
(2021) 09 CAT CK 0022

In the Central Administrative Tribunal

Case No : Original Application No. 201, 466 Of 2016

Jamil Ahmed Anssari & Others

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 24-09-2021

Acts Referred:

Constitution Of India, 1949 — Article 14, 16

Citation : (2021) 09 CAT CK 0022

Hon'ble Judges : Ramesh Singh Thakur, Member (J)

Bench : Single Bench

Final Decision : Allowed

Judgement

Ramesh Singh Thakur, Member J

1. The applicants are aggrieved by the order dated 02.11.2015 (Annexure A-6), whereby respondents Nos.4 to 9 have been selected for the post of Junior Engineer (C&W).

2. Brief facts of the case are that all the applicants were appointed as Technician Grade-III on different year and thereafter promoted as Technician Grade-II and Technician Grade-I in 2011, 2013 and 2014. The applicants are senior to respondents Nos.4 to 9, which is evident from the Gradation List filed as Annexure A-1 and the comparative chart showing the seniority of the applicants vis-à-vis respondents Nos.4 to 9 (Annexure A-2).

2.1 A notification dated 25.02.2015 (Annexure A-3) was issued inviting applications for promotion to the post of Junior Engineer (C&W) for filling up 8 posts (General-6, SC-02) under 25% Limited Departmental Competitive Examination (LDCE) quota. The applicants, being eligible applied for the aforesaid post under unreserved category. Similarly, respondents Nos.4 to 9 have also submitted their candidature under the unreserved category. A written examination was conducted on 01.08.2015, wherein the candidates were provided with the question papers Part A and Part B consisting of 60 and 40

marks respectively. After conducting the written examinations, an answer key (Annexure A-4/A) was prepared by the respondents. The applicants submit that the respondent-department have awarded full marks to some of the wrong answers given by the respondents Nos.4 to 9 to give undue benefits to the private respondents. Details regarding the wrong answers given by the respondents Nos.4 to 9 have been mentioned in page 7, 8, 9 and 10 of the Paper Book.

2.2 Accordingly, a merit list was prepared by the respondent No.3 on 07.09.2015 (Annexure A-5), wherein names of the applicants appear at Sr. Nos.17, 13, 18, 11 and 12 respectively as against the names of private respondents Nos.4 to 9 at Sr. Nos.10, 5, 2, 3, 6 and 1 respectively. The applicants submit that their merit was assessed on the basis of marks as per the entries made in the ACRs, whereas in the case of private respondents, special reports for three years were called and undue benefit was given to them in those special reports. The applicants have submitted a joint representation (Annexure A-7) to the competent authority of the respondent department. However, the same has not been decided by the respondent department. 2.3 The applicants submit that a similar issue came up for consideration before the Chandigarh Bench of this Tribunal in OA No.1346-PB-2011, wherein vide order dated 10.04.2013, the OA was allowed and the selection/empanelment of private respondents therein was quashed and set aside. The said order was also affirmed by the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No.20612/013 dated 18.09.2013.

3. Reply has been filed on behalf of respondents Nos.1 to 3, wherein it has been stated that there is no role of seniority in the said selection as the selection has been done against LDCE quota. The candidates were given marks based on the marks obtained in the written test and the marks allotted for their Service Record/ACRs and the merit list is prepared based on the available vacancies. The allegation regarding manipulation and overwriting of the 02 questions, is incorrect as the question paper was set prior to exam. However, the key to the objection questions was provided after the examination. The evaluating officer has checked the answer sheets of all the candidates as per the laid down criteria and procedure for the said examination without any biasness towards any of the candidates. The representation (Annexure A-7) filed by the applicants was also examined and an enquiry was conducted at administrative level and after such enquiry, no illegality or irregularity was found. It has also been submitted by the respondents that the order passed by the Chandigarh Bench of this Tribunal in OA No.1346-PB-2011, which has subsequently been affirmed by the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No.20612/013, is not applicable in the present case as the issue therein was with regard to calling the ACRs/Service Report of the candidates after declaration of the result of written examination, whereas same is not the case in the present matter.

4. Respondents Nos.4 to 9 have also filed their reply wherein it has been stated

that once the applicants have participated in the selection process, knowing fully well the criteria laid down in the advertisement, cannot be allowed to challenge the same after declaration of the result having not been successful. The respondents Nos.4 to 9 have placed reliance on the following judgments passed by the Hon'ble Apex Court:

1. Dr. G. Saran vs. University of Lucknow & Ors., (1976) 3 SCC 585.
2. Madan Lal & Ors. vs. State of J & K & Ors., (1995) 3 SCC 486.
3. Union of India & Ors. vs. S. Vinodh Kumar & Ors.(2007) 8 SCC 100.
4. P.S. Gopinathan vs. State of Kerala & Ors., (2008) 7 SCC 70.
5. Manish Kumar Shahi vs. State of Bihar & Ors., (2010) 12 SCC 576.
6. Ramesh Chandra Shah & Ors. vs. Anil Joshi & Ors., (2013) 11 SCC 309.

