
(2008) 01 MAD CK 0028

In the Madras High Court

Case No : Writ Petition No. 11233 of 2007 and M.P. No. 1 of 2007

Mr. Gautam Dass

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Citation : (2008) 01 MAD CK 0028

Hon'ble Judges : S.R. Singharavelu, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : L. Chandrakumar, for the Appellant; V.G. Suresh Kumar, ACGSC for R1-R3 and P.V.S. Gridhar, for R4, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Singharavelu, J.—Aggrieved by the order dated 16.10.2006 passed by the Tribunal in R.A. No. 5 of 2006 in O.A. No. 543 of 2005

and O.A. 408 of 2006 filed by the fourth respondent, the petitioner has filed this writ petition seeking to quash the said order.

2. The brief facts are as follows: The applicant/4th respondent was promoted as against SC vacancy by the second petitioner as per the order

dated 9.3.2004. One Smt. P. Neela approached the Tribunal in O.A. No. 427 of 2004 against her non selection in the panel dated 26.2.2004.

Consequent to the quashing of the Panel dated 26.2.2004 by the Tribunal in O.A. 427 of 2004, a second panel dated 29.3.2005 was drawn on

21.4.2005. Since the fourth respondent had held the post for more than 2 years from 9.3.2004, he was allowed to continue as Chief Office

Superintendent vide Office order dated 21.4.2005 and panel dated 28.5.2005 against a vacancy, which subsequently occurred in December

2004. Subsequently, one vacancy occurred in February, 2005 due to the retirement of Sri. V. Narayanan and a selection process was proposed

for this vacancy. At this stage, one Maheswarlal Babu approached the Tribunal in O.A. No. 543 of 2005 stating that filling up of one vacancy in

Chief Office Superintendent by fourth respondent deprived him of an opportunity to appear for selection, where three candidates were called for

only one vacancy. The Tribunal quashed the order empanelling the fourth respondent and directed that he has to be subjected to the selection

process. Accordingly, promotion order issued in favour of fourth respondent was cancelled and he was reverted as Office Superintendent Gr.I.

Subsequently, fourth respondent was promoted on ad hoc basis as Chief Office Superintendent against an existing vacancy as his juniors have

already been promoted on ad hoc basis. An alert notice was issued to the eligible employees including the fourth respondent for selection to the

post of Chief Office Superintendent on 15.3.2006. A letter dated 22.3.2006 was also communicated, intimating the date of written test to be held

on 7.4.2006. At this stage fourth respondent approached the Tribunal in O.A. No. 408 of 2006, seeking interim relief restraining the official

respondents subjecting him to written test. However, the Tribunal passed an order restraining the official respondents from reverting the fourth

respondent from the post of Chief Office Superintendent. Subsequently, the fourth respondent filed R.A. No. 5 of 2006 in O.A. No. 543 of 2005

and O.A. No. 408 of 2006 seeking injunction restraining the official respondents from calling him for modified selection again for promotion to the

post of Chief Office Superintendent, as he was already selected for the SC vacancy meant for 2003, pending disposal of the application. The

Tribunal after considering the facts and circumstances of the case passed an order observing that the Office Order dated 21.4.2005 in so far as the

exclusion of the fourth respondent from being adjusted in the SC vacancy is illegal and consequently O.A.408 of 2006 is allowed as prayed for.

Based on the order passed by the Tribunal in the above R.A., Sri. Pughazendhi who was selected against SC point have been shown against UR

and the name of the fourth respondent was included in the panel against SC point. The petitioner being the last UR candidate in the panel was

deleted from the panel since Sri. Pughazendhi who was originally selected against SC point has been shown against UR point.

3. In the counter affidavit filed on behalf of the third respondent it is submitted that initially, based on the cadre of restructuring orders dated

9.10.2003, a panel consisting of 6 employees was published wherein Smt. P. Neela, the senior-most employee did not find a place. Based on the

Tribunal's order in O.A. No. 427 of 2004, filed by Smt. P. Neela for her non-inclusion in the panel, a revised panel including the name of Smt. P.

