
(2014) 01 KAR CK 0136

In the Karnataka High Court

Case No : Writ Petition No. 15020 of 2013 (S-CAT)

M. Ravindra Rao

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Citation : (2014) ILR 3165 : (2014) 3 KCCR 2645

Hon'ble Judges : S. Abdul Nazeer, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : H.H. Kaladgi, Advocate for the Appellant; Abhinay Y.T., Advocate for R1 and R2, Advocate for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—The petitioner was appointed as Junior Engineer in Southern Railways (now South Western Railways) on 21.06.1990. On promotion, he was working as Senior Section Engineer. He was eligible for promotion to the post of Assistant Divisional Executive Engineer. A notification at Annexure-A was issued on 03.07.2012 for filling up the 19 posts which had fallen vacant in the cadre of Assistant Divisional Executive Engineer. Out of the 19 posts, 15 posts were un-reserved, 3 posts were reserved for Scheduled caste and one for the Scheduled Tribe category. The 2nd respondent issued a list of employees eligible to appear for the Grade-B selection (70% quota) for the post of ADEN/AXEN in the Civil Engineering Department. The petitioner was not included in the said list. His name was included in the stand-by list at Annexure-B (at Sl. No. 13). A final eligibility list was issued by the 2nd respondent as per Annexure-D, dated 26.07.2012 and in this list his name was not included. Therefore, he filed O.A. No. 491/2012 before the Central Administrative Tribunal, Bangalore Bench, Bangalore, seeking the following reliefs:

(I) Direct the respondents to consider the claims of applicants for selection to the post of Assistant Divisional Engineer/Assistant Executive Engineer (Group-B) in Civil Engineering Department against 70% quota by including their names in the

final eligibility list of candidates published on 26.07.2012 (Annexure-A2) in the interest of justice and equity;

(II) To pass such other order or direction as this Hon''ble Tribunal deems fit to pass in the facts and circumstances of the case.

2. The Tribunal has rejected the application by order dated 20.02.2013. Feeling aggrieved, the petitioner has filed this writ petition.

3. Learned counsel for the petitioner submits that in terms of the Railway Boards letter No. E(GP)81/1/18 dated 10.09.1986, if the field constituted includes employees who had failed twice in the earlier selections, a corresponding number of additional employees should be called for the selection. In this connection, he draws our attention to letter issued by the Railway Ministry, Government of India, at Annexure-G dated 21.06.2012 and submits that the term "earlier selections" for this purpose is not restricted to the immediately preceding two selections only. All the three earlier selections have to be taken into consideration. The number of candidates who have failed twice in the earlier selections are about 13. The 2nd respondent has included only four candidates who had failed twice in the earlier two selections in the final eligibility list at Annexure-D instead of all the three previous selections in the year 2004, 2007 and 2010 in which event, the petitioner should have been included in the final eligibility list.

4. On the other hand, learned advocate appearing for the respondents has sought to justify the impugned order. It is argued that only those candidates who have failed twice in the earlier two selections have to be included in the final eligibility list with corresponding number of employees from the stand-by list. He further submits that 2nd respondent has sought for a clarification in this regard from the Railway Board as per his letter at Annexure-E dated 03.08.2012 (filed along with an affidavit dated 21.01.2013.)

5. We have carefully considered the arguments of the learned counsel made at the bar and perused the materials placed on record.

6. As noticed above, there were 19 vacancies for the post of "Assistant Divisional Executive Engineers". The Railway Boards letter at Annexure-H dated 05.01.2006 provides for the zone of consideration for the selection to these posts which is as under:

203.4. Zone of consideration. ? The number of employees to be called for the selection will be in accordance with the sliding scale in the order of seniority as shown below-

1. Vacancies ? 5 employees.

2. Vacancies ? 8 employees.

3. Vacancies ? 10 employees.

4. Vacancies and above ? employees equal to three times the number of

vacancies.

7. Since the vacancies are more than four, the persons to be included in the eligibility list should be equal to three times the number of vacancies. That is why the employees at Sl. No. 1 to Sl. No. 57 have been included in the list eligible to appear for the examination. The contention of the respondents is that in the previous two selections, four candidates have failed twice. Therefore, Sl. Nos. 58 to 65 have been included. Sl. Nos. 62 to 65 have been added under the SC category.

