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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 668/92

~~XXXXXXXXXXXXXX No~~

DATE OF DECISION 12.2.93.

Shri Dinesh Shankarlal Petitioner

Shri D.V. Gangal Advocate for the Petitioners

Versus

Respondent

Union of India and others

Advocate for the Respondent(s)

Shri J.G. Sawant,
Shri G.S. Walia.

CORAM:

The Hon'ble Shri Justice S.K. Dhaon, Vice Chairman

The Hon'ble ~~8MKK~~ 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 ?

U. Savara
12.2.93.
(USHA SAVARA)
MEMBER(A)

NS/

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 668/92

Shri Dinesh Shankarlal

... Applicant.

V/s.

Union of India through
The General Manager
Central Railway
Bombay V.T.

The Chief Workshop Manager
Carriage and Wagon Workshop
Central Railway, Matunga
Bombay.

... Respondents.

CORAM : Hon'ble Shri Justice S.K. Dhaon, Vice Chairman

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

Appearance:

Shri D.V. Gangal, counsel
for the applicant.

Mr. J.G. Sawant, counsel
for the respondents.

Mr. G.S. Walia, counsel
for respondents.

JUDGEMENT

Dated: 12.2.93

¶ Per Ms. Usha Savara, Member (A) ¶

The applicant, who is a member of the S.T. community has filed this application impugning notification dated 30.10.90, (Annex. A) by which the Senior Personnel Officer, Matunga invited applications from skilled artisans for the 38 posts of Apprentice Mechanics, and notification dated 18.4.'92 (Annex.B) empanelling the successful candidates. The grievance of the applicant is that though he qualified in the written test and was called for the viva voce test on 26.3.'92, his name was not included in the panel.

The main contention of the applicant is that there being 38 posts, 29 posts belonged to general candidates, 6 posts belonged to S.C. community and 3 posts were reserved for S.T. communities but the

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respondents have granted only 2 posts to S.T. community and therefore the applicant has been denied empanelment. The respondents have filed a reply in which they have categorically denied the contention of the applicant. It has been explained that there are nine different trades in the workshop, and persons employed in these trades are eligible to compete in the selection for the trainee post of Apprentice Mechanics. Each of these trades have separate seniority list. The calculation of reservation on the basis of 15% for S.C. and 7½ % for S.T. is done with reference to each trade separately. Details have been furnished, and evidently the respondents have not committed any error in their calculation.

The applicant has also challenged the selection on the ground that the selection committee ought to have examined the SC/ST candidates separately and that they should have been asked " very simple " questions. It is also the case of the applicant that as per rules, he is not required to obtain any minimum marks in the viva voce test. Shri Gangal, learned counsel, relied upon Railway Board's letter dated 31.8.'74 (Annex H) to support this contention. Shri J.G. Sawant, learned counsel for the respondents pointed out that full quota of reserved candidates for SC and ST had been filled up in the selection. He also submitted that the post of Apprentice Mechanic is a trainee post and after successful training of 2 years, the persons is eligible to be appointed to the working post of Chargeman 'B', which is a safety category post. There could be no question of relaxation in standard in a safety category post. Reliance was placed on letter dated 7.6.'85 issued by the C.P.O. (Mech) which clarifies the instructions issued by the Railway Board on 11/12.9.'75 as to how the vacancies of Chargeman 'B' are to be filled. The selection was open to all eligible skilled artisans in workshop,

R & M steam and diesel cadres to ~~form~~ a panel for filling up vacancies of Chargeman 'B' to the extent of 25%, Bara 3.40 runs as below:

" As the posts of Chargeman 'B' grade Rs. 425 - 700 (RS) are safety posts, the qualifying mark for empanelment should be 60% in professional ability and 60% in aggregate in respect of all the employees including those belonging to SC/ST community."

In view of this, Shri Sawant stated that the applicant could neither have been examined separately, nor given simple questions, because the post ~~for~~ which he was being trained was a safety post, and permitted ~~if~~ no relaxation in standard, as claimed by the applicant.

By M.P. No.14/92, Shri Gangal brought to our notice various circulars in respect of promotion of best amongst the failures. He claimed that in view of the circulars, the applicant ought to have been selected as he was " best amongst the failures". He particularly relied upon circular dated 31.8.'74, which states that if during the selection proceedings it is found that the requisite number of SC/ST candidates are not available for being placed on the panel in spite of the various relaxations already granted, the best amongst them, i.e. who secure the highest marks, should be earmarked for being placed on the panel to the extent vacancies have been reserved in their favour. The panel, excluding the names of such persons, may be declared provisionally. Thereafter, the SC/ST candidates, who have been so earmarked may be promoted adhoc for a period of six months against the vacancies reserved for them. During the said six months period, the Administration should give them all facilities for improving their knowledge and coming up to the requisite standard, if necessary by organising special coaching classes. At the end of six months *by*.

a special report should be obtained on the working of these candidates and their cases be put up for review. If the candidates are found to have come up to the requisite standard, their names should be included in the panel and the same finalized, otherwise the vacancies be de-reserved and filled in the usual manner by candidates from other communities. The circular goes on to say that this procedure would also apply to promotion to the posts filled on the basis of seniority-cum-suitability. Shri Gangal reiterated that according to all the circulars, the eligible SC/ST candidates were entitled to pre-promotion training or in-service training, and since the applicant had not been given this training, the selection was bad and was liable to be quashed.

Shri Wali@, who appears for Shri Arun Kumar Nigam, intervenor, in the case, submitted that the circular dated 31.3.'74 had been overruled by circular dated 19.6.'78 which clarified that the earlier circular did not apply to 'Safety category' posts, and there could be no relaxation of standard with regard to 'Safety Category' posts and it was imperative for all the candidates to get 60% marks both in the written and viva voce^{ex}, before they could be put on the panel.

We have heard the learned counsel and perused the circulars filed by him. The first precondition to the applicability of 1974 circular is that the requisite number of SC/ST candidates are not available. It has been confirmed by the respondents in their return that all the reserved posts have been filled up, i.e. 6 posts for S.C. and 2 for S.T. have all been filled by suitable candidates, and there is no more reserved vacancy for either S.C. or S.T. In the circumstances, there is no need to empanel the l/f.

best among the failed candidates. Secondly, it is undeniable that the post of Chargeman 'B' being a safety category post, which involves the public interest of millions of travellers, there can be no relaxation of standard. In view of this, the circulars cited by Shri Gangal have no application. So far as the applicant's claim for pre-promotional coaching is concerned, there is some merit in his claim. As a matter of fact, this is also the requirement of circular dated 7.6.1985 - para 3.5 that the employees belonging to SC/ST community be imparted special pre-promotion coaching before subjecting them to the written test. However, the applicant did not raise this point at any time, before the test, and has sought to raise it only when he has failed to qualify in the viva voce test. He cannot be allowed to raise this point now after he has taken his chance at being selected for the higher post. He is estopped from doing so at this stage. This view finds support in the judgement of the Hon'ble Supreme Court in the case of O.M. Prakash Shukla Vs. Abhilash Kumar Shukla AIR 1986 SC 1043.

In the result, the application has to be dismissed as being ~~void~~ of merit, and accordingly it is so dismissed. The interim order granted to the applicant on 26.8.1992 by which he was provisionally permitted to participate in the training is vacated.

There is no order as to costs.

U.S. SAVARA
12.2.93.
(U.SHA SAVARA)
MEMBER (A).

S.K. DHAON
(S.K. DHAON)
VICE CHAIRMAN.