CENTRAL ADMINISTRATIVE TRIBUNAL,

JAIPUR BENCH

Orders pronounced on : 29.7.2016
(Orders reserved on: 25.07.2016)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &**
HON'BLE MRS. MEENAKSHI HOOJA, MEMBER (A)

(I) O.A.NO.712/2012

Devi Lal S/o Shri Shera Ram, aged about 36 years, working as a Sr. P.P. Bewar Rilway Station, selected as a Ticket Collector, Ajmer Division, N.W.R R/o Railway Quarter No.T-61D, Beawar.

... Applicant

Versus

1. Union of India through General Manager, North Western Railway, Jagatpura, Jaipur.
2. Divisional Railway Manager, North Western Railway, Ajmer.

... Respondents

Present: Mr. C.B. Sharma, Advocate, for the applicant.
Mr. Anupam Agarwal, Advocate, proxy counsel for Mr. P.K. Sharma, Advocate for Respondents.

(II) O.A.NO.734/2012

Devi Lal son of Shri Shera Ram, aged about 36 years, resident of Quarter No.T-61-D, Railway Colony, Beawar and presently working as Sr. P.P. Bewar Railway Station, Beawar under Station Superintendent, North Western Railway, Ajmer Division, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, North Western Railway, Jagatpura, Jaipur.
2. Divisional Railway Manager, North Western Railway, Ajmer.
3. Dilip Kumar Son of Shri Ladu Ram holding the post of P.P. C/o Station Superintendent, Railway Station, Ajmer and resident of Railway Quarter No. T/8/A, Adarsh Nagar, Ajmer.

... Respondents

Present: Mr. C.B. Sharma, Advocate, for the applicant.
Mr. Anupam Agarwal, Advocate, proxy counsel for Mr. P.K. Sharma, Advocate for Respondents No.1&2.
None for Respondent No.3.

O R D E R
HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)

1. The facts and the questions of law raised by the applicant in both these cases are inter-connected and as such these are being disposed of by a common order.

2. The facts of the case which lead to filing of O.A. No. 712/2012, are that the respondents notified a selection for the post of rankers quota vide letter dated 3.6.2011 in which 21 posts were notified which consisted of 16 posts for general candidates, 3 for SC and 2 for ST category candidates. The applicant submitted his application against this notice and written examination was held on 3.2.2012 and result was declared on 7.3.2012 in which 33 candidates were found suitable (A-4). The applicant claims that the panel was prepared on 8.5.2012 in which name of the applicant was included at Sr. No. 21.

3. The applicant claims that the respondents have taken action in accordance with Railway Board directives issued vide RBE No. 113/09 dated 19.6.2009 as per which panel is to be formed strictly as per merit and there will be no scope for erstwhile provision of placement of candidates who secured 80% or more classified as outstanding on the top of the order. These instructions are in accordance with decision of Hon'ble Apex Court in **M. Ramajairam Vs. General Manager, South Central Railway & Others**, 1996 (1)SC SLJ 536 which has been incorporated in notification dated

3.6.2011. He claims that he has been selected as a general candidate, though he belongs to SC category. Out of the panel, the respondents deputed 17 employees for training at Zonal Training Institute at Udaipur from 9.7.2012 to 14.8.2012 vide letter dated 5.7.2012 in which name of the applicant was at Sr. No. 17. The applicant completed training as per letter dated 14.8.2012 (A-6). The respondent no. 2 awarded practical training to 26 employees vide letter dated 16.8.2012 in which name of applicant is not included and he was posted back to his original post vide letter dated 16.8.2012 (A-8). 26 selected candidates have been issued posting orders on 29.8.2012 (A-9). The applicant apprehending that his name may not be deleted from the panel approached this Tribunal with O.A.No. 712/2012 claiming that entire panel for the post of Ticket Collector notified vide letter dated 8.5.2012 (A-1) be corrected by showing the name of the applicant against reserved vacancies as S.C. category and that the respondents may further be directed to issue posting order in his favour and that respondents should adhere to Railway Board Circular No. 126/2010 (A-11).

4. However, the respondents issued order dated 12.10.2012 (A-1) indicating that the name of the applicant was placed in provisional panel who was junior to one Sh. Dalip Kumar S/o Sh. Ladu Ram and as such name of applicant was deleted from Sr. No. 21 and in his place name of Sh. Dalip Kumar

was included thereby excluding the applicant from the panel and vide order dated 18.10.2012 Sh. Dalip Kumar was sent for practical training.

