

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Copy. 27/99 in
ORIGINAL APPLICATION NO: 517/98

the 4th day of FEBRUARY 2000

CORAM: Hon'ble Shri B.N.Bahadur, Member(A)

Hon'ble Shri S.L.Jain, Member (J)

Sanjay Kirtikar and 29 others

...Applicant.

By Advocate Shri D.V.Gangal.

v/s

Shri Shankaran
General Manager,
Central Railway
Mumbai and another.

...Respondents

By Advocate Shri V.D.Vadhavkar.

O R D E R

{Per Shri S.L.Jain,Member (J) }

This is an application under Rule 4 of Central Administrative Tribunal (Contempt of Courts) Rules 1986 to hold and declare that the respondents have committed contempt and they should be punished accordingly.

The applicants filed the OA 517/98 which was decided by the Mumbai Bench vide common order dated 28.1.1999, alongwith OA 830/98, a review against the same was filed by the respondents which was also rejected. The order passed in the said OA is as under:

1. The respondents should consider all the applicants in both the OAs for regularisation as per scheme of the Railways after checking their names in the live

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Register and taking into consideration their seniority and then suitability and eligibility for for the purpose of screening as per rules.

2. As and when the vacancies are to be filled up for Group 'D' posts in the Commercial Department, the names of the applicants after screening be considered and in case they are in surplus, for their department then their names may be considered alongwith others for other departments.
3. In the first instance , the respondents may first undertake the work of screening for Commercial Department and complete it within Four months from the date of receipt of copy of this order. Then the administration may take up the work of filling up vacancies as and when there are vacancies and they decide to fill them.
4. In the circumstances, there will be no orders as to costs.

3. The applicants alleged that the period of four months as provided in the order has expired in May 1999 but the respondents failed to take any positive step in the direction of screening the applicants. The respondents do not want to implement the order of this Tribunal willfully and intentionally. Hence this petition.

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4. In reply the respondents stated that action to complete the preliminaries required for screening has already been initiated, a rough number of casual labourers in Live Register of all departments has been arrived in, which is around 10,000. It was alleged in reply to the OA that due to increase in age of retirement from 58 to 60 years with effect from May 1998, normal wastage due to superannuation will commence from May 2000, direction have been given to Divisional Commercial Manager to conduct review/need to fill them up bearing in mind economy consideration etc., pursuant to this, the position that emerges is that large number of posts in commercial department have been found to be surplus to the requirement based on quantum of work. So far 194 posts in Group 'D' in commercial department have identified as surplus and sanction to surrender 48 posts have been issued vide letter No. BSL. P. 123 Cadre Comml. part II dated 18.11.1999. A notification was issued on 20.5.1999 to all concerned on Bhusawal Division calling the working particulars of such Casual labours in Proforma prescribed by a target date 28.6.1999 and casual labours of all departments submitted their particulars out of which 1316 are on Live Register amongst which 169 belong to commercial department, amongst which 26 casual labours are the applicants. After scrutiny of all aspects, such as name in Live Register/Supplimentary Live Register, educational qualification, age limit bearing in mind relaxation etc. only 6 applicants are eligible for consideration of screening. For consideration of their seniority, the number of working days have also been worked out.

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5. Casual labour is needed in Engineering Department. Accordingly, call letters were issued to all 26 applicants and out of which six applicants (in OA 517/98) are ~~scs~~reened which are as under:

1. Shri Sanjay Krishnarao Kirtikar
2. Shri Arun Babulal Pardseshi
3. Shri Deelip Vishram Chaudhary
4. Shri Nathoo Chindhu Chaudhary
5. Shri Arun Hsansraj Pagare
6. Shri Kailash Sitaram.

have been found eligible. As regards rest, advise has been sent to them in regard to their ineligibility.

6. The applicants filed the rejoinder affidavit and contended that the applicants are within the age limit on the date of their first appointment in the Railway as casual labourer and educationally qualified as required under the Rules then prevailing. The upper age limit is 33 years for General category, 36 years for OBC and 38 years for SC/ST as per letter of Railway Board dated 21.8.98, on the date of appointment for Group 'D' post educational qualification was 'able to read and write in vernacular' which the applicant possessed. They were within the age limit at the time of their termination of service in 1991. Their case for absorption was to be considered in the year 1997. Hence, the case of the applicants is prior to 4.12.1998, the result is that the instructions of Railway Board dated 4.12.1998 relating to 8th standard pass are not applicable. Only six

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applicants were called for screening and the remaining applicants were even not called for screening. The decision is taken administratively and not by screening committee, hence illegal. The instruction with regard to screening and empanelment are contained in Railway Boards letter dated 20.1.1989. The large number of casual labourers in MRCL have been appointed in the Railway Administration without any upper age limit and educational qualification. The fact of ineligibility is not mentioned in reply to the OA, hence such plea cannot be raised at this stage. The figure of 10,000 casual labourers waiting for absorption is false one. There is no excess man power in Commercial Department. Letter dated 18.11.1999 is deliberately prepared to sabotage the order of the Tribunal. Several juniors and unqualified candidates have been absorbed. Hence prayed for dismissal of the objection of the respondents.

