
(2001) 01 AP CK 0045
In the Andhra Pradesh High Court
Case No : Writ Petition No. 26822 of 2000

R.K. Behra

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 31-01-2001

Acts Referred:

Citation : (2001) 1 ALD 521 : (2001) 1 ALT 449

Hon'ble Judges : S.B. Sinha, C.J;S.R. Nayak, J

Bench : Division Bench

Advocate : Mr. P.B. Vijay Kumar, for the Appellant; Mr. E. Urmil, Addl. SC for CG, for the Respondent

Judgement

S.R. Nayak, J.—This writ petition is directed against the order of the Central Administrative Tribunal, Hyderabad Bench, at Hyderabad, (for short "the Tribunal"), dated 26-11-1999 in OA No.963 of 1998 dismissing the Original Application filed by the petitioner herein.

2. The precise question that arises for our consideration and decision in this writ petition is whether a candidate belonging to Scheduled Caste community who seeks appointment to the post of Foreman (GYRO) by way of promotion can claim as a matter of right or as a matter of course that the appointing authority should make good the deficit percentage of marks in the Departmental Qualifying Examination (DQE) by granting relaxation and adding requisite number of grace marks by virtue of the Administrative Instructions contained in GI Department of Per and A.R., O.M. No.36011/6/79-Est. (SCT), dated 19-4-1979.

3. Before dealing with this precise question, the relevant background facts that led to the filing of this writ petition be stated briefly as under:

The petitioner joined the office of the Admiral Superintendent, Naval Dockyard, Visakhapatnam, the 4th respondent herein on 19-7-1983 as Gyre Fitter Grade-I and later he was appointed as senior Chageman (Gyro) on 14-4-1988 by way of direct recruitment. Under the relevant service regulations governing appointment

to the post of Foreman (Gyro), an employee serving in the cadre of Gyre Fitter Grade-I should put in atleast two years of qualifying service in that cadre in order to qualify himself to appear for DQE for promotion to the post of Foreman (Gyro). The petitioner herein, after putting in two years qualifying service in the post of Grye Fitter Grade-I, appeared for the DQEs conducted in the years 1991 and 1997 and in his both attempts he was not successful for he did not secure prescribed minimum marks of 50% aggregate to qualify himself to be considered for the post of Foreman (Gyro). It appears that no DQE was conducted during the years 1993 and 1996. The petitioner made a representation dated 28-10-1997 to the 4th respondent demanding reasons from him as to why he was no: considered for appointment to the post of Foreman (Gyro) and he received reply from the 4th respondent on 22-11-1997 informing the petitioner that he did not qualify himself in the DQE even after application for relaxed standards. The petitioner being aggrieved by the reply of the 4th respondent dated 22-11-1997 filed Original Application No.963 of 1998 before the learned Tribunal assailing the validity of the said reply and for a consequential direction to the respondents to appoint him to the post of Foreman (Gyro) with all consequential and attendant benefits. The Original Application of the petitioner was contested by the respondents by filing a detailed reply statement.

4. Before the learned Tribunal, it was contended by the petitioner that though he secured the required marks in the DQEs conducted in the years 1991 and 1997, he was not selected for appointment to the post of Foreman (Gyro). The petitioner specifically contended that the respondents disqualified him for appointment to the post of Foreman (Gyro) because they did not extend the relaxed standards as applicable to candidates belonging to Scheduled Castes and Scheduled Tribes and that had the respondents extended the relaxed standards as contained in the administrative instructions issued by the Government of India from time to time, he would have got promotion to the post of Foreman (Gyro) in the year 1991 itself. It was pointed out by the respondents in the reply statement that in the DQEs conducted in the year 1991 and 1997, though five (5) grace marks were added to the marks obtained by the petitioner in terms of administrative instructions contained in GI Department of Per., and A.R. O.M. No.36011/6/79-Est. (SCT), dated 19-4-1979, the petitioner was short of the prescribed minimum of 50% aggregate marks. It is also pointed out that in the DQE conducted in the year 1997, the petitioner secured only eighteen (18) marks in the written test and fifteen (15) marks in the oral test and five (5) grace marks was added to the total. Even then, the aggregate of the petitioner could only be thirty eight (38) marks as against the prescribed minimum of fifty (50) marks.

5. In the light of the respective contentions of the parties and materials placed before it, the learned Tribunal did not find any merit in the Original Application filed by the petitioner. Accordingly, the learned Tribunal by the impugned order dismissed the Original Application holding that in not selecting the petitioner for appointment to the post of Foreman (Gyro), the respondent authorities did not

violate the administrative instructions contained in the GI Department of Per, and A.R. O.M. No.36011/6/79-Est. (SCT,) dated 19-4-1979.

6. We have already noticed above the contention put forth by the petitioner before the learned Tribunal. What he contended before the learned Tribunal was that the respondents did not extend the relaxed standards thereby meaning, that the respondents did not add grace marks to the marks obtained by the petitioner in the written and oral tests and if the respondents were to add grace marks in terms of administrative instructions, he would have been selected and promoted to the post of Foreman (Gyro). That contention was found to be factually incorrect in as much as both in the year 1991 and in the year 1997, grace marks in terms of the administrative instructions were added to the actual marks obtained by the petitioner in the written test and the oral test and despite the addition of grace marks, the petitioner did not qualify himself to be considered and appointed to the post of Foreman (Gyro) both during the year 1991 and the year 1997. When that is the contention before the learned Tribunal, quite curiously, the petitioner for the first time in this writ petition has urged that "O.M. dated 19-4-1979 gives a free hand to the department to fix relaxed standards in marks on each occasion depending upon circumstances mentioned therein", and therefore, the respondents ought to have made good the deficit percentage of marks obtained by the petitioner in the DQEs conducted in the year 1991 and 1997 by adding requisite number of grace marks and promoted him instead of adding only five (5) marks based on the decision taken by the department in the year 1983. This contention was not taken nor urged before the learned Tribunal. We would have been justified in not entertaining this plea taken for the first time in this Court. But, we do not propose to do so, because, we do not find any merit in this contention. GI Department of Per, and A.R. O.M.No.36011/6/79-Est. (SCT), dated 19-4-1979, reads:

"Subject :--Relaxation of standards in qualifying examinations for promotion.

