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(2015) 08 BOM CK 0255

In the Bombay High Court

Case No : Writ Petition No. 3574 of 2000

P.T. Temburne and Others — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 28-08-2015

Acts Referred:
Constitution of India, 1950 — Article 14, 16, 162, 309

Citation : (2015) 08 BOM CK 0255

Hon'ble Judges : Anoop V. Mohta, J;V.L. Achliya, J

Bench : Division Bench

Advocate : K. Sivaramkrishnan, for the Appellant; N.D. Sharma and Ashok R. Varma instructed by K.B. Rao, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.L. Achliya, J—The petitioners have preferred this writ petition against the order dated 29th October, 1999 passed by the Central Administrative Tribunal, Mumbai Bench dismissing the Original Application No. 58/1995 preferred by the petitioners before the Tribunal. The petitioners have claimed the reliefs as under:--

"(a) This Hon''ble Court may call for the record and proceedings of the Central Administrative Tribunal underlying the impugned order dated 29-10-1999 in O.A. No. 58 of 1995; and after examining the legality, propriety and rationality of the order be pleased to quash and set aside the same;

(b) this Hon''ble Court may declare that the provision of an interview for promotion as ASOs in the norms of 1977 is void as it is discriminatory and violative of Articles 14 and 16 of the Constitution in view of the orders of the Department of Personnel dated 10-4-1989;

(c) this Hon''ble Court may declare that the norms of 1977 as amended in 1992 are invalid and discriminatory and violate Articles 14 and 16 of the Constitution as they do not incorporate the requirements of reservation and that providing a

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SC/ST representative on Selection Committees as required by the policy laid down by the Department of Personnel and may further declare that the provisions in the norms of 1977 allowing Selection Committees to take the marks in the Qualifying Examination into account are discriminatory and violate Articles 14 and 16 of the Constitution;

(c-1) The Hon''ble Court may declare that the provision in para 8 of the amended norms of 1992, seeking to limit promotion to the posts of Assistant Stores Officers under the newly created seniority quota of 20%, to Storekeepers who had not availed of exemption from the written examination while being promoted to that grade is void, as it violates Articles 14 and 16 of the Constitution;

(c-2) The Hon''ble Court may further declare that no examination have been prescribed under the norms of 1977 for promotions to the posts of Storekeeper under the seniority quota of 25%; and that as such neither of the petitioners had, at the time of their promotion as storekeepers in 1989, availed of any exemption from a written examination;

(d) this Hon''ble Court may direct the Respondents to frame fresh norms incorporating all safeguards available to SC/ST and reconsider all promotions ordered from 1979 by ignoring the performance in the interviews as well as the marks in the Qualifying Examination;

(e) this Hon''ble Court may declare that Storekeepers are the sole feeder Cadre for promotion to the Cadre of ASOs and further that Junior Storekeepers are neither eligible for promotion as ASOs nor to appear at the Qualifying Examinations for the said promotions and also that all orders allowing them to do so are void and of no effect. The Respondents may be directed to consider only SKs for promotion as ASOs.

(f) this Hon''ble Court may declare that JSKs who are in the same hierarchy as the SKs and are lower in rank to them; cannot validly be allowed to compete for the same promotion post of ASO as the Sks, as this would violate Articles 14 and 16 of the Constitution. Respondents orders of 1993, purporting to allow JSKs to compete for promotion to the same posts as SKs may be struck down as void and unconstitutional. All examinations in which JSKs were allowed to appear for promotion as ASO may be declared to be void and of no effect;

(g) this Hon''ble Court may declare that the Respondents have failed to implement the policy of reservation of posts laid down by the Government of India in respect of the posts of ASOs and that there are 22 posts reserved for SC/ STs in this cadre including three in the seniority quota, which need to be filled up. The Hon''ble Court may direct the Respondents to review the provisions wrongly made to these posts and fill up these posts without delay by candidates belonging to SC/ST in accordance with law and the policy applicable at the time these vacancies arose, fully implementing all the concessions for those communities available at that time while doing so;

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(h) It may be declared that the so called relaxation in qualifying marks allowed to SC/ST was inadequate and did not take into consideration all relevant factors set out by the Department of Personnel in their orders of 1977 and was thus violative of Articles 14 and 16 of the Constitution. The Respondents may be directed to review the results ensuring that all relevant considerations are fully taken into account, including the relaxations allowed by them in similar examinations in their own Personnel and Account branches. If as a result of such review the Applicants are promoted, effect to the promotions may be given from their juniors were promoted and Applicants allowed back wages and seniority;

(i) this Hon''ble Court may direct the Respondents to also consider the Applicants'' own cases for promotion against the 3 vacancies available in the seniority quota for SC/ST without delay on the dates when those vacancies arose; granting them all concessions in accordance with the then applicable directions of the Department of Personnel, and give them all benefits of seniority and back wages if promoted."

