

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH : MUMBAI

Date of Decision : 07.03.2002

O.A NO. 534/1998.

Chandrakant Doodappa Kamble, residing at Block No.64, Teacher Housing Society, South Sadar Bazar, Solapur 413 003 and working as Goods Guards under the Divisional Railway Manager, Solapur Division, Solapur.

...APPLICANT.

versus

1. Union of India through the General Manager, Central Railway, C.S.T. Mumbai.
2. Divisional Railway Manager, Central Railway, Solapur Division, Solapur.

...RESPONDENTS.

Mr. G. K. Masand, counsel for the applicant.
Mr. S. C. Dhavan, counsel for the respondents.

CORAM

Hon'ble Mr. B. N. Bahadur, Administrative Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :
(per B. N. Bahadur, Adm. Member)

This is an application filed by Shri Chandrakant Dodappa Kamble, seeking the relief from this Tribunal as follows :-

''(a) That this Hon'ble Tribunal will be pleased to direct the respondents, by a mandatory order, issued by this Hon'ble Tribunal to include the name of the applicant in the Panel of Passenger Guards Scale Rs. 1350-2200/5000-8000, notified on 3.12.1997 (EX/A) and to promote the applicant to the post of Passenger Guard, in the scale of Rs. 5000-8000 retrospectively with effect from the date, his juniors S/Shri S. D. Sonaware and others who have been placed on the Panel, were promoted with all consequential benefits, including payment of arrears of pay and allowances, seniority etc.

(b) That pending the hearing and final disposal of this Application, Respondents be restrained by an order and injunction issued by this Hon'ble Tribunal from promoting any other employee to the post of Passenger Guards, scale Rs. 5000-8000 till such time applicant has been promoted to the said post.

... 2.

B.N.B.

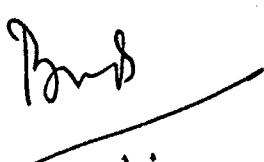
(c) That costs of this Application be awarded in favour of the Applicant ; and

(d) That such other and further reliefs as are expedient be granted in favour of the applicant."

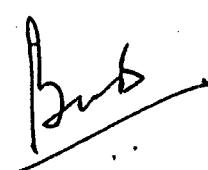
2. The relevant facts as brought out by the applicant are that he is a Commerce Graduate and was appointed as Goods Guard on 04.02.1991. He refers to a notification, which was issued on 21.02.1997, (Exhibit-B), through which selection for the post of Passenger Guard (in the grade of Rs. 1350-2000 /5000-8000), was announced. The intention was to empanel 63 employees, including eleven from SC, four from ST and Forty eight from other communities. The applicant states that he is from the SC community and his name appears at Sr. No. 93 in the list annexed to the notification dated 21.01.1997. Learned counsel for the applicant states that the applicant appeared to the various process of selection and passed the written selection test as per list indicated. He appeared into the viva voce test like others, with an additional/notional seniority marks.

3. It is the grievance of the applicant that even though he had done well and had also answered all the questions, he was surprised that his name did not find a place in the impugned panel dated 03.12.1997. He is also aggrieved by the fact that his junior Shri S. D. Sonawane has been placed on the panel as indeed some others whose names he describes in Para 4 of the Original Application. The applicant thus comes up to the Tribunal being aggrieved by this supersession and at the fact that a representation made by him to the concerned authorities did not elicit any reply.

... 3 .



4. The grounds taken by the applicant, among others, were argued by his Learned counsel. Respondents have filed a written statements of reply detailing the facts of the case. Facts regarding applicant's appearing the exam and his passing the written test etc. were broadly admitted but the applicant's claims for selection has been resisted. The respondents state that the Viva voce test was held in September, 1997, but the applicant did not secure the requisite marks in aggregate and hence was not included in the panel that was published vide letter dated 03.12.1997. The respondents then reproduce the relevant rule (219 (g) of IREM) to explain the process of requirements of selection and make the point that since the post of Passenger Guard is in safety category, no relaxation can be given to any candidate. It is stated that the applicant's contention that he did well is a matter of his own assessment and cannot be a criteria for his placing his name in the panel. It is however stated that Scheduled Caste Employees in the main panel though junior to the applicant were found suitable and hence placed on the panel. The applicant did not secure the requisite marks of 60% in aggregate and hence becomes ineligible for being selected. The further part of the written statement seeks to set out replies to the averments made in the OA, parawise. The case of Madan Lal vs. State of J & K & Ors. (AIR 1995 SC 1088), has also been cited in support.