Neela and deleting the name of Shri. Rajendran was published vide panel dated 29.3.2005. The Tribunal passed orders in this O.A. to include the

name of Shri. Rajendran against the only SC vacancy and Sri. Pughazhendi shown against the UR vacancy. As a result of implementation of the

orders in this O.A., the petitioner's name had to be deleted from the revised panel dated 19.12.2006. Hence, the revision of panels three times

was as per the orders of the judiciary and not an irregularity committed by the Railway Department.

4. We have heard the learned Counsel for the petitioner as well as the learned Additional Central Government Standing Counsel appearing for the

Respondents 1 to 3 and the learned Counsel appearing for the 4th Respondent.

5. Challenging the order dated 16.10.2006 in R.A. No. 5 of 2006 in O.A. No. 543 of 2005 and O.A. No. 408 of 2006 filed by Rajendran, (4th

Respondent), this writ petition was filed by one Gautam Dass. The seniority position of the said persons can be understood from the following

table.

Sl. Name Increment Promn. Existing TR/PR/RV to
No. Emp. No. Dt. in the Roster Pay in Scale Pay in Scale
Shri/Smt. Lower Gr. Sl. No. & Designation Designation
reserved Unit/T. No. To Unit.
against

1. Neela P 1.4.2003 6(UR) 7900-10500 8125 Chief Office Supdt.

Promotiond OS Gr-I

2. Maheswari

Murthy.K 1.4.2003 8(UR) -do- -do-

Promotion

3. Narayanan. V 1.5.2003 9(UR) -do- -do-

Promotion

4. Pugazhendi. V 1.10.2003 7(SC) -do- -do-

Promotion

Against SC

Vacancy

5. Saradamoni. K 1.12.2003 4(UR) -do- -do-

Promotion

6. Gautamdas. K 1.12.2003 5(UR) -do- -do-

Promotion

7. Rajendran. M 1.07.2003 10(UR) -do- -do-

6. Employees at Serial Nos. 1 to 4 were posted against the vacancies arisen out of restructuring and given benefit of the promotion with effect from

1.11.2003 whereas the junior employees at Serial Nos. 5 & 6 were posted against the normal vacancies existing on 1.11.2003 and they will get

promotion and higher pay from 9.3.2004. Serial No. 7 is deemed to have been empanelled against the second vacancy, which occurred in

December 2004 and allowed to continue.

7. Originally, there was issuance of first panel which is dated 26.2.2004 empanelling 6 employees for the post of Chief Office Superintendent.

They are:

1. Smt. Maheswari Murthy

2. Sri V. Narayanan

3. Sri V. Pughazendhi (SC)

4. Smt. Saradamoni

5. Sri K.S. Gauthamdas (Writ Petitioner)

6. Sri M. Rajendran (SC)

8. As per the order dated 9.3.2004, M. Rajendran (4th Respondent) was promoted as against SC vacancy. P. Neela, who was not selected in the

above panel filed O.A. 427 of 2004 on the file of the Central Administrative Tribunal, Madras Bench, Madras, to quash the above said first panel.

9. Second panel dated 29.3.2005 was drawn on 21.4.2005 deleting the name of M. Rajendran (4th Respondent). However, he was allowed to

continue as Chief Office Superintendent by order dated 21.4.2005, as he was holding the post for more than two years from 9.3.2004.

10. Subsequently, a vacancy arose in December 2004 for which a panel dated 28.5.2005 was prepared. Thereafter, upon the retirement of V.

Narayanan a vacancy arose in February 2005 and selection process was mooted therefor. At this stage one Maheswarlal Babu filed O.A. No.

543 of 2005 objecting the filling up of one vacancy in Chief Office Superintendent by 4th Respondent and stating that thereby he was deprived of

an opportunity to appear for selection. The Tribunal quashed the order empanelling the fourth respondent viz., M. Rajendran and directed that he

has to be subjected to the selection process. So the promotion order issued in favour of fourth respondent was cancelled and he was reverted as

Office Superintendent Grade I.

