

(2009) 04 MAD CK 0050

In the Madras High Court

Case No : Writ Petition No. 23362 of 2006

A. Durai

APPELLANT

Vs

The Registrar Central Administrative Tribunal, Director
General Department of Posts, Chief Postmaster General and
The Superintendent RMS "M" Division

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Citation : (2009) 04 MAD CK 0050

Hon'ble Judges : P.K. Misra, J;D. Hariparanthaman, J

Bench : Division Bench

Advocate : A. Durai, Party in Person, for the Appellant; A.S. Vijayaraghavan, for Respondents 2 to 4, for the Respondent

Judgement

D. Hariparanthaman, J.—The following are the admitted facts:

2. The petitioner was recruited as Sorting Assistant in the Postal Department in the year 1983. He also served in the Army Postal service in various

units situated in northern part of our country for about 12 years.

3. The fourth respondent issued a letter dated 22.04.1996 calling for application from the inservice eligible candidates for promotion to the cadre

of IPO/IRM. In the said letter, schedule of examination for promotion to the cadre of IPO/IRM was issued and as per the schedule, the

examinations were to take place from 07.08.1996 to 09.08.1996. The letter further states that the number of vacancies in IPO/IRM cadre would

be intimated later. The fourth respondent in the letter dated 30.05.1996 informed the vacancy position for both IPO and IRM cadres.

4. We are concerned with only IRM cadre that too in Scheduled Caste category. The vacancy position in IRM cadre as per the said letter is in

total seven posts (4 - for unreserved category, 2 for Scheduled Caste category and 1 for Scheduled Tribes category). That is, while the vacancies

were notified by the letter dated 30.05.1996, the process for filling up the vacancies was initiated in the letter dated 22.04.1996 itself.

5. The petitioner participated in those examinations. However, the examination was cancelled on the ground that there were serious irregularities

and malpractices. Again, the examination was conducted from 07.01.1998 to 09.01.1998 and the same was informed in the letter dated

01.10.1997 by the fourth respondent. The following relevant paragraph from the said letter is extracted:

The examination will be restricted only to those candidates who had been given hall permits as being eligible for the IPO/IRM Examination 1996

(held from 7-9 Aug'96) and for the already notified vacancies of IPO/IRMs for the year 1996.

6. The result of the examination was published and only one person from Scheduled Caste was successful and that too, he did not choose to join

the post. According to the petitioner, both the posts remain vacant even till date.

7. The petitioner secured the following marks:

Paper I - 41 %

Paper II - 47 %

Paper III - 10 %

Paper IV - 88 %

Paper V - 33 %

He was thus not selected.

8. The petitioner, therefore, made series of representations to review his case and sought relaxation in the marks as applicable to SC/ST

candidates obtained in the IRM examination. However, his request to review his case was rejected by the C.O. in letter No. REP/9-2/96 II dated

04.07.2000. Such rejection was communicated by the fourth respondent in his letter dated 05.07.2000 and it is stated that no review was

permissible after 22.07.1997. His further representation dated 24.11.2000 in this regard was also rejected based on the earlier rejection and the

same was communicated by the fourth respondent in his letter No. PF/AD dated 24.01.2001.

9. The petitioner filed Original Application before the Central Administrative Tribunal in O.A. No. 1230 of 2001. The prayer made in the said

Original Application reads as follows:

i) To quash the impugned order No. PF/AD dated 05.07.2000 and 24.01.2001 passed by the third respondent and

ii) To direct the respondents to review the case of the applicant as far as IRM Examination, 1996 is concerned and to give him the promotion to

Inspector of Railway Mail with retrospective effect from 1998 and to give him all consequential benefits and

iii) To pass such further or other orders as this Hon''ble Tribunal may deem fit and proper in the circumstances of the case with cost.

10. Before the Tribunal, the Department argued that based on the judgment of the Apex Court in Indra Sawhney etc. etc Vs. Union of India and

others, etc. etc., , the relaxation of marks granted to SC/ST candidates in the matter of promotion was withdrawn with effect from 22.07.1997. In

this regard, they relied on the letter No. 7-15/97-SPB, II dated 05.09.1997 from the Director General, Posts, New Delhi, which in turn is based

on the Office Memorandum No. 36012/23/96-Estt.(Res) dated 22.07.1997 of the Department of Personnel.

