

Date of Order : 12.5.2000

OA 222/97

Vishnu Prakash s/o Shri Bhag Chand Kumavat Age 18 years
r/o Kishangarh Renwal District Jaipur (Rajasthan).

.... Applicant

Versus

1. The General Manager, Western Railway,
Mumbai.
2. The Chairman, Western Railway Recruitment
Board, Mumbai.
3. The Divisional Commercial Superintendent
(Establishment), Western Railway, Mumbai
Central, Mumbai.

.... Respondents

Mr. A.L. Verma, Counsel for the applicant.
Mr. U.D. Sharma, Counsel for the respondents.

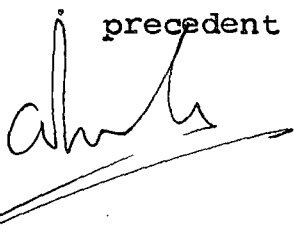
CORAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial)
Hon'ble Mr. N.P. Nawani, Member (Administrative)

ORDER

PER HON'BLE MR. N.P. NAWANI, MEMBER (ADMINISTRATIVE)

The applicant, Shri Vishnu Prakash, prays that the respondents be directed to allow him to join the training for the Vocational Commercial Recruitment Course/Assistant Commercial Clerk (for short, VCRC/ACC) at Udaipur in the Training School with his batch or in the alternative with other batch or individually. He has also prayed that the respondents be directed to refrain from demanding (Annexure A-3) SC/ST certificate for him as condition precedent for training.

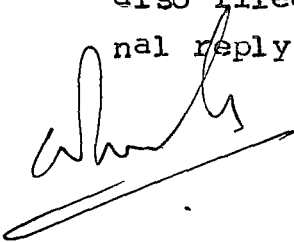


...2/-

2. The case of the applicant is that in response to the advertisement dated 23.2.1994, the applicant had applied for the said training, had qualified in the written examination as a General candidate, was called for interview vide Bombay Recruitment Board's (for short, BRB) letter dated 31.3.1994 (Annexure A-1) and was selected as General candidate. He completed the said Training course during the session 1994-95 at Bombay at his own expense and also completed the vocational course of practical training from 9.4.95 to 17.4.95 vide letter dated 7.3.95 (Annexure A-2). Thereafter he was informed that he has been selected for 12 days' VCRC/ACC to commence from 6.1.97 at Railway Regional Training School, Udaipur (for short, RRTS) and asked to complete formalities on or before 26.12.96. However, when he reached there, he was surprised to hear that he should submit a certificate of being a member of SC/ST, as according to them he was selected as a member of the reserved category. The applicant told them that he has neither applied as a candidate of reserved category nor has he claimed the benefit of SC/ST as he never belonged to such category.

The contention of the applicant is essentially that the respondents have no legal right to deny admission to the VCRC/ACC training ^{and they} are now estopped from refusing to give training to the applicant. It is also urged that as per order dated 18.12.96 (Annexure A-3), the applicant was to be on probation during such training and receive stipend at the rate of Rs. 950/975, which is the scale of Class III (clerical staff) employees. It is alleged that the respondents in order to cover and hide the malafide acts are asking him to submit SC/ST certificate. The applicant, on being refused to join training, submitted a representation but nothing has been done and hence the OA against the arbitrary and illegal actions of the respondents.

3. Notice of the OA was sent to respondents who have filed a reply opposing the relief sought by the applicant, who has also filed a rejoinder. The respondents have filed an additional reply. These have been taken on record and perused by us.