11. Subsequently, 4th Respondent was promoted on ad hoc basis as Chief Office Superintendent against an existing vacancy as his juniors were

already promoted on ad hoc basis.

12. An alert notice dated 15.3.2006 and a communication dated 22.3.2006, for the written test to be held on 7.4.2006 were communicated to the

eligible employees including the fourth respondent for selection to the post of Chief Office Superintendent.

13. Aggrieved over the above said communication the fourth respondent has filed O.A. No. 408 of 2006 on the file of the Tribunal, seeking interim

relief restraining the official respondents from subjecting him to written test. The Tribunal passed an order restraining the official respondents from

reverting the fourth respondent from the post of Chief Office Superintendent. Subsequently, he has also filed R.A. No. 5 of 2006 seeking

injunction restraining the official respondents from calling him for modified selection again for promotion to the post of Chief Office Superintendent.

According to the fourth respondent he was already selected for SC vacancy meant for 2003, therefore, he should not be again subjected for

modified selection.

14. The Tribunal after considering the facts and circumstances of the case passed an order observing that the office order dated 21.4.2005 in so

far as the exclusion of the fourth respondent from being adjusted in the SC vacancy is illegal and consequently allowed the O.A. No. 408 of 2006.

When once the fourth respondent's adjustment in SC vacancy was upheld in O.A. No. 408 of 2006, Pughazendhi, who was selected against SC

point was shown against UR. When once Pughazendhi, who was originally selected against SC point was shown against UR point, the petitioner

being the last person in the UR point was deleted from the panel. It is aggrieved over the same the petitioner has come forward with this writ

petition by pointing out the incorrectness in the order passed in O.A. No. 408 of 2006 observing that the office order dated 21.4.2005 in so far as

exclusion of the fourth respondent from being adjusted in the SC vacancy is illegal.

15. It is not in dispute that Pughazendhi was selected on his own merit in the panel dated 9.3.2004; but was adjusted against the UR vacancy on

the ground that fourth respondent M. Rajendran also belonging to SC community was adjusted against SC vacancy in the promotion order dated

9.3.2004.

16. The writ petitioner can succeed only if he shows that Pugazhendhi, who was a SC candidate although was selected on merit should have been

adjusted only in the SC vacancy and such an order is very much necessary when the promotion of fourth respondent M. Rajendran was wrongly

adjusted against SC vacancy.

17. In order to show that Pughazhendhi, who happened to be a SC candidate should have been adjusted against SC vacancy, on behalf of the writ

petitioner reliance was placed upon the following clarifications and the Railway Board's letter dated 7.9.2002. Such of the letter (Annexure R-4 in

OA 543/05) sets out the procedure for promotion of the SC/ST candidate on their own merit. The relevant para is extracted below:

(ii) If an unreserved vacancy arises in cadre and there is any SC/ST candidate within the normal zone of consideration in the feeder grade, such

SC/ST candidate cannot be denied promotion on the plea that the post is not reserved. Such a candidate will be considered for promotion along

with other candidates treating him as if he belongs to general category. In case

he is selected, he will be appointed to the post and will be adjusted against the unreserved point.

18. The further clarification given on 6.5.2005 which is long after the preparation of the panel dated 9.3.2004 stated in para 2 as follows:

It is also clarified that since in the case of promotions by Non-selection, promotions are made on the basis of seniority-cum-fitness and the concept of merit is not involved in such promotions, instructions contained in Board's letter dated 7.8.2002 and 20.6.2003 referred to above do not apply to the promotions made by Non-selection method.

19. By relying upon the clarification above mentioned it was asserted on behalf of the writ petitioner that appointment of Pughazhendi to the post would have to be adjusted against the reserved point, inasmuch as the Railway Board's letter dated 7.8.2002 enabling such adjustment against unreserved point in so far as it is a non-selection promotion will not get applicable by virtue of the clarification dated 6.5.2005.