5. Both the above orders have been challenged by the applicant in O.A.No. 734/2012 pleading that in the eligibility list dated 9.1.2012 name of applicant was at Sr. No. 14 whereas name of respondent no.3 was at Sr. No. 15 and in the result declared on 7.3.2012, applicant was declared as pass. In the select list dated 2.5.2012 (A-7) name of applicant was at Sr. No. 21 whereas name of respondent no. 3 was not even included in that panel. The claim of the applicant is that his name could not be deleted by the respondents hence the 2nd O.A.

6. The respondents have opposed the O.A. by filing reply pleading that respondent No. 3 had filed an O.A.No. 433/2012 for inclusion of his name in the panel and also submitted a representation dated 27.7.2012 which was considered by the competent authority and on scrutiny it was fund that the said provisional panel dated 8.5.2012 deserved to be amended by including the name of Sh. Dalip Kumar at Sr. No. 21 by deleting the name of the applicant. Thus, inclusion of name of applicant was a mistake which was corrected by issuance of impugned orders. The panel was made subject to directions / orders to be issued by Railway Board / Courts as such respondents were entitled to correct the panel.

7. In so far as plea of placement of name of the applicant against the reserved category is concerned, it is submitted that as per RBE No. 103/2003, those reserved category employees who had secured more marks than that of the applicant after availing the relaxation had been adjusted against the reserved vacancies. It is only after filling up of the entire quota of reserved posts that the applicant was considered against the general vacancy. Since applicant as well as respondent no.3 were having equal marks, therefore, respondent no.3 being older in age, was included by placing it at Sr. No. 21 on provisional panel by excluding the name of the applicant.

8. We have heard learned counsel present for the parties and examined the material on the file.

9. A perusal of the pleadings would make it more than clear that in the selection in question, applicant and respondent no.3 both got 61 marks in aggregate so both were in merit and there was only 1 vacancy in open category and as such they resorted to Para 304 of IREM which provides that "when two or more candidates are declared to be of equal merit at one and the same examination / selection, their relative seniority is determined by date of birth, the older candidate being the senior". Apparently, respondent no.3 was older than the applicant in age and as such was included in the panel deleting the name of the applicant and one can safely say that inclusion of name of applicant was by way of an

administrative error only which has been corrected by the respondents upon representation filed by respondent no.3. He had also filed an Original Application in this Tribunal which was dismissed as infructuous as during pendency of the case the respondents had amended the panel in question by including the name of respondent no.3 in place of the applicant.

10. The plea of the applicant that he should have been adjusted against S.C. quota has been properly explained by the respondents stating that as per RBE No. 103/2003, reserved category employees, who had secured more marks than the applicant, after availing the relaxation, had been adjusted against the reserved slots and it is only after filling up of the quota meant for reserved posts that the applicant was considered against a general slot. That being the position, since applicant as well as respondent no.3, both were having equal marks, therefore, respondent no.3 being older in age was included in the panel and applicant had to make a way for respondent no.3. Thus, we do not find any fault with the action of the respondents in passing the impugned orders.

11. It is well settled principle of law that if an error has taken place, the Administration is well within its power an authority to correct such an error. In this connection, reference may be made to a decision of the Hon'ble Supreme Court in the

case of **Chandigarh Administration and others Vs. Naurang Singh and others** reported in (1997) 4 SCC 177. In paragraph-6 of the judgment, it was held that a mistake committed by the Administration cannot furnish a valid or legitimate ground for the Court or the Tribunal to direct the Administration to go on repeating that mistake. The Administration, no doubt could rectify that mistake. A similar view has also been expressed by a Full Bench of the Punjab & Haryana High Court in the case of **Sunder Lal and Others Vs. State of Punjab and Others** reported in AIR 1970 Punjab & Haryana 241. Therefore, the administration had the authority to rectify any mistake committed by it and we do not find any grounds made out to interfere with the impugned orders.

12. In so far as plea relating to violation of principles of natural justice is concerned, it may be useful to note here that in the facts of this case, that process may be of only useless formality only. What is known as 'useless formality theory' has received consideration of Hon'ble Apex Court in **M.C. Mehta v. Union of India**, [1999] 6 SCC 237 in which it was held that "Before we go into the final aspect of this contention, we would like to state that case relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that

the case of the applicant is not one of `real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed".

13. In view of the above discussion, the both the Original Applications fail and are dismissed leaving the parties to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(MRS. MEENAKSHI HOOJA)
MEMBER (A)

Place: Jaipur
Dated: 29.7.2016

HC*