4. The respondents have contended that the applicant has indicated his status as belonging to SC/ST community in the application form (Annexure R-1) filled in by him for selection for the said post before the BRB, Bombay in Col. 10 of the form, which coloumn was to be filled only by SC/ST candidates. The applicant also availed of the benefit of journey pass from Renwal to Bombay and back as also from Renwal to Ajmer and back for attending the interview. On the basis of above declaration, he was treated as a ST candidate. Further, after having been selected for the said vocational course against the post reserved for ST category. It is also stated that the result of successful candidate in the written examination was declared on 9.3.94 (Annexure R-3) wherein the roll No. of the applicant 040115 has been mentioned in the list of ST candidates. Further that the attendance sheet of 5.5.1994, the name of the applicant is mentioned at sl. no. 56 and his status has been indicated as ST and the applicant has appended his signature against the said entry. It has also been stated by the respondents that at the time of his interview on 5.5.1994, the applicant was asked to produce the caste certificate but since he was not in a position to do so at that time, he had given an undertaking (Annexure R-5) that he would produce within eight days but he has not done that. In the final result also, the name of the applicant figures under the waiting list at sl. no. 39 against ST category. The applicant declared himself as OBC by tick-marking against that when he filled up the form for admission in the Vocational Course at the college in Bombay (Annexure A-7). Finally in the list of 37 candidates allocated to Bombay Central Division for appointment as Commercial Clerks, his name figured at sl. 22 and his status shown as belonging to ST community (Annexure A-8). It is, therefore, contended by the respondents that right from the date of filling up the application form, the applicant is being treated as belonging to ST community and since he failed to produced the caste certificate, the appointment was rightly denied to him.

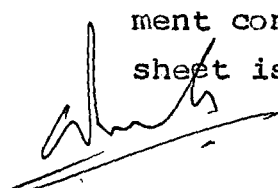
5. In his rejoinder, the applicant has clarified that in the form at Annexure R-2 (sic R-1), Col. 3 related to whether the candidate belongs to SC/ST category, SC/ST was not filled by him, but instead, he has crossed this column which obviously means that he does not belong to SC/ST. The respondents are wrongly relying on Col.10 and it does not lie in the mouth of the respondents to describe him as SC/ST candidate

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The applicant asserts that his name begins (sic ends) with 'KUMAVAT' and Kumavats are neither SC nor ST. Further if the Application Form was defective, it ought to have been rejected at that stage itself. He has paid full fees for study for two years amounting to approximately Rs. 9000/- as a General Category Candidate. After all this, the respondents are estopped for demanding a Caste Certificate from him, when he has stated in no uncertain terms that he does not belong to SC/ST category.

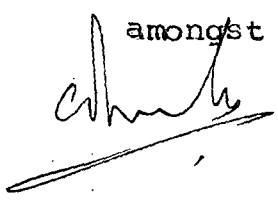
6. We have carefully considered rival contentions. We feel that the most important fact to be determined in this case is what has been declared by the applicant in the Application Form (Annexure R-1) with respect to the question whether he belongs to SC/ST. It appears to us that the entire case of the respondents is built on the assertion that the applicant has declared him as belonging to Reserved category against column no. 10 of the Application Form and thereafter in certain other documents as mentioned by the respondents in their reply and additional reply. From the photocopy of the Application Form of the applicant at Annexure R-1, it is difficult to verify the contention of the applicant that he had put a cross mark against relevant question no. 3 of the Form which actually asks the candidates to declare whether he belongs to SC/ST community. There does appear a faint cross mark against the space meant for Scheduled Caste. We had to, therefore, call for the original records. The respondents did give us a sealed packet at the time of final hearing on 4.5.2000 supposed to be containing the original records, including the original Application Form. We were, however, surprised to find after opening the said packet that it contained only the summary sheets/Merit list prepared by the Railway Service Commission, Bombay in connection with the Examination Form VCRC (Vocational Commercial Recruitment Course). In the said summary sheet/merit list, the name of the applicant, Vishnu Prakash Kumavat appears against Roll no. 56/040115 and underneath there is a hand-written remark, inter-alia, mentioning that "Caste certificate not attached with Application." It has also been noticed that under column heading 'community', since there is a ditto against the applicant and the entry in respect of candidate just above him is ST (Meena), it is clear that respondents have accordingly treated him as belonging to ST- 'Meena' community. This particular document containing summary sheet/merit list for the examination sheet is of no help to the respondents. As already mentioned