8. The communication of the Ministry of Railways, Government of India at Annexure-G dated 21.06.2012 provides for inclusion of the eligible employees for the purpose of promotion to the post in question, which is as under:

GOVERNMENT OF INDIA MINISTRY OF RAILWAYS (RAILWAY BOARD)

No. E(GP)2002/2/49/Petitioner

New Delhi, dated: 21.06.2012

The General Manager Southern Railway Chennai

(Kind Attention: Shri R. Aaivu, Dy. CPO(G))

Sub: Zone of consideration for selection - Group "B" (70%)

Ref: Southern Railway's letter No. P(G)/534/II/REPRESENTATION dt. 23.04.2012.

With reference to S. Railway's above mentioned letter, it is advised that in terms of para. 3(v) of Board's letter No. E/GP/87/2/72 dated 11.01.1988 read with para. 1(ii) of Board's letter No. E(GP)/85/1/78 dated 10.09.1986, such employees who neither appear for the written examination nor indicate their unwillingness or in other words absent themselves at last juncture defeating the provision of including additional names in their place are to be treated as having availed an opportunity and not succeeding or failed and the zone of consideration is required to be extended to that extent.

2. Further, with reference to para. 3 of S. Railway's above mentioned letter, it is advised that as per the above mentioned instructions, the zone of consideration is to be extended to the extent of candidates failed twice or having availed opportunity twice in the earlier selections. The term "earlier selections" for this purpose is not restricted to the immediately preceding two selections only.

3. Action may be taken accordingly.

Sd/- (Amitabha Khare) Executive Director, Estt. (RRB) Railway Board

9. It is not in dispute that the guidelines provided in this communication are holding the field during the relevant point of time. These guidelines states that such of the employees who neither appear for the written examination nor indicate their unwillingness or in other words absent themselves at last juncture

defeating the provision of including additional names in their place are to be treated as having availed an opportunity and not succeeding or failed and the zone of consideration is required to be extended to that extent. It also provides that the zone of consideration is to be extended to the extent of candidates failed twice or having availed opportunity twice in the earlier selections. The term "earlier selections" for this purpose is not restricted to the immediately preceding two selections only.

10. The 2nd respondent has taken into account, two previous selections for the purpose of including corresponding number of additional employees in the final eligibility list. According to the petitioner, if all the three earlier selections are taken into consideration, the number of employees who had failed twice is 12. It is submitted by the learned counsel for the respondents that the total number of employees failed twice in all the earlier selections is 6. It is not disputed that even if the number of failed candidates is taken as 6, the petitioner is eligible to appear for the examination. It is no doubt true that the respondents have sought for a clarification from the Railway Board in this regard as per Annexure-E. However, the rules that were in force as on the date of selection is at Annexure-G dated 21.06.2012. We are of the view that the name of the petitioner has been illegally excluded from the final eligibility list at Annexure-D. Therefore, the order of the Tribunal at Annexure-J, dated 20.02.2013 is hereby quashed.

11. It is submitted by the learned counsel for the petitioner that the Tribunal has permitted the petitioner to appear for the examination pending disposal of the application. Pursuant to the said order, the petitioner has appeared for the examination and the result has been kept in a sealed cover. We direct the 2nd respondent to declare the result of said examination. If the petitioner passes in the examination, he should be considered for further promotion, if he is otherwise eligible.

12. Clause-8 of Annexure-A provides for pre-selection coaching to the candidates belonging to the SC-ST community. Admittedly, the petitioner belongs to SC community. Since the petitioner was not included in the eligibility list, he was not allowed to appear for the coaching classes. If he fails in the examination taken by him pursuant to the interim order of the Tribunal, he should be provided with special coaching in terms of Clause-8 since he belongs to SC community and a fresh examination has to be conducted for him. If he passes in the examination, he should be considered for promotion in accordance with law. Writ petition is allowed in the aforesaid terms. No costs.