

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH.Original Application No.681/92.

Shri Yogendra Singh.

.... Applicant.

V/s.

Union of India & Ors.

.... Respondents.

Coram: Hon'ble Shri M.Y.Priolkar, Member(A),
Hon'ble Ms.Lakshmi Swaminathan, Member(J).Appearances:-

Applicant by Shri G.S.Walia.

Respondents by Shri P.M.A.Nair.

Oral Judgment:-

[Per Shri M.Y.Priolkar, Member(A)] Dt. 28.9.1993.

Heard Shri G.S.Walia, advocate for the applicant and Shri P.M.A. Nair, counsel for the Respondents.

2. The applicant who belongs to SC community applied for the post of Health Inspector under the Central Railway in pursuance to an employment notice (No.3/90) issued by the Railway Recruitment Board. In this notice, the qualification required was given as B.Sc. (Chemistry) from a recognized University plus Diploma of Health Inspector from a recognized institution. The applicant was declared successful on 28.8.1991 in the written test conducted by the Railway Recruitment Board and was called by letter dated 27.3.1992 for interview to be held on 7.5.1992. However, before the applicant could be actually interviewed, it was discovered on verification of his qualification that the applicant had only a degree of B.A. with a diploma of Sanitary Inspector, whereas, the Railway Board by order dt. 24.5.1990 had decided that for recruitment to the post of Health Inspector, the minimum qualification shall be B.Sc. Chemistry

plus Diploma of Health Inspector, and this had also been indicated in the employment notice of the Railway Recruitment Board for this post. Admittedly, prior to this Railway Board's Order dt. 24.5.1990 laying down the revised educational qualification the prescribed qualification was only Matriculation with Diploma of Sanitary Inspector.

3. The grievance of the applicant is that although he was eligible under the earlier recruitment rules for the post of Health Inspector and there were vacancies of Health Inspector existing prior to the amendment of the rules, which had to be filled up under the old rules, he was wrongly denied the post only on the ground that he does not have the qualification prescribed under the amended rules. The respondents have admitted that there were four vacancies existing as on the date of the amendment of the rules viz. 24.5.1990. It is well settled (1989 SCC (L&S) 127) that the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. The earlier vacancies should therefore have been filled up under the then existing Recruitment Rules and, ~~admittedly, the applicant was eligible in all respects to be considered for appointment to~~ the post of Health Inspector under the then existing Recruitment Rules. Besides, the applicant being a SC candidate was also entitled to be considered for the one reserved vacancy out of the total four vacancies existing prior to the date of amendment. We have perused the Roster maintained by the respondents for appointment to this post and find that vacancies at Points Nos. 6 to 9 of the Roster (copy enclosed to applicant's affidavit dt. 20.9.1993) were the vacancies prior to the amendment which had to be filled up under

to his rank in the panel. The learned counsel for the respondents, however, submitted that there may be many other persons more meritorious than the applicant who could have also applied if the lower educational qualification, prevailing prior to the amended rules, had been prescribed in the ~~employment~~ notice. He contended, therefore, that it would be just and fair to hold a fresh examination for the earlier vacancies after indicating the lower qualification in the advertisement. We are unable to agree. In the case of Ashok alias Somanna Gowda and another V/s. State of Karnataka and Others 1992 ~~SCC~~ (L & S) 38, decided on 11.10.1991 the Supreme Court observed that "in view of the ~~fact~~ fact that appointments under the impugned Rules were made as back as in 1987 and only the present appellants had approached the Tribunal for relief, the case of other candidates cannot be considered as they never approached for redress within reasonable time". In the case before us we are thus inclined to grant relief only to the present applicant who was vigilant in making grievance and approaching the Tribunal in time.

4. The application is disposed of accordingly with the above direction with no order as to costs.

5. After this order was dictated, the learned counsel for the Railway Recruitment Board prayed for a stay of the operation of this judgment as the Respondents intended to approach the Supreme Court against this Judgment. We direct that this order shall be implemented by the respondents immediately

the earlier rules. The vacancy at Point No.7 was reserved for Scheduled Caste. However, it is the contention of the respondents that the appointment at Point No.6 which was an unreserved vacancy was filled up by one Shri S.B.Chauhan who was an SC candidate and this point was adjusted against Point No.7 reserved for SC candidate. Point No.7 was, accordingly, treated as unreserved. This action of the respondents is clearly against the provisions in Ministry of Home Affairs, Department of Personnel and Administrative Reforms O.M. dt. 4.2.1982 which was also adopted by the Railway Board by their letter dt. 21.5.1982. Para 2.1 of this O.M. inter alia provides that where SC/ST candidates are appointed on compassionate grounds against unreserved points of roster, such appointments are not to be adjusted against reserved points occurring in future recruitment years. It is also not the case of the respondents that because of this additional appointment of SC candidate on compassionate ground, the percentage of SC candidates has exceeded the prescribed limit in that cadre.

3. In the circumstances, we have to hold that the applicant should have been considered for appointment against the Scheduled Caste point in the roster which had occurred prior to the amendment of the rules. Admittedly, the applicant was the only SC candidate who had appeared for the Written Test conducted by the Railway Recruitment Board for this post and declared successful. We, therefore, direct that the applicant may now be interviewed by the competent selection committee of the Railway Recruitment Board and if found successful in the interview, should be offered appointment against point No.7 which is a reserved point in the roster. The applicant will also be entitled to benefits of seniority according

19

after three months from the date of receipt of a copy of this order, unless, in the meanwhile, they obtain a stay from the Hon'ble Supreme Court.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

M. Y. Priolkar
(M. Y. PRIOLKAR)
MEMBER (A)

B.

operations stayed by SIC 5650/94
by order dt'd 16-3-94
29.3.94