2. Before adverting to deal with the arguments advanced by the learned counsel representing the petitioners and the learned counsel representing the respondents, it is necessary to consider in brief the facts leading to filing of this writ petition.

3. Petitioner No. 1 was initially appointed as Upper Division Clerk/Junior storekeeper in Bhabha Atomic Research Centre (hereinafter referred to as ''BARC'') a constituent unit of the Department of Atomic Energy. Subsequently, on the formation of Directorate of Purchase and Stores (DPS), another constituent unit of the said Department, in the year 1974, he was transferred to the Directorate of Purchase and Stores roll. He was promoted as storekeeper with effect from 3rd July, 1989 on seniority-cum-fitness basis. Before the regular appointment, he was given ad-hoc promotion as storekeeper on several occasions. Subsequently, he was posted as senior storekeeper on creation of that post in the year 1998 with effect from 1st December, 1995. So far as petitioner No. 2 is concerned, he was initially appointed as Lower Division Clerk in Trombay Township Project with effect from 24th December, 1968. Consequent to the formation of the Directorate of Purchase and Stores in the year 1974, he was transferred to DPS roll. During the period from 1st October, 1976 to 21st March, 1979, petitioner No. 2 was appointed as junior storekeeper on ad-hoc basis and subsequently with effect from 22nd March, 1979, petitioner No. 2 was appointed as junior storekeeper on regular basis. With effect from 13th October, 1989, petitioner No. 2 was promoted as storekeeper on regular basis on seniority-cum-fitness basis. Subsequently, he was posted as senior storekeeper with effect from 1st September, 1996.

4. Both the petitioners belong to scheduled caste. The petitioners claim to be working as storekeepers. According to the petitioners, the storekeeper with an experience of minimum of five years were alone entitled to be promoted to the post of Assistant Stores Officer. Detrimental to their interest, the respondents

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have modified the norms for promotion to the post of Assistant Stores Officer and provided one more feeder cadre for appointment as Assistant Stores Officer. As per the modified norms, the respondents have provided that a junior storekeeper with eight years regular service would be considered for promotion to the post of Assistant Stores Officer. On 9th August, 1994, a circular was issued inviting applications from the employees working in the feeder cadres for a written examination to be held for the purpose of selection to the promotional post of Assistant Stores Officer. Both the petitioners responded to the said circular and appeared in written examination held for said post on 12th November, 1994. However, they were not called for viva voce. Being aggrieved by the same, the petitioners filed O.A. No. 58/1995. The petitioners raised the following challenges before the Tribunal:--

"i) The respondents did not frame the recruitment rules for recruitment and promotion in the cadre of storekeeper and the entire process of promotion has been made on the basis of administrative/executive instructions;

ii) it was incumbent upon the respondents to have framed the rules in consonance with the directives of Department of Personnel and Training (DOPT);

iii) The respondents have not followed the reservation policy/procedure as made applicable for promotion to the post of the Assistant Stores Officer in the Directorate of Purchase and Stores, Department of Atomic Energy;

iv) The respondents have wrongly allowed the junior storekeepers to appear for the departmental examination for promotion to the post of Assistant Stores Officer, while announcing the departmental examination

v) The respondents have not notified the number of vacancies for the scheduled castes and scheduled tribes candidates while issuing notification dated 9th August, 1994;

vi) The respondents have not issued the circular clarifying that the candidates belonging to reserved category i.e. scheduled castes and scheduled tribes are entitled to relaxation in minimum marks to be scored in the examination;

vii) The respondents have wrongly made provision to make 20% appointments in the cadre of Assistant Stores Officers through the process of direct recruitment;

viii) The respondents have wrongly allowed the junior storekeepers with minimum of 8 years service, eligible for promotion as Assistant Stores Officer;

ix) The respondents have not made applicable and adopted 40 point roster in the matter of appointments and promotions."