The undersigned is directed to refer to this Department's O.M.No.36021/10/76-Est. (SCT), dated 21-1-1977 in which it has been provided that in promotions made on the basis of seniority subject to fitness where there is reservation for Scheduled Castes and Scheduled Tribes in accordance with Department of Personnel and A.R.D O.M.No.27/2/71-Estt. (SCT), dated the 27th November, 1972 and where a qualifying examination is held to determine the fitness of candidates for promotion, suitable relaxation in the qualifying standards in such examinations should be made in the case of Scheduled Caste/Scheduled Tribes candidates. The extent of relaxation in such cases is to be decided on each occasion taking into account all relevant factors including (i) the number of vacancies reserved; (ii) the performance of Scheduled Castes/Scheduled Tribes candidates as well as general candidates in that examination; (iii) the minimum standard of fitness for appointment to the post; and also (iv) the overall strength of the cadre and that of the Scheduled Castes and Scheduled Tribes in that cadre. A question has been raised whether similar relaxation of standards could

be made in favour of Scheduled Castes/ Scheduled Tribes candidates, in departmental qualifying examinations for promotion in cases where promotion is made by relaxation (and not on the basis of seniority subject to fitness). It has now been decided that in the case also of departmental qualifying examinations held for promotion to be made on the basis of selection in which there is reservation for Scheduled Castes and Scheduled Tribes in accordance with para 2(B) (b) of this Department's O.M. No.1/12/67, Est. (C), dated 11-7-1968 and No.10/141/73-Est (SCT), dated 20-7-1997, read with relevant amending orders viz., O.M. No.27/25/68-Est. (SCT), dated 25-3-1976 and O.M. No.36021/7/75-Est. (SCT), dated 25-2-1976. suitable relaxation should be made in the case of Scheduled Castes/Scheduled Tribes candidates in the Departmental Qualifying Examinations in question. In such cases the extent of relaxation should be decided on each occasion whenever a qualifying examination is held taking into account all relevant factors such as those referred to at items (i) to (iv) in this Office Memorandum."

Under this O.M., the appointment authority is conferred with a discretionary power to grant suitable relaxation in the case of Scheduled Castes/Scheduled Tribes candidates in the DQE and it is directed that the extent of relaxation should be decided on each occasion whenever a qualifying examination is held taking into account (i) the number of vacancies reserved; (ii) the performance of Scheduled Caste/Scheduled Tribe candidates as well as general candidates in that examination; (iii) the minimum standard of fitness for appointment to the post; and also (iv) the overall strength of the cadre and that of the Scheduled Castes and Scheduled Tribes in that cadre. The concerned department in its wisdom and taking into account the above factors thought it appropriate and necessary to add only five (5) grace marks in the case of candidates belonging to the Scheduled Caste and Scheduled Tribe communities.

7. Undoubtedly under the above O.M., the appointing authority has discretion to extend more relaxation also in the case of Scheduled Caste and Scheduled Tribe candidates if there is any justification for doing so. The question that arises for our consideration in the instant case is whether in the DQEs conducted in the year 1991 and 1997, the department ought to have awarded more grace marks than five (5) marks to the marks obtained by the petitioner as a matter of legal obligation and factual justification. The only fact stated in the pleading and highlighted before us at the time of argument by the teamed Counsel for the petitioner in support of his claim that the petitioner was the only candidate belonging to Scheduled Caste community and therefore the 4th respondent ought to have added atleast seventeen (17) grace marks to the actual marks obtained by the petitioner in the DQE conducted in the year 1997 so as to make him qualify to be considered for appointment to the post of Foreman (Gyro). The circumstance stated by the petitioner could hardly be a justification for the learned Tribunal or for this Court to direct the 4th respondent -appointing authority to add seventeen (17) grace marks to the actual marks obtained by the petitioner and promote him to the post of Foreman (Gyro). The 4th respondent is

a donee of the discretionary power conferred upon him under the O.M.No.36011/6/79-Est. (SCT), dated 19-4-1979. It is well settled principle of law that the Courts should not usurp the discretionary power vested in a donee of the power under a statute or otherwise, and the Courts are entitled to see only whether the donee of the discretionary power has exercised the power vested in him/it reasonably and fairly or arbitrarily and irrationally. Nothing is placed before us to satisfy ourselves that the respondent Department in awarding only five (5) grace marks in favour of the Scheduled Caste and Scheduled Tribe candidates acted arbitrarily or irrationally. Be that as it may, from a careful reading of O.M., dated 19-4-1979, it cannot be said that the 4th respondent-appointing authority was under a legal obligation to make good the entire deficiency in percentage of marks obtained by the petitioner in the DQEs by granting relaxation and adding requisite grace marks irrespective of the poor percentage of actual marks obtained by the petitioner in the written test and the oral test. In that view of the matter, no exception can be taken to the impugned order of the learned Tribunal.

8. In the result and for the foregoing reasons, writ petition is dismissed with no order as to costs.