5. The applicants have filed their rejoinder to the reply filed by the respondents Nos.1 to 3. It has been stated that the answer keys were not set as per the Railway terminology as the words 'TV' and 'PAC' cannot be termed as 'Television' and 'Public Accounts Committee'. Further, the official respondents have taken into consideration the ACRs for the years 2013, 2014 and 2015, whereas as per notification dated 25.02.2015, the ACRs for the years 2012, 2013 and 2014 were to be considered. Even otherwise, the advertisement dated 25.02.2015 nowhere mentions that in absence of ACRs, the working report shall be taken into consideration. Moreover, the action of calling the working report, has been held illegal by the Hon'ble High Court of Punjab & Haryana at Chandigarh in the case of Union of India and others vs. Raghubir Singh and others, which has been followed by this Tribunal in several other cases.

6. In their rejoinder to the reply filed by respondents Nos.4 to 9, the applicants have stated that in the tabular chart filed by official respondents Nos.1 to 3, the date of reporting ACR of respondent No.7 for the year 2014, has been shown as 11.09.2015, i.e. much after the declaration the result on 07.09.2015. Further, the ACR of respondent No.9 for the year 2014 has been shown to be written on 7.03.2014, which is impermissible as it can only be written after 31.03.2014 and not before that. Similarly, the ACR of respondent No.5 for the year 2015 has been written on 20.03.2015 and ACR of respondent No.8 for the year 2015 has been written on 18.03.2015. Furthermore, in the working report for the year 2013-14 in respect of respondent No.6, no date has been mentioned. Thus, it can be presumed that the same has been called after the declaration of the result to give undue benefit to respondent No.6. The applicants have also stated that even assuming the working reports/ACRs were to be considered, even then the ACR/working report, which were not communicated to the applicants cannot be taken into consideration as per the settled preposition of law.

7. The respondents Nos.1 to 3 have also filed their additional reply to the rejoinder filed by the applicants, wherein the allegations regarding filling up the

ACRs of some of the private respondents and not mentioning the date have been denied by them. It has been stated that in the case of applicants also, no date was mentioned in the APAR for the year 2014-15. Regarding the filling of APAR prior to assessment year, it has been submitted by the official respondents that the blank APAR was distributed to unit incharge through their Branch Officers during February and March of the year and it was instructed that the filling of APAR may be expedite. Some of unit incharge misinterpreted the instructions and initiated the APAR prior to 31st March. However, the reporting and the reviewing authority have viewed the same after 31st March.

8. We have heard the learned counsel for the parties and perused the pleadings and the documents available on record.

9. It is an admitted fact that pursuant to the notification 25.02.2015 (Annexure A-3) for filling up the posts of Junior Engineer through 25% LDCE quota, the applicants as well as private respondents had applied for the aforesaid post. A written examination was conducted on 01.08.2015 and the result of the same was declared on 07.09.2015 (Annexure A-5) whereby all the applicants as also the private respondents were declared successful. Thereafter, vide letter dated 02.11.2015 (Annexure A-6), a select list was prepared placing all the private respondents in the panel on the basis of the marks obtained in the written test and the service record. It is the case of the applicants that though some of them got higher marks in the written test but due to awarding lesser marks in the service report, they have not been placed in the panel. Moreover, there were certain discrepancies in awarding marks in the written test and some of the answers were not correct as per the Answer Key.

10. The issue regarding calling service report that too after declaration of result, has already been considered and decided by the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No.20612 of 2013 dated 18.09.2013 (Union of India and others vs. Raghubir Singh and others). The relevant para 10 of the judgment reads as under:

"10. We are not impressed with the submission made by learned counsel for the petitioners. It is a case where the employees not only senior in the rank but also having more experience have been ignored by adopting a strange procedure, which is not only discriminatory but is also alien to the service jurisprudence. Such a procedure adopted by the petitioners, if allowed, will cause heartburn amongst the senior employees and at the same time facilitate the authorities to adopt pick and choose policy in utter disregard to the concept of equality enshrined in Articles 14 and 16 of the Constitution. The employees, who are competing for a promotion post should be tested on an uniform pattern without any undue advantage of fortuitous circumstances. The petitioners cannot justify their action of assessing one employee on the basis of his previous ACRs and other by calling a 'special report' with regard to his current work and conduct. An employee who had worked very hard during the last three years may have been assessed differently by the assessing officers, while the officer who is writing the

special report may not be in a position to assess the working of junior employees for the last three years. His simply describing his work as "good" or "outstanding" may jeopardize the service career of seniors. It appears that the Railways, which is a very big organization, instead of improving upon its lapse and lacuna is trying to defend its indiscriminate act and policy, which has resulted into unfair and arbitrary consequences."