5. The Tribunal has considered all the above referred challenges raised by the petitioners and ultimately reached to a conclusion that the petitioners have not made out any case for grant of reliefs and dismissed the application vide order dated 29th October, 1999. Being aggrieved by the said order, the petitioners have preferred this writ petition. During the pendency of the writ petition,

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petitioner No. 1 expired and now the petition is prosecuted on his behalf by his legal heirs.

6. We have carefully considered the submissions made by the learned counsel representing the petitioners and the learned counsel representing the respondents. At the outset, we are of the view that the impugned order passed by the Tribunal is a reasoned order and all the contentions raised by the petitioners before us have been duly considered by the Tribunal and, therefore, calls for no interference in exercise of writ jurisdiction of this Court.

7. The learned counsel for the petitioners could not point out any illegality or perversity in the impugned order passed by the Tribunal so as to interfere in exercise of the writ jurisdiction of this Court. It is settled position in law that while exercising the powers of judicial review against an order of the Tribunal or any other quasi judicial authority, the High Court is not expected to interfere with the reasons and conclusion arrived by the Tribunal, unless it is found to be based upon some inadmissible evidence or findings arrived at by Tribunal are such that no reasonable man could have arrived to such conclusions on the basis of material on record. In the light of the order passed by the Tribunal, we are of the view that the Tribunal has thoroughly considered each and every contentions raised by the petitioners and recorded the reasons in detail and dealt with each and every contentions raised before the Tribunal. There appears to be no perversity in the order passed by the Tribunal. We are, therefore, not inclined to interfere with the order passed by the Tribunal.

8. The basic contention which was raised before the Tribunal was, in absence of the statutory rules framed under Article 309 of the Constitution of India to regulate the appointments, promotions and postings, etc. of employees working in the BARC, the process of selection undertaken by the respondents was not sustainable in law. Perusal of the order passed by the Tribunal clearly reveals that this contention was duly considered by the Tribunal. The Tribunal has observed in the order passed that the respondents have placed before the Tribunal a printed booklet published by the Department of Atomic Energy which contains statutory rules framed under Article 309 of the Constitution of India by the Department of Atomic Energy. In our view, not framing of statutory rules under Article 309 of Constitution of India itself not lead to vitiate the appointments and promotions made by the Department. In absence of any statutory rules, the field can be occupied by the executive instructions framed in that behalf in exercise of powers under Article 162 of the Constitution of India. Pending framing rules under Article 309 of the Constitution of India, the recruitment can be made as per the norms finalised by the Department. It is an admitted position that office memorandum dated 25th May, 1977 was in force when the impugned promotions were made by respondent No. 2. As per the norms laid down in the office memorandum dated 25th May, 1977, initially, storekeepers with five years regular service were eligible for promotion to the post of the Assistant Stores Officer through departmental exams. Subsequently,

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the norms were modified and junior storekeepers with eight years regular service were also included in the category of feeder cadre for promotion to the post of Assistant Stores Keeper. There was nothing wrong in making eligible junior storekeepers with eight years regular service to compete for the higher posts of Assistant Stores Officer. It is an admitted fact that the petitioners appeared for the written examination conducted for the promotional post of Assistant Stores Officer along with other candidates. The fact is also not in dispute that the petitioners could not clear the written examination in spite of providing concession i.e. relaxation of 10 marks as a candidate from reserved category. It is settled position in law that once a person has availed the chance to get selected and participated in the process of selection and ultimately found himself to be unsuccessful, the said person cannot challenge the process of selection. In this context, it is useful to refer to the decision of the Apex Court in the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, AIR 1995 SC 1088 : (1995) 2 JT 291 : (1995) LabIC 1575 : (1995) 1 SCALE 494 : (1995) 3 SCC 486 : (1995) 1 SCR 908 : (1995) 2 SLJ 161 : (1995) 2 UJ 817 , wherein in para 9, the Apex Court has observed as under:--

"Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to reassess the relevant merits of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee."

