
(2016) 03 KL CK 0054

In the High Court Of Kerala

Case No : O.P. (CAT) No. 67 of 2015 (Z) and O.P. (CAT) Nos. 78, 80 of 2015

Dhanesh T.D. and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Citation : (2016) 03 KL CK 0054

Hon'ble Judges : K. Surendra Mohan and P.V. Asha, JJ.

Bench : Division Bench

Advocate : T.C. Govinda Swamy, Kala T. Gopi, S. Syamala Devi, T.N. Sreekala and K. Jayakumar, Advocates, for the Appellant; C.S. Dias, SC, for the Respondent

Final Decision : Dismissed

Judgement

K. Surendra Mohan, J.—1. The petitioners in these cases challenge the orders of the Central Administrative Tribunal ("CAT" for short) dismissing their original applications. The petitioners in OP(CAT)67/2015 had filed O.A.175/2014 while the petitioners in OP(CAT) 78/2015 had filed O.A176/2014 and petitioner in OP(CAT) 80/2015 had filed O.A.245/2014. They had filed the original applications challenging the denial of their appointment to Group D posts in the Indian Railways. According to them, they had qualified in the written examination and had come through the other procedures that formed part of the selection process and therefore they ought to have been ranked in the list of candidates selected for appointment. Instead, the respondents had followed a policy of pick and choose, selecting only candidates of their choice. By three separate orders, the CAT has dismissed the original applications. Since the contentions raised are common, the cases are considered together and are disposed of by this common judgment. O.P (CAT)67/2015 is treated as the leading case. The facts, pleadings, parties, documents produced etc. are referred to in the manner in which they are referred to in the said case.

2. All the petitioners are persons belonging to the Other Backward Communities

(OBC) who had applied for appointment to the Group D posts in the Indian Railways under the quota reserved for OBCs. They had submitted their applications pursuant to an employment notice No:5/2010 dated 15.12.2010. As per the notification, a total number of 3592 Group D vacancies were available for being filled up. The posts included Sweeper cum Porter, Helper Grade II, Trackman, Safaiwala etc. in various divisions of the Southern Railway as well as the Integral Coach Factory at Chennai. The petitioners had thereafter appeared for a written examination that was conducted at various places. Those candidates who had qualified in the written examination were subjected to a physical efficiency test (PET). Those who had qualified in the PET were directed to appear for the verification of their documents. The petitioners had completed all the above formalities and therefore, it was incumbent on the part of the respondents to have ranked them. It is alleged that there were sufficient number of vacancies for appointment of all the petitioners.

3. However, contrary to their expectations, the respondents published a first part select list dated 23.1.2013 in which 731 candidates were provisionally selected and recommended for appointment to various posts. A copy of the said select list was produced as Annexure A4 in Ext. P2. The reason stated for preparing a part select list was that, there was urgency to fill up the Safety Category vacancies. Therefore, the list of 731 candidates who were found to be fit was published. It was specifically stated that, the list was provisional and that the final select list would be published later on.

4. Later on, a second part select list consisting of 1702 candidates was prepared. Thereafter a combined list of all the candidates in both the lists was published on 15.3.2013, a copy of which is Annexure A5 in Ext. P2. Thus, a total number of 2929 candidates were appointed against 3592 vacancies that were notified. It was contended by the petitioners that, even out of the persons who have been included in the select list Annexure A5, there are many who have not joined. The remaining vacancies were also available for being filled up. In spite of the above, they were not appointed. It is their case that, as many as 800 of the notified vacancies remain unfilled and therefore there is no justification for not appointing all the qualified persons including the petitioners.

5. The contentions of the petitioners were disputed by the respondents. According to the reply statement filed, out of 3592 vacancies, 3087 vacancies were in the Southern Railways while 505 vacancies were in the Integrated Coach Factory. Only 9889 candidates passed the written test. After the selection process, 3456 candidates qualified in the PET. Though 20% over and above the number of vacancies notified were to be called for document verification, only 3207 candidates were available. After the verification of the documents, the candidates who were declared to be medically fit have been recommended. According to the details furnished by the respondents, the total number of candidates so recommended was 2882. It was therefore contended that, the selection process was conducted in an impartial manner and that there was no

discrepancy in the procedure that was adopted.

6. The CAT considered the rival contentions, went into the figures of the vacancies as well as the number of the candidates provided by both parties and found that, there was absolutely no material or evidence available to justify a conclusion that there was any discrepancy in the recruitment procedure that was adopted. However, since no consolidated list of the recommended candidates had been published even as on the date of the order of the CAT, a direction was issued to the respondents to publish a combined list of all candidates who have been recommended for appointment. Accordingly all the O.As were dismissed. Thereafter, in compliance with the direction issued by the CAT, it is on record that, the respondents have published a combined list of the total number of candidates recommended for appointment. The list produced before us is Ext. P2 which shows that the total number of candidates recommended is 3010.

