

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1161/1997

THIS THE 28TH FEBRUARY, 2002

CORAM: HON'BLE SHRI JUSTICE ASHOK AGARWAL. CHAIRMAN
HON'BLE SMT. SHANTA SHAstry. MEMBER (A)

1. Shri Sudhakar Gundu Kamble,
r/o F/286/6 Nau Sena Baug,
Navy Quarter, Lonavala,
dist. Pune-410 401.
2. Shri Sunil Sitaram Dhaware,
r/o P-322/2 Pratap nagar,
INS Shivaji, Lonawala,
dist. Pune-410 402.
3. Shri Gorakh V. Gajare,
r/o Upper Indira Nagar,
Pune.
4. Shri Raju Shankar Sable,
r/o P-286/5 Nau Sena Baug,
Navy Quarter, Lonavala,
dist. Pune-410 401. Applicants

Versus

1. Chief Engineer (southern Command),
Engineers Branch,
Pune-411 001.
2. Chief Engineer (Navy),
Colaba, Mumbai-400 005.
3. commander Works Engineers (Suba),
Pawai, Bhandup P.O.
Mumbai-400 078. Respondents

Advocate Shri R.K. Shetty.

O R D E R (ORAL)

Hon'ble Smt. Shanta Shastry. Member (A)

The grievance of the applicants is that they have been debarred by the respondents from appearing in the trade test held on 16.02.1995 inspite of they being eligible and senior enough to be included in the nominal

rolls circulated along with the notification of the test only because they belong to SC community.

2. The applicants have therefore, sought a direction to the respondents to admit them for the trade test for highly skilled grade-II to be conducted as and when and in continuation with the part test given by them on 16.02.95 and to ensure that there shall be one SC examiner in the team of examiner to ensure that the applicants are not dealt with unfairly due to cast prejudice and in case the applicants qualified their seniority, promotion and pay fixation shall be related back to 31.7.95 when the juniors to the applicants were granted promotion. The applicants have further prayed that after their promotion to highly skilled grade-II they be allowed to appear in the trade test for HS Grade-II along on the date their juniors were allowed to take test and accord all the benefits as in HS Grade-I.

3. In 1994-95 eight Trades, skilled and unskilled were clubbed together such as (1) Pump House Operator (2) Driver Engine Static, (3) Machine Petrol & Diesel Engine (4) Driver Mobile Plant (5) Operator Earth Moving Machinery (6) Operator Pneumatic Tools (7) Boiler attendant (8) Lift Mechanic. The category of Fitter grade mechanic was given three grade namely the skilled grade of Rs.950-1500 highly skilled Grade II in the scale of Rs. 1200-2040 and highly skilled Grade I in

the scale of Rs.1320-2200. The promotions from skilled grade to highly skilled grade-II and highly skilled Grade-I are based on qualifying in the respective of trade test.

4. All these applicants belong to Schedule Caste. The respondents, by their letter date 21.7.1994 had given direction that 18 vacancies of highly skilled grade II be filled up immediately and after a clear gap of 30 days 14 posts of highly skilled grade I be filled up. Reservation was also provided from out of 18 vacancies 13 vacancies were for the general category 3 were reserved for SC and 2 for ST. The test was to be conducted on 16.02.1995. In this connection, they enclosed an eligibility roll according to the seniority and eligibility of the candidates. In this roll the names of the applicants did not appear, although as per the seniority list, they were above serial No. 42 onwards of the eligibility roll. On making a representation, they were allowed to appear in the written test subject to an undertaking that if decision was taken later on as their being ineligible, they would not claim the benefit. Thereafter, a decision was taken by the respondents on 20.02.1995 informing that CS, Navy, Bombay had intimated that action of permitting these applicants to appear in the trade test held on 16th February, 1995 was not in order and these individuals could not be detailed for practical test

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conducted on 23rd February, 1995. It was directed that only candidates, whose names had been reflected in the roll were sent for practical test. The applicants again represented in December, 1995 against this action of the respondents in debarring them from appearing in the practical test.