9. The learned counsel for the petitioners has argued that it is the mandate of the constitution that in all the appointments and promotions, the number of posts to be filled in from candidates belonging to reserved category must be reserved for candidates belonging to reserved categories. It is contended that the said constitutional mandate has not been followed by respondent Nos. 1 and 2 in the matter of appointments and promotions. The contentions raised by the learned counsel for the petitioners have been considered by the Tribunal. The notification dated 9th August, 1994 which was impugned by the petitioners was in fact in house circular issued inviting option from eligible employees fulfilling the eligibility criteria entitled to be promoted for the post of Assistant Stores Officer. It was not an advertisement or a public offer made inviting applications. The Tribunal has observed in the impugned order that applications were invited

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in prescribed proforma in which in column No. 6, it was specifically mentioned to furnish the information as to whether a candidate belongs to a SC or ST category. It was also provided that the person claiming to be from the reserved category must provide caste certificate. On the basis of record and more particularly the official file pertaining to the examination conducted for the post of Assistant Stores Officer, perused by the Tribunal, the Tribunal has observed that in the written examination held the relaxation of 10 marks has been given in favour of the candidates belonging to the reserved categories. In spite of providing relaxation of 10 marks in favour of the candidates belonging to reserved categories, none of the candidates from reserved category including the petitioners cleared the written examination conducted for the post of Assistant Stores Officer. Thus, there is no force in the contention of the petitioners that the candidates belonging to the reserved categories were not considered or they were not provided relaxation in the departmental/written examination conducted for the post of Assistant Stores Officer.

10. The Tribunal has also observed that 40 point roster has been followed by respondent Nos. 1 and 2 while making appointment to the post of Assistant Stores Officer. Since the year 1979, the 40 point roster was found to be implemented by respondent Nos. 1 and 2. In the roster prepared for the period 1979 to 1986 the slots of scheduled caste candidates were shown at slot Nos. 1, 8, 14, 22, 28 and 36, whereas, scheduled tribes were shown at slot Nos. 4, 17 and 31 in the roster. The Tribunal has also observed in the order that the reservation for the scheduled caste and scheduled tribe candidates found to be maintained as 22% which was in accordance with the reservation policy of the Government of India then in force. It is further observed that in the year 1986 again 40 point roster was prepared and the names of scheduled caste candidates were shown at slot Nos. 1, 8, 14, 22, 28 and 36 and scheduled tribes are shown at slot Nos. 4, 17 and 31 and the percentage was maintained at 22% for scheduled caste and scheduled tribe candidates. Similarly, the 40 point roster was prepared on same lines from 1995 onwards till the year 1998. The Tribunal has also noted that some of the candidates from scheduled caste and scheduled tribe were found to be promoted as per roster.

11. On perusal of record of written examination held in the year 1994 in which the petitioners have also participated, in all 69 candidates were found to have applied for the post of Assistant Purchase Officer and 251 candidates applied for the post of the Assistant Stores Officer, which includes 11 scheduled caste candidates for the post of the Assistant Purchase Officer and 25 scheduled caste and 5 scheduled tribe candidates for the post of Assistant Stores Officer. The Tribunal further observed that for the post of Assistant Purchase Officer, out of the 17 candidates passed in the examination, 2 candidates were scheduled caste who passed examination after getting relaxation in marks provided for the candidates belonging to reserved category. For the post of Assistant Stores Officer, 18 candidates cleared the written examination. However, none of the candidate from reserved category i.e. scheduled caste and scheduled tribe

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cleared the examination in spite of providing weightage of 10% marks to such candidates. Thus, the Tribunal has found that the policy of reservation as in force has been duly observed by respondent No. 2 while making promotions. The petitioners though appeared in written examination, they could not succeed in spite of giving relaxation in the minimum marks to be secured in the written examination. In view of this, there is no substance in the contention of the petitioners that no posts were earmarked or reserved for the candidates belonging to the scheduled castes and scheduled tribes.

12. We have also considered the other contentions raised by the petitioners. The respondents have filed affidavit-in-reply and dealt with each and every contentions raised by the petitioners. The petitioners have not filed rejoinder and controverted these contentions which have been duly responded by the respondents. Otherwise also, all such contentions have been duly considered by the Tribunal. In view of this also, the reasons and findings recorded by the Tribunal calls for no interference.

13. In view of the discussions made in the foregoing paras, we find no merit in the petition filed by the petitioners. The order passed by the Tribunal is found to be reasoned. We have noticed no illegality and perversity in any of the reasons or findings recorded by the Tribunal. The petition is found to be devoid of any merits and substance therein. We are, therefore, inclined to dismiss the petition. Accordingly, the petition is dismissed with no order as to costs. Rule stands discharged.

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