20. In this context the Tribunal in para 17 of its order dated 16.10.2006 has posed a question, "though the clarification letter of the Board dated 6.5.2005 says that merit is not involved in the non-selection promotion. Does it mean that SC/ST candidates who are entitled to be considered as per their seniority position need not be accommodated as per their seniority and rank and has to be accommodated only in the SC vacancy? The answer can only be "No".

21. We have carefully analysed the above position and agree with the findings of the Tribunal, which has got support from the following decisions:

(1) *Sawhney v. Union of India* 1992 Supp (3) SCC 217, wherein it was held that SC candidates selected on the basis of their own merit need not be counted against the quota reserved SC candidate. They will be treated as open competition candidate.

(2) In *R.K. Sabharwal v. State of Punjab* 1995 (3) SLJ 227, wherein it was held that the reserved category candidates can compete for the non reserve posts and in the event of their appointment to the said posts, their number cannot be added and taken into consideration for working out the percentage of reservation.

(3) In *Union of India and others etc. Vs. Virpal Singh Chauhan etc.*, , wherein it was held that candidates selected/promoted on the rule of merit

(and not by virtue of rule of reservation) shall not be counted as reserved category candidates.

(4) In *Ritesh R. Sah Vs. Dr. Y.L. Yamul and others*, , wherein it was held that a student who is entitled to be admitted on the basis of merit, though

belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category.

(5) In *Union of India v. Satya Prakash and Ors.* 2006 (3) SLJ 74 , wherein it was held as follows:

In other words, while a reserved category candidate recommended by the Commission without resorting to the relaxed standard will have the

option of preference from the reserved category recommended by the Commission by resorting to relaxed standard, but while computing the

quota/percentage of reservation he/she will be deemed to have been allotted seat as an open category candidate (i.e. on merit) and not as a

reserved category candidate recommended by the Commission by resorting to relaxed standard.

22. As observed in the above decisions it was right on the part of the Tribunal to have held that, ""there is no scope for the department to plead that

in case of non-selection promotion, it is open to them to adjust the SC candidates on their liking. The senior most available SC candidates beyond

the number of reservation vacancies is to be adjusted in the quota reserved for them.

23. Therefore, the distinction made by the department on the basis of clarification dated 6.5.2005 is contrary to the law laid down by the Hon''ble

Supreme Court and the earlier Railway Board''s circulars. As a result the adjustment of Pughazhendi against UR vacancy is correct since

Rajendran who happens to be the senior than Pughazhendi and belongs to SC community is adjusted against SC point especially in the absence of

any other candidate of the same category is found correct. When these two premises go against the writ petitioner''s contention the claim of the

writ petitioner cannot be countenanced.

24. The adjustment of Rajendran the fourth respondent against the SC vacancy is also not against the order passed in O.A. No. 427 of 2004 filed

by one Neela, to quash the panel dated 26.2.2004, as Rajendran was not a party thereto; had he been made a party in O.A. No. 427 of 2004, he

would have succeeded in establishing that he should not be disturbed even if Smt. Neela the applicant therein have not claimed for either of the vacancies in which he had staked his claim. Even in O.A. No. 543 of 2005 preferred by Maheshwarlal Babu against filling up of one vacancy in Chief Office Superintendent by fourth respondent what was contemplated was only maintainability of the deemed empanelment of Rajendran and not about his adjustment towards SC vacancy. Therefore, the order passed in the above O.A. also do not stand in the way of adjustment of name of fourth respondent (M. Rajendran) against SC vacancy especially when there was no claim made by the person belonging to the same category in community.

25. Thus, looking at in any angle the adjustment of fourth respondent against the SC vacancy is found correct. The subsequent order of adjustment of Pughazhendi against UR vacancy is also found correct. Therefore, we see no reason to interfere with the order of the Tribunal. There is no merit in the writ petition. The writ petition fails and is dismissed accordingly. No order as to costs.