5. We have seen all papers in the case, including the original records produced before us. We have heard Shri G. K. Masand, Learned counsel for the Applicant as also Shri S. C. Dhavan, Learned counsel for the Respondents.

6. Learned counsel for the applicant took us over the facts of the case and in fact during the course of arguments, we had perused the record of mark-sheet of all candidates and had brought out in open court, the fact that applicant had not secured 60 marks in aggregate. One of the arguments taken by the Learned counsel for the applicant was that the record of service of the applicant was not assessed properly. It was argued that applicant had never been visited by any penalty/punishment or adverse remarks. It was also urged by Learned counsel that the marks given for personality, leadership etc. should be assessed by the Tribunal against the backdrop of the career of the applicant.

7. Learned counsel for the applicant was at pains to point out that the applicant had a very good record of safety, and had been given green a card, and in fact some others selected did not have that level of safety credits. The main legal arguments taken by the applicant's Learned counsel was that even the law settled in this regard which indeed did prevent Tribunals from going into the details of assessments, did provide for the infirmity of arbitrariness things being gone into. It was the contention of counsel for the applicant that the markings and assessments suffered from the infirmity of arbitrariness.

Babu

8. Arguing the case on behalf of the respondents Learned counsel Shri S. C. Dhawan, took us over the facts of the case and said that the applicant had appeared on a regular selection and in the absence of allegation of malafide, it had ought to be presumed that the assessments done were correct. He also point out that he had been called for viva voce test in view of his passing the written test. The learned counsel argued that Courts and Tribunals such as ours were prevented in terms of settled law from judicial assessments of the marks allotted. He resisted the prayer of the applicant's learned counsel to the fact that records of all/most participants should be seen, as he stated that this assessment could not be made by our Tribunal, and that this was not the function of the Tribunal. He reiterated that no infirmity in procedure has been pointed out nor any ground of malafide taken.

9. Learned counsel for the respondents took the support of two cases decided by the Hon'ble Supreme Court viz. M. Byranna vs. Director, Central Cattle Breeding Farm and another , [1998 SCC (L&S) 1590] and the case of Orrissa Small Industries Corpn. Ltd. & Anr. vs. Naransingha Charan Mohanty & Ors., [1999(2)SC 65]. Shri G. K. Masand, made the point that the above law did however provide for intervention by Tribunals in case of arbitrariness.



10. In the first instance, we find that the applicant indeed has qualified for the written test plus viva voce, obtaining a total of 21 plus 9, i.e., 30 marks out of 50. Admittedly, therefore, he became eligible for the viva voce test upon which he became eligible for assessment under the three heads viz. record of service, seniority and personality, leadership and others. We have seen the original record at pages 201 to 206 of the file produced, which contains statements of marks in respect of candidates. This is a statement signed by DME, DOM and APO, Solapur. We find here that the applicant has secured the marks, the total of which in the above three alongwith the other category comes to a figure, which is less than 60. Now once the figure of 60 marks is not reached, the rules clearly states that the applicant become ineligible for promotion. Therefore, in terms of the rules, he is not eligible.

11. Now we come to the point taken by the Learned counsel for the applicant to the effect that the marking suffers from arbitrariness. We will definately go into this aspect but after reminding ours, of the law settled not only in the two cases cited before us but in several other cases decided by Hon'ble the Supreme Court. In this regard, we remind ourselves that we will

A handwritten signature in black ink, appearing to read 'B. S. B.' followed by a diagonal line.

not per se, replace our judgement for that of the decision of the properly constituted committee which assessed the applicant alongwith a large number of other candidates. There is no illegality of procedure involved which could have been one of the grounds. We have gone through the Confidential Record, also with a view to assessing whether it is such that the assessment made whatever called grossly purverse or arbitrary. After reading the C.Rs, we are not satisfied that this is the case beyond this we will not go i.e., we will not try to miss our judgement whether the marks given are short by one or by two or should have been a few marks higher. This will not be our function. We have gone through the marks of the others to find out any gross or visible arbitrariness or purversity.

12. One aspect of the argument taken on behalf of applicant is that the applicant had secured 60% of marks in the written examination while others who had not secured such marks had met the grade. Whereas this cannot be a argument in terms of the rule, we did examine over marks of most of other candidates and will only note here that no arbitrariness is seen.

13. In view of the above discussion, we do not see any ground for interferring in the matter. Therefore, the OA fails and is hereby dismissed with no order as to costs.

J. K. KAUSHIK
(J. K. KAUSHIK)

MEMBER (J)

B. N. BAHADUR
(B. N. BAHADUR)

MEMBER (A)