

Since ^{on} the caption of "record of service" the applicant has secured less than 60% the committee has shown him as "unsuitable". The learned counsel for the respondents also placed on record the ACRs of the applicant for the relevant years. The selection committee had perused the same and as per rules they have given marks for each attribute for the purpose of promotion and then the total marks given for record of service was 28 which is less than the minimum of 30 marks to be obtained by a candidate. When the committee members have applied their mind to the record of service and

they have given marks as per rules, it is not possible for this Tribunal to sit in appeal over the findings of the Selection Committee. It is well settled that judicial review is only to find out whether the authorities have acted within the four corners of law.
~~also~~
It is/well settled that ~~a Court or~~ Tribunal cannot sit in appeal over the findings of a Departmental Promotion Committee or the Selection Committee for the purpose of promotion. If the committee has followed the Rules and they have applied their mind and prepared their findings, it is not possible for this Tribunal to take a different view, even if another view is possible. Out of the 27 candidates who were interviewed by the committee, we find that the committee has found some candidates suitable and some unsuitable and they have given marks against separate headings and then marks are totalled. The proceedings were also signed by all the four members of the selection committee. We are satisfied that everything has been done as per the rules and there is no violation of any rule by the committee.

8. It was argued by the applicant that inspite of the order passed by this Tribunal on his M.P. 289/95 for production of records, the Respondents have not produced the records for three years. He, therefore, commented on the delay on the part of the respondents in producing these original records before us. No doubt, the applicant filed M.P. 289/95 not only for production of documents, but also for seeking inspection. By order dt. 31.7.1995 the Tribunal allowed inspection of only certain documents to the applicant. It is now

 ...10.

admitted that as per this order the applicant inspected those documents. As far as remaining documents are concerned, the respondents were asked to produce the documents. In the order sheet dt.31.7.95 it is recorded that respondents counsel undertakes to keep all the documents ready at the time of final hearing. Therefore, there was no direction on 31.7.1995 that respondents should produce the records immediately or on the next date of hearing. On the other hand, the order is that respondents should make available the records at the time of final hearing. It is only in October, 1998 the case reached the stage of final hearing and we heard the arguments and the respondents have produced the records at the time of final hearing. Hence there is nothing to doubt about the bona fides of the respondents and therefore, the argument of the applicant about delay in production of records has no merit when the direction by the Court was to produce documents at the time of final hearing.

9. The applicant referred to a number of Judgments of the Supreme Court and Tribunals to contend about the reservation policy, about the roster system and commented that respondents have not properly calculated the Scheduled Caste vacancies etc. Most of the decisions referred to by the applicant are wholly irrelevant and not applicable to the facts of the present case.

As already stated the applicant is not seeking quashing of the panel of regularly promoted candidates. He is seeking cancellation of panel prepared through

...11.

bcg

departmental examination. According to him the number of vacancies for SC candidates were more, but the respondents have shown lesser number of vacancies and they have not followed the decisions of the Supreme Court regarding reservation policy, roster system etc.

The learned counsel for the respondents has placed before us the entire files which show that respondents have calculated the vacancies as per rules. As already seen the total vacancies to be filled up are 45. Since more number of SC/ST candidates were already working, while filling up the 45 posts, the respondents have only shown 44 vacancies for General and one vacancy as that of SC vacancy. If more SC and ST candidates were already in the cadre then the question of giving some more posts to the SC/ST candidates does not arise and therefore, the respondents have evaluated the vacancies as 44 for General candidates and one for SC candidates.

In our view, even this ^{dispute about} exercise of vacancies for different categories is also academic and wholly irrelevant either to grant or refuse the prayers in the present application.

Irrespective of the number of vacancies for SC candidates, the applicant cannot get any relief unless he passed in the LDCE selection process. Out of 45 candidates, 11 candidates had to be selected through LDCE. There was no SC vacancy as far as LDCE selection is concerned. Now let us suppose that this calculation is wrong and that even in LDCE it should have been 6 general candidates and 5 SC candidates. What follows? The applicant will not get even if all the

11 vacancies was for SC candidates unless he passed in the selection process of LDCE. Now we have seen that the applicant has failed in that LDCE process. He has failed to get 60% marks and therefore he has failed in that selection process. Hence applicant cannot get promotion even if the SC vacancies calculated by respondents was wrong or even if we hold that all the 11 posts belong to SC candidates. If the applicant had passed in the examination and if he had been denied promotion for want of SC vacancy, then the matter would have been different. But, since the applicant has failed in the viva voce, the correctness or otherwise of the number of SC vacancies is wholly irrelevant for our present purpose. We cannot even quash the entire panel on that ground because the selected panel candidates are not before the Tribunal and they are not made parties. They have already been promoted in 1992 and now they have already worked in the promotional post for almost 6 years and we cannot interfere with their promotion without hearing them. Further, when the applicant responded to the Notification and participated in the selection process and failed, he cannot turn around later and challenge the very Notification under which vacancies were notified or question the Constitution of the Selection Committee etc.

10. Another comment was made by the applicant about the promotion of Galgali. Even here, Galgali is not made a party respondent. We cannot interfere with his promotion or quash his promotion without hearing him. Since Galgali is not made a party in this O.A. we do not want to express any opinion whether his promotion

was justified or not. Further, if the applicant cannot get promotion due to his failing in the viva voce then the question of interfering with the selection panel whether it is Galgali or other members will not arise at all.

Similarly, the applicant's contention about the respondents not following the Railway Board's Circular dt. 16.6.1992 also has no merit since it will go to the root of the question of quashing the panel dt. 18.6.1992, which cannot be done in the absence of the candidates selected in the panel being made parties to this case. Further, when the applicant has failed in the selection process he will have no right to challenge the selection of others. Hence, in taking any view of the matter, we do not find any merit in the present application.

11. In the result, the application fails and is hereby dismissed. In the circumstances of the case there will be no order as to costs.

Shrawan
(D.S. BAWEJA)

MEMBER(A)

R. G. Vaidyanatha
(R.G. VAIDYANATHA) 23/11/98
VICE - CHAIRMAN

B.