

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 890/97 AND 902/97.

Date of Decision: 28.01.1998.

Rajendra Kondaji Darole & Anr.

Applicants.

Shri V. S. Masurkar for  
Shri K. R. Yelve.

Advocate for  
Applicants.

Versus

Union Of India & Anr.

Respondent(s)

Shri Ravi Shetty,

Advocate for  
Respondent(s)

CORAM:

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

Hon'ble Shri. M. R. Kolhatkar, Member (A).

- (1) To be referred to the Reporter or not? *Yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *no*

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

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NOS: 890/97 AND 902/97.

Dated this Wednesday, the 28th day of January, 1998.

CORAM : HON'BLE SHRI JUSTICE R.G. VAIDYANATHA,  
VICE-CHAIRMAN.

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Rajendra Kondaji Darole,  
Asstt. Security Officer,  
B.A.R.C.

Residing at -  
B-12, Room No. 5,  
Barvenagar, Ghatkopar (W),  
Bombay - 400 084.

... Applicant in  
O.A. No. 890/97.

Laxmichand Laxmidas Dass,  
Assistant Security Officer,  
B.A.R.C., Tarapur.

Residing at -  
B.A.R.C. Colony, Type-B,  
93/13, Tal. Palghar,  
Dist. Thane - 401 504.

... Applicant in  
O.A. No. 902/97.

(By Advocate Shri V.S. Masurkar  
for Shri K. R. Yelve)

VERSUS

1. Union Of India  
through Secretary,  
Department of Atomic Energy,  
C. S. Marg, Mumbai -400 039.

2. Controller,  
B.A.R.C., Central Complex,  
B.A.R.C., Trombay,  
Mumbai - 400 085.

... Respondents in  
both the cases.

(By Advocate Shri Ravi Shetty)

: OPEN COURT ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

: OPEN COURT ORDER :

§ PER.: SHRI 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 both the Counsels.

2. The applicants in these two cases are S.C/S.T. candidates who are aggrieved by the decision of the Government in with-drawing the concession given to SC/ST candidates regarding minimum marks to be obtained in the written test for the purpose of being eligible for promotion. As per the notification dated 08.08.1996, the general candidate should get minimum of 45% in each paper and 50% aggregate for being declared successful in the examination. However, the concession was given to SC/ST candidates by reducing minimum marks to 35% in each paper and reducing the aggregate marks to 40%.

It appears that the applicants had appeared for the written examination. They were declared to have been passed in the examination by provisional results by giving the benefit of relaxation in the marks. Subsequently, the Government issued a circular dated 22.07.1997 under which the relaxation given to the SC/ST candidates is withdrawn. Consequently, the applicants were declared as not successful in the examination, since they are not entitled to the benefit of relaxation. This was stated by the Learned Counsel for the respondents on instructions from the concerned officer. Therefore, the applicants have approached this Tribunal for quashing the portion of the order

dated 22.07.1997 under which the concession given to SC/ST candidates regarding marks is withdrawn and for a direction to the respondents to call the applicants for interview which are scheduled to be held on 07.10.1997.

In pursuance of an interim order passed by this Tribunal, the applicants were interviewed by the Committee on 07.10.1997 and their results are kept in sealed cover.

3. The Learned Counsel for the applicants contended that once the Government has issued the notification dated 08.08.1996 under which special concession is given to SC/ST candidates regarding marks, it cannot withdraw by a subsequent notification and therefore, the applicants should be declared to have passed in the examination and must be called for interview and the results of the interview kept in the sealed cover should be opened and given effect to. On the other hand, the Learned Counsel for the respondents contended that both the applications are not maintainable, since the applicants are not entitled to any concession regarding marks in view of the law declared by the Supreme Court and the subsequent Circular issued by the Government on 22.07.1997.

4. It is true that the notification dated 08.08.1996 gives special concession to SC/ST candidates but the Supreme Court in the judgement in case of Vinod Kumar & Another V/s. Union Of India & Others reported in 1996 SCC (L&S) 1480 has declared that relaxation to qualifying marks for the purpose of promotion in favour of reserved

category is not permissible in law and violation of the constitutional provisions. They have also relied on the observations of the Supreme Court in Indra Sawhney V/s. Union Of India & Others [1992 SCC (L&S) Suppl.1 ¶] where the Apex Court has observed in para 831 that there cannot be any concession in qualifying marks for the purpose of promotion for O.B.C., S/Cs and S/Ts. and once the law is declared by the Apex Court, it is not ~~the~~ <sup>a</sup> case of prospective over-ruling, unless the Supreme Court itself says in the judgement that it is a case of prospective over-ruling. If once a particular law is declared as void, it means, it is from the inception it is void. Therefore, the argument of the Learned Counsel for the applicants that the decision of the Supreme Court dated 01.10.1997 should be applied only prospectively and should not apply to the Government notification which was issued earlier on 08.08.1996, as the examination was held in January 1997, subsequent to the law declared by the Apex Court. It is well settled that the law settled by the Supreme Court is the Law of the Land under Article 141 of the Constitution of India. It may be that the Government has issued circular in pursuance of the law ~~of~~ declared by the Supreme Court subsequently on 22.07.1997. Even if the Government had not issued such a circular, in view of the law declared by the Apex Court, the clause in the Government notification dated 08.08.1996 giving special concessional marks to SC/ST candidates will have to be held as ultra-vires ~~of~~ the Constitution and cannot be enforced.

Therefore, in view of this position in law, the applicants cannot take any advantage only on the ground that the notification was prior to the judgement of the Supreme Court, particularly, when the examination is held subsequent to the judgement of the Supreme Court. Therefore, in our view, the applicants' case that they are entitled to the benefit of concessional marks in the examination, cannot be accepted in view of the law declared by the Apex Court, which is followed by the Government by issuing the circular dated 22.07.1997. Hence, we find no merit in the two applications and they are liable to be rejected.

5. There was some arguments at the bar about the application of law<sup>namely</sup> whether the application of law should be on the basis of<sup>date of</sup> vacancies or on the basis of the date of selection. In our view, this is not a case of change of law from the law that was existing on the date of vacancy and the law that is existing on the date of selection. This is a case where the law as on the date of vacancy is held to be void, so far as a particular point is concerned. To such a situation, the argument that the law on the date of vacancy should be followed has no merit because there is no change in law but what has followed is the declaration of portion of law existing on the date of vacancy as void. No relief can be given under a void law ~~or~~ by a Court or Tribunal or by any other authority. Therefore, that question is wholly irrelevant for the present purpose.

6. In the result, both the applications are rejected at the admission stage itself. The interim order is hereby vacated. In the circumstances of the case, there will be no order as to costs.

*M.R. Kolhatkar*

(M.R. KOLHATKAR)

MEMBER (A).

*R. G. Vaidyanatha*

(R. G. VAIDYANATHA)

VICE-CHAIRMAN.

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