

(2004) 03 MAD CK 0077
In the Madras High Court
Case No : Writ Petition No. 4078 of 2001

A. Durairaj

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 10-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 03 MAD CK 0077

Hon'ble Judges : R. Jayasimha Babu, J; M. Karpagavinayagam, J

Bench : Division Bench

Advocate : M.B. Dominique, for the Appellant; R. Thiagarajan for V.G. Sureshumar, for the Respondent

Judgement

R. Jayasimha Babu, J.—The petitioner who holds Diploma in Mechanical Engineering was holding the position of Senior Section Engineer

(Signals and Telecommunications) in the Railways at Podanur in the year 1976 when he was sent for medical examination for considering his case

for ad-hoc promotion to the post of Assistant Signal and Telecommunication Engineer. The promotion to that higher post was normally only by

way of pass in the written examination, followed by viva-voce test.

2. Petitioner was considered for ad-hoc promotion only because he belonged to the Scheduled Caste. Along with him, several others who also

belonged to Scheduled Castes, were sent up for medical examination. Such of those who passed the medical test which included the test for

ascertaining the presence or absence of the defect of colour blindness, were given ad-hoc promotions. Such ad-hoc promotes were also required

to pass the written examination. Three of the persons who were given such ad-hoc promotion did take the examination, but though they did not

secure the minimum marks required for securing a pass, were nevertheless promoted, as under the guidelines given by the Central Government

with regard to promotion of candidates belonging to Scheduled Caste and Scheduled Tribe category, the best among failed candidates belonging

to those categories were required to be given the promotion even if they did not secure the minimum marks prescribed in the examination.

3. At the medical test, the petitioner was declared as colour blind. On that score, he was denied ad-hoc promotion.

4. The petitioner appeared for the written examination in the year 1980. But he was unsuccessful. Recruitment in that year was inter-alia for four

vacancies reserved for Schedule Caste and two for the Scheduled Tribes. There were ten candidates belonging to Schedule Caste who appeared

for the examination, six of whom passed. The first four were promoted against the four vacancies reserved for SC. As there were no candidates

available from ST, the other two vacancies meant for ST were also treated as vacancies which may be filled by the SC candidates and the other

two candidates belonging to Scheduled Castes who passed the examination were also given promotion. The petitioner appeared at the examination

which was held in the year 1981, but did not pass that examination also.

5. Later in that year 1981, the post of Assistant Signal and Telecommunication Engineer was declared as a post which was to be treated as one

belonging to the safety category. Consequence of such declaration was that the ad-hoc promotion of the nature that had been made earlier was no

longer possible. There was no question of relaxing the standards which could otherwise have been done in respect of the post which did not fall

within the safety category and the persons belonging to Scheduled Castes and Tribes could not claim the benefit of the application of relaxation of

standards in their cases when they appeared for the examination. Though the petitioner appeared for the examination in later years, he did not meet

the minimum standards required and consequently, never qualified himself for regular promotion as an Assistant Signal and Telecommunication

Engineer.

6. Sometime before 1998, he acquired B.E. degree and thereafter, he was sent up again for a medical examination, which included a very

comprehensive testing for colour blindness. It must be mentioned that after the

medical report in the year 1976, the petitioner had made several attempts to find out the remedies if any available for getting over colour blindness, had contacted Doctors in U.S.A. and had imported certain items of medication in the hope that it would help him to get over the colour blindness which he bona-fide believed he had, having regard to what the Railway Doctors had informed him.

7. When medically tested in the year 1998, he was found to be medically fit. The Railway Board having themselves entertained doubts regarding the accuracy of the testing, petitioner was sent up for examination by a group of experts at the internationally acclaimed eye centre, Sankara Nethralaya in Chennai, where a team of Doctors, after elaborate testing, found that the colour defect if any was only minimal and that he could pass all the normal tests for colour blindness.

8. The petitioner was thereafter given ad-hoc promotion as Assistant Production Engineer. He retired from service on 30.4.2003 as an Assistant Signal and Telecommunication Engineer. The petitioner approached the Tribunal in the year 2000 claiming that he should have been given numerous promotions that had been given to three others who had been given ad-hoc promotion in the year 1978, and all the benefits flowing from such notional promotion also be given to him, as the reason for denying him that ad-hoc promotion in the year 1976 was found in the year 1998 to be erroneous.

