

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

O.A. NO. 864/92

Date of decision: 22.9.94

JASWANT SHARMA & ORS

: Applicants.

VERSUS

UNION OF INDIA & ORS

: Respondents.

Mr. J.M. Kaushik

: Counsel for the applicants.

Mr. Manish Bhandari

: Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Ms. Usha Sen, Administrative Member

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

Applications were invited vide Annexure A-2, dated 8/12.2.1989 for the posts of Electrical Fitter from the serving employees by way of direct recruitment. This was a limited direct recruitment. Initially, the respondents published the merit list vide Annexure A-3, dated 25.5.89 and declared 25 persons as qualified in the written test as per merit obtained and shown against each. However, this list was modified subsequently vide Annexure A4 dated 27.6.89 and 34 persons have been declared as qualified in order of merit. It will not be out of place here to mention specifically the case of Manu Kumar S. who has been shown in Annexure A4 as member of the General community, whereas in Annexure A-1, he has been shown as a member of the S.C.

2. Applicants have also filed Annexure A-10 to show that while giving him the posting he has again been shown as member of the General community. We asked the respondents to produce the record and the respondents' counsel looked into the file and submitted that in the application, Manu Kumar S. has not been shown as a member of the S.C. but he has been shown as a member of the general community. Mr. Manish Bhandari, learned counsel for the respondents, submits that it may be because of the mistake committed by the respondents'

officer that in Annexure A-1, Manu Kumar S. has been shown as member of S.C., i.e. in the panel. Mr. Manish Bhandari pointed out that Manu Kumar S. secured 43% marks. Mr. Kaushik, appearing on behalf of the applicants, after going through the marks sheet pointed ^{out} that Shashi Kumar Rao has secured 49% marks and Bhanu Prakash Gautam secured 45% marks. He has also pointed out that vide Annexure A-3 by which the results ^{were} declared by the respondents, both of them were posted at Abu Road at the relevant time and both of them appeared in the viva test and they stand on higher footing in the merit than Manu Kumar S. Mr. Manish Bhandari pointed ^{out} that specific pleadings have not been given about the marking and for this reason, he is not in a position to say why the name of Bhanu Prakash Gautam has been excluded. However, he said that Shashi Kumar Rao was transferred ^{to} in Bombay Division, as such, the name of Shashi Kumar Rao has been excluded. We will not like to observe any thing at this stage except the fact that once a selected person on merit is transferred, the respondents have no right to delete his name unless he makes a submission in writing or orally that he does not want to accept the post on which he has been selected. It is not the business of the respondents to delete the name of the ~~applicant~~ securing higher marks. Thus, test checking has shown that preparation of the panel is full of mistakes. The persons securing higher marks are not getting place in the panel and a person who is not a member of the S.C. has been placed in the panel showing for the purpose of inclusion in the panel as a member of the S.C. This itself is sufficient for quashing the panel, Annexure A-1, dated 18.8.89. It will not be out of place here to mention that the persons whose names find place in the panel including Manu Kumar S. are parties before us. Further, this Tribunal considering the prima facie case of the

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applicants, passed the order dated 21.9.89 that selections to Electrical Fitter Grade III as per panel notified on 18.8.89 (Annexure A-1) and any promotions based thereon shall be subject to the outcome of this application and the persons included in the panel shall be specifically informed of this fact. Mr. Bhandari submits that Bhanu Prakash Gautam and Shaishi Kumar Rao are ^{not} the parties in this litigation. It is true that they are not the parties but to find out the correctness of the panel prepared, the cases of the persons can be looked into. This Tribunal is not going to pass an adverse order against them and their inclusion as a party is not necessary. They ~~have~~ will not be punished if we set aside the panel. They are likely to be benefitted on account of the passing of an order, so the objection of Mr. Bhandari is over-ruled. Shri Bhandari has taken the objection that Bhanu Prakash Gautam filed the O.A. and challenged this very examination and the same has been rejected. Though there is nothing on record to show that position, however, it was submitted by Mr. Kaushik that the O.A. was rejected not on merit but on the ground of non-joinder of the parties and the rejection of the application does not come in the way and the doctrine of Res Judicata does not apply. Mr. Kaushik submits that Mr. Bhandari had not impleaded the selected persons as a party, as such, it was rejected. Its rejection is not on merit but rejection on non-joinder of party and Section 11 of the CPC or the Doctrine of Res Judicata does not apply in the facts and circumstances of the case. Mr. Bhandari submits that the applicant cannot make any grievance as he has failed. It is not a question of failure or success. It is a question of selection and a strange system has been adopted by the respondents in this process of selection. This is a case of direct recruitment, limited direct recruitment of the employees who are already in employment. It is not a case of

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promotion. However, from the perusal of the marks-sheets, it is clear that 100 marks were provided for Viva and 100 marks for the written test. There is no nexus for providing 100 marks for the Viva for the post of a Electrical Fitter. Electrical Fitter needs a practical training. He has little to do with a Viva^{and} is not coming directly in contact with the public at large. This is a technical job. This provision was not notified in any way to the public or even to the persons who appeared in the examination. In Annexure A-2, the notification issued, we find that there is no reference that 100 marks will be provided for Viva. Mr. Bhandari could not point out any circular or any rule by which the respondents have provided 100 marks for Viva in the selection test for the post of Electrical Fitter. Mr. Bhandari has taken an objection that this ground was not raised. It is true that in specific words this was not raised but from where the applicants will know what is going on in the department. It was not made known to the public that there will be 100 marks for Viva and 100 marks for the written test. The result sheet is not available to the public and the applicants cannot know how the marks have been given. This fact has come to the notice while seeing the records. It is for the respondents to explain why 100 marks have been provided for Viva and 100marks for the written test. Is it to favour to someone by giving higher marks in Viva who is lagging behind in the written test? There must be nexus in the system of marking. The post of Electrical Fitter is of technical nature and Viva is having less importance for the technical expertise. We are not taking the matter only on this point. We are considering the cumulative acts of the respondents which are as under: Admittedly, Manu Kumar S. is not a person of a.C.. In his application, he has not declared that he is a

member of the S.C. However, in the panel prepared, his name finds place in the list of the S.C. persons. However, again, at the time of giving posting order, he has been reverted back to his original caste, i.e. a general caste. So, for placing his name in the panel, he was transferred to the SC from the general caste and after getting success in appointment by becoming a person of SC, he has again been reverted back to his original position.