5. It is the contention of the applicants that they could not have been denied the opportunity to appear in the trade test when they were senior as per seniority list only on the ground of their belonging to SC. There is no bar to SC candidates appearing along with the general candidates on the same footing as general candidates without giving any relaxation or reservation. The learned counsel had also cited the procedure laid down on "the seniority on promotion" in the Central Government services as brought out in Swamy's Compilation in para 6.3.1 (ii) Part IV. It is clearly spelt out that "SC/ST officers who are within the normal zone of consideration should be considered for promotion along with others and those SC/ST candidates among them who are selected on that basis may be included in the general select list in addition to their being considered for inclusion in separate select list of SC and ST respectively. If candidates from SC/ST obtained on the basis of their position in the general list are lesser than the number of vacancies then the difference

should be made up by the selected candidates of this community in the separate lists for SC/ST respectively." However, the applicants' representations were rejected and they were not allowed to appear in the trade test. Thus, their juniors have got promoted earlier than the applicants. All the applicants finally were allowed to sit in the trade test held in 1998, their promotion orders were issued on 10th April, 2000.

6. The learned counsel for the respondents submits that it is not denied that the applicants were not allowed to sit in the trade test of 16th February, 1995 only because they belong to ST community. However, the respondents have also pointed out in their written reply that some of the applicants did not possess the requisite educational qualification in that they did not possess the ITI certificate. Therefore also some of them were ineligible. It is further submitted that immediately after the trade test held on 16.02.1995 a further supplementary test was held on 10th May, 1995 at the instance of the union as very few candidates passed in the first test held on 16th February, 1995. However, the learned counsel admits that it was not correct to not to allow the applicants to appear in the trade test when they were within the zone of consideration according to their seniority in the general list. The learned counsel for the respondents, however ^{he} ~~has~~ now raised an objection that the applicants cannot now be

considered for the test of 1995 as it would unsettle the settled position and the applicants have not made those likely to be affected, as parties to this OA. Therefore, in the absence of non-joinder of parties, the application is to be dismissed. The applicants cannot be granted relief.

7. We have heard the learned counsel for the applicants as well as the respondents. We agree that it was wrong on the part of the respondents in not allowing these applicants belonging to SC/ST category to be made eligible to appear in the trade test for HS Grade-II and further test for Grade-I based on their general seniority. On this ground, certainly, the applicants have a case.

8. Coming to the non-joinder of parties, it is clear that the applicants have not made those likely to be affected in case the relief is granted to the applicants, as parties. The learned counsel for the applicants took great pains to demonstrate that strictly speaking not many persons who were earlier junior to the applicants would be affected if the applicant's case is considered for the trade test of 16.02.1995. He tried to show that in the first test which was held on 16.02.95 very few candidates had passed and only one junior to the applicants at S1. No.59 in the seniority list had passed, so it is not that many officials would

be affected if the applicants are granted the relief. On the other hand, the learned counsel for the respondents has also produced a list of candidates, who have passed in the test held on 16.02.95. According to the respondents three candidates, who were junior to the applicants from the general list had passed in 1995. Therefore, it is not correct to say that only one ^{junior} candidate has passed. The learned counsel for the applicants has produced four documents showing the promotion orders dated 30.6.1995, the selection panel of 1998, those who had qualified in 1997 test, the trade test result of 1998 and the promotion orders from skilled grade to HS Grade-II. It is the contention of the learned counsel for the applicants that the promotions, which were made on 30.6.95 of Sl.No.11 to 26 are not based on the trade test, but are on the basis of insitu scheme. The respondents have not strictly relied on the seniority but had added the 40 point roster and had debarred the applicants to appear in the test as general candidates. Further, even the selection panel of 1998 based on the examination held in 1997 consists of ^{those} _{who} had failed in 1995 trade test. From the select panel of 1998 only one junior to the applicant had been promoted, he too qualified only in 1997. However, Shri R.G. Hire who passed in 1998 is not affected in that he was already senior to the applicant. It is therefore, the contention that strictly speaking there ^{is} no being ^{no} junior to the applicants, who had succeeded in 1995

examination, the question of joining them as parties does not arise at all. The learned counsel for the applicant has further submitted that all the applicants were educationally also qualified on the other hand some of those who were allowed to appear in the test of February, 1995 did not see the school even, this was therefore irregular.