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earlier, during the arguments it has come out clearly that the Original document which was required to be seen by us was the Application Form of the applicant (Annexure R-1) confirming whether the applicant had put a cross mark against item no. 3 which was the substantive question relating to determination of SC/ST. Further by the orders of this Tribunal dated 10.12.99 and 03.02.2000, respondents were asked to keep ready the records concerning the case (emphasis added). In spite of this, if the respondents have failed to show us the original copy of the Application Form filled in by the applicant (Annexure R-1), we are left with no option to draw an adverse inference against the respondents. The conduct of the respondents in not clarifying the matter about the caste of the applicant, raised in the remark in the Summary Sheet/Merit list, to the effect that "Caste certificate not attached with Application" also goes against them. Coupled with the fact that we do observe a faint cross mark in the photocopy (Annexure R-1) against item no. 3, which was the most relevant item regarding declaration by the applicant with respect to the question whether he belonged to SC/ST caste, and failure of the respondents to produce the original copy of this document, we have to hold that the applicant has not declared himself as belonging to SC/ST community in his Application Form.

7. The conduct of the applicant can be questioned to the extent that against item no. 10 of the application Form (Annexure R-1), which was supposed to be filled only by the candidates belonging to SC/ST communities, he made the mistake of writing the name of station 'Renwal'. He did of course put a cross mark in the vacant space provided in the note under item no. 10, which meant to state that item no. 10 was to be filled in by the candidates belonging to SC/ST communities. The fact of having put a cross mark in this space goes to show that he perhaps wrote the name of the station 'Renwal' under the impression that against the earlier part of Item no. 10, he was to write the name of the station and in the lower part he was to indicate if he belonged to SC/ST and that is why he wrote the name of the station and put a cross mark respectively. This note under Item no. 10 started with half bracket and ended with 'X' mark, which might have also ~~which also~~ confused the applicant. It was all the more necessary for the respondents to get the matter regarding Caste of the applicant sorted out immediately after the result of the candidate was included amongst ST candidates vide letter dated 6.2.94 (Annexure R-3



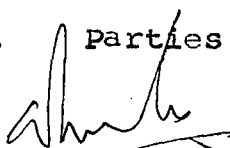
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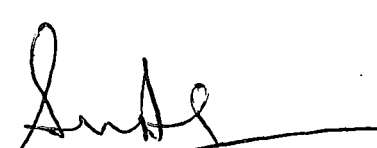
Similarly the name of the applicant has also figured against the ST category in the undated list of names of candidates recommended for vocational course at sl. no. 39 and at sl. no. 22 of document dated 16.12.96 (Annexure R-8). It is true that the applicant tick-marked against OBC category in the admission form, he filled in for vocational training in the K.M.S. Dr. Shirodkar Vocational Junior College, Bombay (Annexure R-7) but this cannot lead ^{to} an inference that candidate has declared himself to be belonging to ST community. In his defence, the applicant has stated that he kept on informing the authorities in clear terms that he did not belongs to SC/ST community. The name of the applicant shown against the ST category in the afore-mentioned document, cannot, therefore, be considered as a factum going against the applicant. The only thing which goes against the applicant is having availed of the railway pass on the basis of his filling of the column no. 10 in the Application Form. It is for the authorities to consider the question of asking the applicant to refund the concerned amount, keeping in view the fact that the applicant might have availed it under the impression that the passes are being ^{given} to all candidates.

8. In view of the above discussions, we hold that applicant had not declared that he belongs to SC/ST community. The action of the respondents in insisting that the applicant to produce a ST certificate before he is allowed to join the training for the post of Vocational Commercial Recruitment Court/Assistant Commercial Clerk in their training Centre at Udaipur and before he is appointed is, therefore, not sustainable in law.

9. The OA accordingly succeeds and the respondents are directed to allow the applicant to join the next such training course and appoint him in the post of Assistant Commercial Clerk after his successful completion of such training subject to satisfaction of other conditions as may be prescribed under rules. Since the applicant appears to have declared himself to be belonging to the OBC category as per Annexure A-7, necessary certificate may be obtained from the applicant before commencement of the training and he be considered against an OBC vacancy in the matter of appointment. The documents containing the summary list/merit list may be returned to the learned counsel for the respondents.

10. Parties to bear their own costs.


(N.P. NAWANI)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)