3. It was pointed out earlier that the persons who have secured 49% and 45% marks by way of sample survey of the test could not get the appointment and the person like Manu Kumar S. who has got only 43% marks gets the appointment. This fact has been proved from the record which was made available to the court that Shashi Kumar Rao secured 49% marks and Bhanu Prakash Gautam secured 45% marks. The discrepancy of giving an appointment to the person who is getting lower percentage of marks and not giving the appointments to the persons who are getting higher percentage of marks is on the face of it sufficient to prove that there was some rethinking in the department and for this very reason, the systematic panel has not been prepared. It may be because of favouring someone at the cost of others.

4. Mr. Manish Bhandari admits this position that in Annexure A-3, names of Shashi Kumar Rao and Bhanu Prakash Gautam have been shown and their place of station has also been shown as Abu Road. For Bhanu Kumar Gautam, no explanation is forthcoming why he was not given appointment when he has secured 45% marks and how the person like Manu Kumar S. has been given appointment who has secured 43% marks and why the mistake of treating for some time, only for a period of declaration of a panel, Manu Kumar S. has been shown as a member of the SC.

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5. Thus, discrimination is there. The cumulative facts that the result was declared twice, there is discrimination in the matter of Shashi Kumar Rao and Bhanu Prakash Gautam and there is a favour to Manu Kumar S.; the panel dated 18.6.89 (Annexure A-1) is also not correct and the person of general category is shown as a member of the SC, lead us to believe ^{and} to take the view that there was some connivance in the matter of the preparation of the panel and the declaration of the result and this connivance gets the further support from the fact that unusual system has been adopted by the railway authorities of providing 100% marks for the written test and 100% marks for Viva for the post of Electrical Fitter. This fact has not been notified in the notification that there will be 100% marks for Viva and this fact was kept very confidential by the authorities because in a written test, discretion of higher marks cannot be exercised in an unusual way but in Viva, there is nothing on record to show the favour or disfavour. ~~However, holding viva-voce examination that five marks have relaxed and predominantly in Rule 155 of the R.R.C. No mode of selection test has been proscribed.~~ However, during the course of arguments, Mr. Manish Bhandari pointed out that the notification, Annexure A-6 which by implication prohibited holding of the selection test has been modified vide circular no. 78/88/circular no. E(R&T)890/25.Vc.III dated 8/25.4.88. In this circular, reference has been given of the letter of the Railway Board dated 24.1.79 and directions have been given as under:-

"3. As regards filling up of vacancies of Skilled Artisans against 25% quota meant for serving semi-skilled and unskilled staff, it is clarified that merit alone will be the criteria and no seniority marks should be added as stated in Railway Board's letter no. E(NG)I-33/PM-1/65(PNM-NEIR) dated 5.2.84 circulated under this office letter no. EP-1005/2 dated 22.12.84 (P.S. No. 319/84). Since this is similar to an open market recruitment candidates to the extent of 3½ times the numbers of vacancies notified may be called for viva-voce in the order of merit in the written examination subject to a floor level of 30% marks for general candidates and 20% marks for SC/ST candidates.

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4. As regards recruitment (against item (ii) above) of Skilled Artisans against 25% Direct recruitment quota from open market, it is clarified that instead of inviting applications through advertisement, the nearby employment exchanges may be approached to sponsor the candidates. Wards of Railway employees can apply directly. In this effect the procedure laid down in para 110 of sub-section II of Chapter I of IREM may be followed. While submitting the requirement to the employment exchanges, tradewise requirement may be submitted to them to enable to sponsor the candidates accordingly."

However, this letter is also silent about the marking system which is to be adopted for the purpose of Viva and the written test and the discretion has been left in the hands of the persons who are conducting the examination and no guidelines have been issued by the respondents about the marking system which is to be adopted for conducting the examination and fixing the marks in the Viva and written test. Thus, this circular gives arbitrary powers to the selecting authority to fix the marks according to their whims and this may lead to ~~the indiscriminating treatment and~~ ~~discrimination in~~ favour of one ~~as against another~~ ^{heavies} For all these, we are of the view that the panel, Annexure A-1, should be quashed. The respondents have given the appointments subject to the decision of this Tribunal; naturally, they will not be operative on account of the Judgment of this Tribunal.

6. Looking to ~~the~~ hardship, we direct that the appointments so made may be continued for a period of three months only from the date of the receipt of the copy of this order. The respondents will be at liberty to give the provisional appointments afresh on the basis of the merit list/ marks secured till the fresh selections are made according to the rules and the persons who are eligible are allowed to appear. ~~Thus, The~~ The provisional appointments so given shall not be continued beyond one year. However, the respondents will be at liberty to

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prepare the fresh panel according to the rules and in case the panel is prepared earlier, then ~~for one year~~ that panel can be enforced.

7. On other points though argued by Mr. Kaushik, we do not find force. The O.A. is disposed of accordingly, with no order as to costs.

Usha Sen
(USHA SEN)
Administrative Member

G.L. Mehta
(G.L. MEHTA)
Vice-Chairman