9. We have perused the various documents produced across the bar by both the learned counsel for the applicants as well as respondents. We find that there is ^{no} _A clear picture emerging as to the number of juniors who would be affected by any relief to be granted to the applicants. There is no agreement between the applicants and the respondents on this. We cannot go into a roving enquiry. We therefore go by the submissions made by the respondents that there are a few juniors whose settled seniority will be affected if relief is granted to the applicants. We are not inclined to disturb the seniority of those so called juniors who were selected earlier at this stage by unsettling the settled position.

10. However, we do find that ^{some} injustice has been done to the applicants in denying them the opportunity to take the trade test and this goes against the principles of natural justice. The learned counsel for the applicants produced a copy of the judgment of the

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Supreme Court in the case of G.B. Pant University of Agriculture & Technology, Pantnagar, Nainital Vs. State of U.P. & Others (2000 SCC (L&S) 994). In this case certain canteen employees of the University were involved and the University were denying that they were University employees. The Supreme Court observed in this judgment that "the deprivation of weaker section had continued for long ~~but~~ ^{been} time has now come to cry a halt and it is for the law courts to rise up to the occasion and grant relief to a seeker of a just cause and just grievance. Economic justice is not mere legal jargon but in the new millennium, it is an obligation for all to confer the economic justice on a seeker. If society is to remain, social justice is the order and economic justice is the rule of the day. A narrow pedantic approach to statutory documents no longer survives. The principle of corporate jurisprudence is now being imbibed by industrial jurisprudence and there is a long catena of cases in regard thereto. The law thus is not in a state of fluidity since the situation is more or less settled. As regards, interpretation widest possible amplitude shall have to be offered in the mater of statutory documents under industrial jurisprudence. The draconian concept is no longer available. Justice-social and economic ought to be made available with utmost expedition so that the socialistic pattern of the society as dreamt of by the founding fathers can thrive and have its foundation so that the

future generations do not live in the dark and cry for social and economic justice.

11. The learned counsel also relied on another judgment in the case of Vinayak Kumar Sharma and others Vs. Chairman, School Service Commission & Others (2001 SCC (L&S) 694). In this some discrimination was meted out against the OBC candidates while the panel of general category was extended that of the OBC category was not extended. The Supreme Court held that there was no justification for not extending the panel life of the OBC category.

12. In view of the above and keeping in view the various measures taken by the Government for welfare of the SC/ST i.e. Backward classes, we would be failing in our duty if we were to brush aside the claim of the applicants merely on the ground of non-joinder of the parties. We, therefore, are inclined to grant some relief to these applicants as for no fault of theirs, they were kept out of the panel for a long time only on the ground of caste. We therefore, direct that the respondents shall conduct a review test of these applicants as of 16th February, 1995 and if they pass, consider them for promotion to highly skilled grade II and I from the date their juniors have been promoted without, however, disturbing the seniority of the juniors, who have already been promoted. The applicants shall be entitled to the difference in pay and allowances, but no seniority over their juniors who have already been promoted and have become seniors shall be

granted. This shall be done within a period of three months from the date of date of receipt of copy of this order. No costs.

Shanta S
(SMT. SHANTA SHAstry)

MEMBER (A)

ASHOK AGARWAL
CHAIRMAN

Gajan

dt 28/3/92

to Applicant copied (s)

on 27/3/92