9. It is not in dispute before us that colour blindness is incurable. Medical literature produced before us also confirms that. It is therefore evident that the earlier diagnosis that petitioner was colour blind was erroneous.

10. The question now is as to whether and to what extent the petitioner should be compensated for the opportunity denied to him of securing promotions and advancing in his career, by reason of that erroneous diagnosis in the year 1976.

11. Had the petitioner been found to be medically fit, he would have been allowed to hold the position of Assistant Engineer - Signal and Telecommunication on ad-hoc basis in the year 1978. That however would not have guaranteed his success in the examination. Pass in the examination had to be secured by meeting the standards prescribed. He did not pass the examinations held in 1980 and 1981 and even by relaxing

the standard, would not have secured promotion. After 1981 that promotional post having been declared a safety category post, relaxation of standard was no longer possible.

12. It cannot be said that any opportunity was denied to him when the post was categorised as a safety post. The Railways had no duty whatever to the petitioner to keep the post categorised as a non-safety post merely to enable him to enjoy the benefit of relaxed standards. It is the safety of the persons who use the Railways which is paramount and the Railways are bound to ensure the highest standards of safety. The lost opportunity to the petitioner in not having the benefit of relaxed standards while competing for this post on and after 1981, is not an opportunity for which it could be said there was any cost which the Railway is required to compensate him for.

13. For the period 1976 to 1981 however, the petitioner has been denied opportunity to hold the higher post and possibly qualify himself further. It would be in the realm of speculation as to whether he would have or would not have passed the examination, had he been given the ad-hoc promotion and/or any further training thereafter.

14. For the lost opportunity that has resulted from the denial of the ad-hoc promotion to him between 1976 and 1981 and the fact that the petitioner has indeed been put to considerable amount of mental agony after he was informed in the year 1998 that he did not in fact suffer from colour blindness, we consider it proper that the Railways compensate him monetarily for this lost opportunity, as also the mental agony that the petitioner had been put to.

15. On the facts of this case, it cannot be said that the petitioner's claim suffers from laches. The petitioner became aware of the fact that he was not colour blind only after 1998 when the medical examination both in the Railway Hospital, as also in Sankara Nethralaya, showed positively and conclusively that he was not colour blind. Any claim by him could only have been made thereafter which in fact has been done.

16. The petitioner has claimed a huge amount which he has calculated as the amount which he would have received, had he been given several promotions. All those calculations assume that he would have passed the examination prior to 1981; that in the event of his not passing, he would

still be the best among failed candidates. Such assumptions are only in the realm of speculation. We cannot therefore assume, as he would like us

to do, that he would have passed the examination, qualified himself for promotions to various higher posts, and would have retired from service

from the highest post which those who had been given ad-hoc promotion held at the time of their retirement.

17. We must also take note of the fact that there were no mala-fides of any kind on the part of Railways. They had no intention whatever to

withhold any benefit lawfully claimable by petitioner. We must also take note of the fact that medical science is not a perfect science. Medical

science also has its limits. It is not possible to expect medical science to produce always very accurate diagnosis or cures. No Doctor can play

God. If the Doctor who examined him in 1976 had used equipment which was the standard equipment at that time and if by using that equipment,

he arrived at certain results bona-fide, the Doctor certainly cannot be accused of lack of competence.

18. We have no way of verifying what was done in the year 1976. We have the reports contained in the file which shows that qualified Doctors

had medically examined him with the equipment then available and have recorded the results, and their opinion is based on those results. We must

proceed on the basis that those Doctors were competent and that they acted bona-fide. The error if any in reading of the results or in the opinion

that they formed, is to be labeled as such only, by reason of the test conducted almost 20 years later with perhaps more advanced equipment, by

Doctors who were better qualified, and in surroundings which made a very comprehensive examination possible.

19. We cannot however on the ground that Doctors had conducted their tests bona-fide in 1976, ignore the fact that in 1998, petitioner has been

found not to suffer from color blindness, which fact if it had been ascertained in the year 1976, would have made a big difference to his career.

20. We can therefore only make a very broad assessment of all the factors, some of which we have already been alluded to, and taking an over all

view, arrive at a figure which broadly would serve the ends of justice, to compensate the petitioner for the lost opportunity and the mental agony he

has been through. Having taken note of all the relevant factors, we are of the view that direction that the respondents pay to the petitioner a sum of

Rupees two lakhs, would meet the ends of justice. Such payment shall be made within a period of six weeks from today. The writ petition is disposed of accordingly.