11. The case of the petitioner was that the said Office Memorandum dated 22.07.1997 of the Department of Personnel is not applicable to his

case, since the selection process started in April 1996 itself i.e. before issuance of the said Office Memorandum and the vacancies were notified on

30.05.1996 and the instructions that existed at that time only would govern the field.

12. The Tribunal agreed with the said submission of the petitioner and quashed the impugned orders dated 05.07.2000 and 24.01.2001 of the

third respondent by its order dated 01.07.2002 in O.A. No. 1230 of 2001. While quashing the said impugned orders, the Tribunal directed the

respondents to grant relaxation of marks as per the letter No. 7-15/94-SPB-II dated 20-26/09/1996 of the second respondent.

13. The respondents 2 to 4 filed Writ Petition in W.P. No. 6719 of 2003 before this Court against the order dated 01.07.2002 passed in O.A.

No. 1230 of 2001 by the Tribunal.

14. During the pendency of the writ petition, the third respondent passed an

order in letter No. REP/p-2/96/OA. No. 1230/96 dated 15.03.2005

stating that the petitioner is not eligible for promotion even as per the relaxation as contemplated in the Director General of Posts letter dated 20-

26/09/1996. The relevant portion of the said order is as follows:

The said notification was issued by way of clarification of notification dated 3.1.92 with respect to grant of grace marks. As per the O.M., the

grant of grace marks shall be not more than what a candidate actually secures in a particular paper should be allowed. The qualifying standard in

each paper is 33% and 38% in the aggregate marks fixed for the SC/ST candidates. Those SC/ST candidates who had secured less than 17

marks are not eligible for review and awarding grace marks. Even if full concession of 16 marks is awarded as envisaged in the above O.M., you

will get only 26 marks (10+16 marks) in Paper-III which is less than 33% (33 marks) prescribed for pass for SC/ST candidates in each paper. As

per the OM, the grace marks can be allowed is only 10 in Paper-III and after allowing the grace marks, you will be getting 20 marks in Paper-III

which is less than 33% prescribed.

Therefore the High Power Committee has come to the conclusion that Shri A.Durai, Sorting Assistant, RMS ""M"" division who has failed in Paper-

III even after the review has been carried out in terms DG's letter No. 7-14/95/SPB.II dated 20/26.9.96 is not eligible for promotion to the cadre

IRM examination for the year 1996 held from 7.1.98 to 9.1.98 in Tamil Nadu Circle.

15. In these circumstances, the petitioner has filed the present writ petition.

16. The respondents filed counter and enclosed a letter in No. 7-14/91-SPB II dated 03.01.1992 issued by the second respondent relating to

relaxation in granting of marks to SC/ST candidates. The relevant portion of the said letter is extracted here-under:

Some doubts have been raised in the matter of grant of grace marks under this scheme. It is therefore now clarified that after a review of the failed

SC/ST candidates, only such of those candidates should be allotted grace marks who require least number of such marks subject to the condition

that they are not considered unfit for promotion on the basis of over-all assessment of their service records. The matter is further clarified with the

help of the following illustration:

if there are 4 SC vacancies to be filled up and there are 10 failed SC candidates, 4 of the failed SC candidates who require the least number of

grace marks will be selected provided they are not otherwise considered unfit for promotion on the basis of their service records. If the grace

marks required to bring these 4 candidates up to the qualifying level are say, 2,4,6 & 8 respectively, then 8 grace marks will be given to each one

of the 4 candidates. Thereafter these 4 candidates will be arranged on the basis of their aggregate marks to determine their interse seniority in the

higher cadre to which they are to be promoted.

Thus, if there is any other candidate who may have a higher aggregate marks than all these 4 candidates but requires say 12 grace marks, he will

not be considered for award of the grace marks.

17. Heard both sides.

18. The petitioner appeared in person. The petitioner states that he officiated the concerned IRM cadre post from the year 2000 up to 2006.

According to him, after he filed the present writ petition, he was made to vacate the officiating post. He further argued that from 1996, the 2 posts

earmarked for Scheduled Caste candidates remain vacant. The petitioner heavily relies on the Office Memorandum dated 04.05.1981 of the

Department of Personnel and Training. The relevant Office Memorandum of the Department of Personnel and Training dated 04.05.1981

enclosed at page No. 1 of the typed set grants relaxation in the granting of marks to SC/ST candidates. He relies heavily on the following passage

from the said Memorandum:

In case of candidates considered not unfit for promotion, GRACE MARKS should be added to bring them upto the qualifying standards. There

will be no limit of grace marks. Grace marks in more than one paper will be permissible.