7. On the commencement of the arguments the learned counsel for the respondents stated that age limit as per Railway Board circular is relaxed upto 40 years, 43 years and 45 years in case of general candidates, OBC candidates and SC/ST candidates respectively.

8. We have perused copy of letter dated 19.11.1999 rejecting the case of Amir Shah as over age. Shri Pramod Rambhav Bendre's case has been rejected as less educated and over age. We have carefully considered the Screening Committee's valuation and we

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are of the considered opinion that Amir Shah is more than 40 years of age as his date of birth is 1.6.1955. Shri Pramod Rambhau's date of birth is 14.11.1959 and VI standard havae been rightly rejected in screening.

9. The learned counsel for the applicant argued that there was no screening by the Screening Committee but only an administrative decision has been taken. We are not inclined to agree with the submission of the learned counsel for the applicant for the reason that the Committee was nominated the officials in view of the proposal submitted on 21.9.1999, 28.10.1999 and the Committee has screened all the applicants regarding their eligibility and those who were not found eligible were not called for further screening. In our considered view we do not find any fault, error or any illegality in constitution of the Committee and consideration of the applicants in screening.

10. The learned counsel for the applicant argued that when the applicants were recruited the educational qualification was "able to read and write in vernacular". By subsequent letter dated 4.12.1998 a qualification of VIIth standard is prescribed. Therefor the applicants cannot be screened in view of the subsequent qualification prescribed, as the applicants were possesing the requisite qualification when they were recruited which is " able to read and write in vernacular". He further contended .. that the said point of eligibility regarding exucational qualification was not raised by the respondents in

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the OA, therefore they are de-barred from taking the objection in the C.P. We have carefully perused the order of the Tribunal passed in the OAs and we are of the considered opinion that this was not agitated by any of the parties, the claim to be eligible in view of educational qualification or in-eligible in respect of the same. This is the only reason that the direction in the order are to be effect that taking into consideration their seniority and then suitability and eligibility for the purpose of screening is passed. Had this point been agitated in the earlier proceedings i.e. during the course of the dsecision of the OA a finding must have been recorded that particular applicant is possessing with the educational qualification required for and what is the educational qualification required for. The applicant's contention that educational qualification laid down in view of the order dated 4.12.1998 cannot be pressed for screening. We are of the considered opinion that the said opinion cannot be ^{adjud} agitated in the C.P. If the applicant have any grievance in this respect they are free to agitate the same inaccordance with law.

11. The learned counsel for the applicant has alleged that there is no excess man power in commercial department. We are not inclined to accept the said submission in view of the subsequent pleadings by the respondents.

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12. The applicants allegation that several juniors and non-qualified persons have been absorbed is a vague allegation without any foundation.

13. The contention of the learned counsel for the applicant that letter dated 18.11.1999 is deliberately prepared to sabotage the order of the Tribunal. If the applicant feels so the matter can not be decided in Contempt Petition and he is at liberty to agitate the matter in accordance with law.

14. The number of casual labourers waiting for absorption is not material for decision of the present contempt Petition. If the applicant feels that the respondents told lies they are at liberty to take recourse in accordance with law.

15. As only six applicants were called for screening and remaining applicants were not called for screening we do not find any substance in arriving to the said decision for the reason that they are first screened regarding eligibility and then not called for interview etc.

16. The date of termination of service of the applicants cannot be the criteria for coming to a conclusion that on the said date they were within the age limit. As stated above the age limit is more than what the applicant contended and keeping in view the said age limit eligibility of the applicants is considered.

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17. If the applicants are aggrieved by the decision of the respondents in respect of following the criteria for educational qualification in view of the order dated 4.12.1998, false statement of the respondents and sabotage of the order of the Tribunal in view of the letter dated 18.11.1999 they are at liberty to agitate the matter in accordance with law. On the said counts no wilfull contempt is made out.

18. C.P. 24/95 in OA 254/94 in view of the case of J.S.POarihar V/s Ganpat Duggar and others and V.Kanakarajan V/s General Manager S.E. Railway reported in 1996 SCC (L&S) 1422, JT 1996 (7) SC 517 respectively in which one of us (S.L.Jain) was a party to the order, following the said Apex Court authorities similar view was taken by this Bench. We are of the considered opinion that no willful Contempt has been made out. Hence the ¹⁶ applications are dismissed. Notice issued to the respondents are discharged. No order as to costs.

J.S.Jain
(S.L.Jain)
Member(J)

B.N.Bahadur
(B.N.Bahadur)
Member(A)