7. Adv. T.C. Govindaswamy who appears for the petitioners contends that the panel of candidates recommended should be equal to the number of vacancies notified. In the present case, the total number of vacancies originally notified was 3592. Therefore, even as per the combined list published now only 3010 candidates have been recommended, evidencing a shortfall of 582 candidates. It is contended that, the petitioners are entitled to be recommended for appointment to the said vacancies. It is further pointed out that, a consolidated list of candidates was necessary to have been published in the first place itself. The said procedure not having been adopted, the selection is bad. The procedure of publishing part lists was intended only to favour their own candidates, it is contended. It is further pointed out that candidates in excess of 20% of the notified vacancies ought to have been included in the rank list. Omission to do so has prevented the petitioner from claiming the benefit of being recommended for appointment to the non-joining vacancies as well as the vacancies that may arise during the period of validity of the list. The above aspects not having been considered by the CAT, it is contended that the impugned order is liable to be set aside.

8. Adv. C.S. Dias who appears for the Railways on the other hand contends that, since the vacancies notified were more than 3500, finalisation of the selection process in respect of all the notified vacancies was found to be cumbersome by the Railway Recruitment Cell (RRC). However, appointments had to be made without delay to the Safety Category vacancies. It was considering the above aspects that part lists were published. There is no procedural irregularity in doing so, according to the counsel. According to the learned counsel, the petitioners in these cases were all persons who had submitted their applications for being recruited under the OBC category. There were only 884 vacancies available for the OBCs. All the 884 vacancies have been filled up by empanelling the successful candidates. All the petitioners have secured marks lesser than the 884 OBC candidates. Therefore, according to the inter se merit among OBC candidates the petitioners were not ranked. It is contended that at present there

are no vacancies available in the OBC category. The vacancies to which reference has been made by the petitioners are available in the general category, to which the petitioners cannot stake a claim. It is pointed out by the learned counsel that, though contentions regarding violation of procedure, favouritism etc. have been put forward, there are absolutely no evidence or material available to support the said contentions. Therefore, it is contended that the CAT had rightly dismissed the O.As. The counsel also placed reliance on the decision of the Apex Court in *State of Orissa v. Rajkishore Nanda* [, (2010)6 SCC 777] to contend that, no appointment in respect of posts in excess of the number notified could be made. Apart from the above it is contended that the earlier selection process had also been the subject matter of challenge before this Court in OP(CAT) 1656/2013, pointing out similar discrepancies. A Division Bench of this Court has, as per judgment dated 23.8.2013 dismissed the said original petition. Therefore it is contended that these original petitions are also, only to be dismissed.

9. We have heard the respective counsel at length. We have also been taken through the elaborate pleadings that are made in these cases in the form of a counter affidavit and reply affidavit. We have been taken through the lists that are produced to point out various discrepancies. However, we do not find anything substantial in the objections that are put forward. The various discrepancies that are sought to be made out by the counsel for the petitioners are based on mere surmises and assumptions. Such circumstances, according to us, are not sufficient to find fault with the selection procedure that has been adopted. We notice that the CAT has considered the contentions in the proper perspective. As rightly pointed out by the counsel for the Railways, it may be true that some of the vacancies notified originally were remaining unfilled. But, the fact remains that the petitioners have no right to claim appointments to such vacancies. It is not in dispute that the total number of OBC vacancies available was only 884. According to the respondents, all the 884 vacancies have been filled up. The counsel for the petitioners has disputed the above assertion. However, there is nothing on record to conclude that the assertion made by the respondents is wrong. Therefore we accept the contention of the respondents that all the 884 OBC vacancies have been filled up. The petitioners being persons who had applied for selection under the category of OBC, it is not open to them to contend that they ought to be appointed to the unreserved vacancies. It is further contended that, the consolidated list containing the names of all the candidates who have been recommended was published only after the original applications were finally disposed of. It is not in dispute that, the combined list was published only pursuant to the direction issued by the CAT. However, it is contended that, the omission to publish such a combined list earlier causes prejudice to the rights of the petitioners. It is a further contention of the petitioners that though the Railways had notified the vacancies under the different categories of general merit, OBC as well as other communities separately, no separate lists of the selected candidates were published with

respect to each of the categories notified. No reason is stated as to why no separate lists for each of the categories were published. Therefore, it is only appropriate that the Railways publish the lists of selected candidates under each of the categories notified, viz., the general merit, OBC etc. separately. Such separate lists of selected candidates shall be published within a period of one month of the date of receipt of a copy of this judgment. Since the combined list was published only after the order the CAT and the separate lists as directed above are yet to be published, we leave open the rights of the petitioners to seek any relief to which they are eligible, in accordance with law, if they have any subsisting grievance with respect thereof, before the appropriate forum. We do not find any grounds to interfere with the orders of the CAT. These original petitions are therefore dismissed.