He further argued that the letter dated 03.01.1992 of the second respondent enclosed with the counter affidavit also supports his case. He argued

that the letter dated 03.01.1992 of the second respondent is not in supersession of the Office Memorandum dated 04.05.1981 of the Department

of Personnel and Training and the same is only in the nature of instructions clarifying the Office Memorandum dated 04.05.1981 of the Department

of Personnel and Training.

19. The petitioner argued that the respondents have accepted the finding of the Tribunal in O.A. No. 1230 of 2001 that the Office Memorandum dated 22.07.1997 of Department of Personnel and Training is not applicable and on the same reasoning the letter dated 20-26/09/1996 of the Department of Posts relating to relaxation in granting marks to SC/ST candidates is also not applicable, since this letter is subsequent to the initiation of selection of process in April 1996 in the letter dated 22.04.1996 calling for applications from the candidates and announcing the schedule of examination and also to the letter dated 30.05.1996 announcing the vacancy position in IPO/IRM cadre. For this proposition, he relies on the following decisions of the Apex Court in Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, and in P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others, . Hence, according to the petitioner, the letters/Office Memorandums that existed on that day would govern the situation. According to him if both the Office Memorandum dated 04.05.1981 of the Department of Personnel and Training and the letter dated 03.01.1992 of the Department of Posts are applied, he is entitled to grace marks as contemplated therein and he has to be selected to IRM post against Scheduled Caste vacancy.

20. The learned Counsel for the respondents 2 to 4 argued that the Office Memorandum dated 04.05.1981 of the Department of Personnel and Training referred to above was superseded by the letter dated 03.01.1992 of the Department of Posts that was enclosed along with the counter affidavit of the respondents 2 to 4 filed in this writ petition. He brings to my notice the relevant passage in paragraph No. 6 of the counter affidavit, which is as follows:

...the Department of Posts had superseded its earlier order issued in letter No: 6-2/81 SPB II dated 4.5.1981 vide its letter No: 7-14(9) SPB II dated 3.1.1992 wherein it has been stipulated that only such of those SC/ST failed candidates should be awarded grace marks who require least number of marks subject to the condition that they are not considered unfit for promotion. Hence his plea that orders which existed at the time of occurrence of vacancy should be considered also does not survive in view of the issuance of the orders of the Director General, Department of Posts vide letter No: 7-14(9) SPB II dated 3.1.1992 which stipulates grant of

least grace marks to the failed SC/ST candidates seeking review

and hence there is no merit in his prayer on this account and the writ petition deserves to be rejected.

21. We have perused the entire materials and more particularly the Office Memorandum dated 04.05.1981 of the Department of Personnel and

Training and the letter dated 03.01.1992 of the Director General of Posts. The relevant portion of both those proceedings were also extracted

above. There is no doubt that even if the letter dated 03.01.1992 is applied in granting grace marks for Scheduled Caste candidates, the petitioner

would be selected. In fact, when we read the letter dated 03.01.1992, the same refers to the Office Memorandum dated 04.05.1981 of the

Department of Personnel and Training and it was only issued in terms of the said Office Memorandum dated 04.05.1981 and not in supersession.

Even if the letter dated 03.01.1992 of the Director General of Posts is in supersession of the Office Memorandum dated 04.05.1981 of

Department of Personnel and Training as contended in paragraph No. 6 of the counter affidavit, the letter dated 03.01.1992 is in support of the

petitioner, unlike the letter dated 20-26.09.1996 of the Department of Posts. In view of the decisions of the Apex Court referred to above, the

letter dated 03.01.1992 of the Director General of Posts that was in operation at the relevant time would govern the situation and the letter dated

20-26.09.1996 of Director General of Posts could not be applied. Further, it is not in dispute that two Scheduled Caste vacancies remain vacant

from May 1996 and the petitioner officiated the post for about six years.

22. Taking into account all these facts, we are inclined to quash that portion of the order dated 01.07.2002 in O.A. No. 1230 of 2001 directing

the respondents to apply the letter dated 20-26.09.1996 of the Director General of Posts for granting grace marks to the petitioner as Scheduled

Caste candidate in the IRM 1996 examinations and the respondents are directed to consider the case of the petitioner in the light of the letter dated

03.01.1992 of the Director General of Posts and pass orders within a period of four weeks from the date of receipt of a copy of this order.

23. With the above observations, the writ petition is disposed of. No costs.