11. In the instant case also, as the ACRs of the private respondents Nos.4 to 9 were not written, they were awarded marks under the heading 'Service Record' as per the special reports called by the respondent department, whereas the assessment of the applicants was done on the basis of their ACRs maintained year-wise. Perusal of the merit list prepared by the respondent department (page 58 of the Paper Book) reveals that the respondents Nos.5 & 6 were awarded full marks (30 out of 30) for the Service Record, whereas they were awarded 31.25 and 30.75 marks in the written examination. Similarly, though the applicants Nos.2 to 5 have got higher marks than respondents Nos.5 & 6 but due to awarding lesser marks in Service Record, they were not placed in the merit list. Perusal of comparative chart of ACR/PR of applicants and private respondents, which has been filed by the respondents Nos.1 to 3 in their additional reply to the rejoinder, shows that respondent No.5, Moinuddin Siddique was awarded 30 marks for the service record irrespective of the fact that he was graded 'Very Good' in the ACR/PR for the year 2012-12, 2013-14 and 2014- 15, whereas applicant No.1, who was also graded 'Very Good' in his ACR/PR for the years 2012-13, 2013-14 and 2014-15 was awarded only 26 marks. Thus, it is quite strange to understand that how the official respondents have assessed the ACR/ Service Record of the candidates and awarded marks for the same.

12. The applicants have also pointed out certain infirmities in evaluating the answer scripts of the private respondents. They have filed the comparative chart vide MA No.201/814/2016 of the assessment of the answer scripts of the private respondents, which shows that though the private respondents have wrongly answered some of the questions, but they have been awarded full marks for the same. On the other hand, learned counsel for the private respondents argued that it is not the case where only the private respondents have been awarded full marks for the wrong answers but the applicants have also been benefited. Moreover, it is not permissible for the Courts to examine the question paper and answer sheets particularly when the assessment has been done by an expert body constituted for the same. It has also been argued that it is a clear case of approbate and reprobate as once the candidate has appeared and participated, he cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein.

13. It is a settled law that the statute does not permit re-evaluation or scrutiny of an answer sheet and the Court should not at all re- evaluate or scrutinize the answer sheets of a candidate except in the cases where material error has been committed. However, in the present case, we find that there are clearly certain

indiscrepancies in awarding marks to the private respondents vis-à-vis applicants. The applicants had raised specific queries and made allegations regarding award of marks to the wrong answers given by the private respondents. Thus, it was incumbent on the authorities to verify the claim of the applicants and revisit the whole issue with a view to neutralizing the effect of such erroneous evaluation leading to underserved/unfair inclusion and exclusion of candidates in the final select list, which has not been done in this case. It is also not the case where the principle of estoppels arises, as from the record itself, it is abundantly clear that there were certain irregularities in awarding marks to the candidates.

14. Another aspect of the case, which came up for our consideration is whether the uncommunicated ACRs can be taken into consideration for the purpose of denying the applicants benefit of appointment on the post of Junior Engineer. The principle is well settled that any grading below the benchmark has to be treated as adverse and its communication is a mandatory requirement. The Hon'ble Apex Court in the case of *Abhijit Ghosh Dastidar vs. Union of India*, 2009 (16) SCC 146, has held as under:

"8. Coming to the second aspect, that though the benchmark "very good" required for being considered for promotion, admittedly the entry of "good" was not communicated to the appellant. The entry of "good" should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the annual confidential report of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances of promotion or getting other benefits. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision (*Dev Dutt case*, SCC P.738, para 4) relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him."

In the instant case also, the applicants have been denied promotion on the basis of the entries made in the APARs for the years 2012-13, 2013-14 and 2014-15, which admittedly have not been communicated to the applicants. Thus, even assuming the ACR/PR of the candidates was to be considered for determining the merit list, even then the ACR/PR, which was not communicated to the applicants cannot be taken into consideration as per the settled preposition of law.

15. In the result, the Original Application is allowed and the impugned order dated 02.11.2015 (Annexure A-6) is quashed and set aside. The respondents are directed to re-determine the panel based on written marks obtained by the candidates in examination after constituting a small committee of experts for the same. This exercise shall be completed within a period of three months from the

date of receipt of a copy of this order. No order as to costs.