
(2013) 07 AHC CK 0079

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35517 of 2013

Union of India and Others

APPELLANT

Vs

O.P. Saran and Others

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2013) 7 ADJ 636

Hon'ble Judges : Rakesh Srivastava, J;Laxmi Kanta Mohapatra, J

Bench : Division Bench

Advocate : Vivek Singh and Kaushalesh Pratap Singh, for the Appellant; Sanjay Kumar Om, for the Respondent

Final Decision : Allowed

Judgement

Laxmi Kanta Mohapatra, J.—Heard Sri Kaushalesh Pratap Singh, learned counsel appearing for the petitioner and Sri Sanjay Kumar Om, learned counsel appearing on behalf of the respondents. The Union of India through General Manager, Diesel Locomotive Works, Varanasi and two other Officers of Diesel Locomotive Works, Varanasi have filed this writ application questioning the legality of the order dated 21st March, 2013 passed by the Central Administrative Tribunal, Allahabad Bench in O.A. No. 539 of 2008.

2. The respondent No. 1 had filed the original application before the Tribunal for a direction to the present petitioners to restore his seniority as per panel dated 13.6.2001 qua respondent Nos. 4, 5 and 6 and also different orders passed by the present petitioners in relation to the above prayer.

3. The case of the respondent No. 1 is that he was working as Chargeman w.e.f. 30.12.1996 and thereafter was posted in Millrite Trade of Mechanical Engineering. A Notification was issued for filling up of 7 posts (05 posts for General category, 01 post for Scheduled Caste and 01 post for Scheduled Tribe candidates) of Section Engineer in the Grade of Rs. 6500-10500. This Notification was issued on 1.3.2001. A list of eligible candidates within the zone of

consideration was prepared by the petitioners and the name of respondent No. 1 found place at Serial No. 12 amongst the list of eligible SC candidates. His further case is that as per the "combined seniority list" of Junior Engineer (Millrite Trade) as it stood on 31st October, 1998, his name was placed at Serial No. 11 whereas the name of one Sri V.P. Singh was placed at Serial No. 10 and name of Sri R.S. Siddique was placed at Serial No. 12. A written and viva voce test was conducted to fill up the above 7 posts and result was declared on 24.5.2001. Name of the respondent No. 1 found place at Serial No. 2 and the name of present respondent Nos. 3, 4 and 5 were found below respondent No. 1. The above "select list" was given effect to. Six years thereafter, a representation was made by the respondent Nos. 3 and 4 challenging placement of the respondent No. 1 above them and prayed for revision of the "seniority list" and place the respondent No. 1 below them on the ground that the respondent No. 1 had been selected on the basis of relaxed standard. The respondent No. 1 was given notice of the said representation but before he could submit any proper reply, the "revised seniority list" was published on 10.2.2007 placing the respondent No. 1 below respondent Nos. 4, 5 and 6. Challenging the same as well as the subsequent orders rejecting the representation of the respondent No. 1, the original application was filed before the Tribunal by the respondent No. 1.

4. The said original application was opposed by the present petitioners on the ground that the post of Section Engineer was a promotional post and promotions were to be effected by way of selection. Accordingly, Notification was issued for filling up of those 7 posts after conducting a written and viva voce test. A candidate was required to obtain minimum 30 per cent marks on professional ability and 60 per cent marks in aggregate. Four General category candidates secured 60 per cent marks but the respondent No. 1 secured less than 60 per cent, but was declared successful on the basis of relaxed marks available to a SC candidate. When the result was published, the respondent No. 1 was wrongly placed at Serial No. 2 and on representation being moved, the same was corrected and the respondent No. 1 was placed below the respondent Nos. 3, 4 and 5 in the "revised seniority list".

5. The Tribunal in the impugned order held that the list prepared in 2001 placing the respondent No. 1 at Serial No. 2 had continued for 5 years and no one challenged the placement of respondent No. 1 in the "seniority list". On the basis of a representation made by two of the private respondents, the question of seniority was reopened and the "revised seniority list" was prepared without obtaining approval of the General Manager as required. The Tribunal further held that as per point No. 3 of Railway Boards Circular No. 97/1992 dated 16.6.1992, the respondent No. 1 came into zone of consideration automatically on the basis of his seniority and relaxed standard was not made available to him under the said provision in the Circular. It further held that nothing was placed by the present petitioners before the Tribunal to come to a conclusion that the respondent No. 1 had been placed at Serial No. 2 wrongly as he had been selected on relaxed standard. Accordingly, the Tribunal allowed the original

application and quashed the impugned orders thereby restoring seniority of the respondent No. 1.

6. Sri Kaushalesh Pratap Singh, learned counsel appearing for the petitioners placed reliance on Railway Board's Circular bearing No. 97/1992 and submitted that under Clause 2(1) of the said Circular, the respondent No. 1 was brought into the zone of consideration by extending relaxed standard. He also submitted that though, a candidate was required to secure 60 per cent in aggregate, the respondent No. 1 secured less than 60 per cent and was placed in the "select list" by extending relaxed standard. Referring to Clause 3.1(ii) of the above Circular, it was further contended that the respondent No. 1 having been brought into the zone of consideration and selected by extending relaxed standard, as per the said provision he is to be placed below those who qualified with the general standard. It was also contended by the learned counsel that the entire file was placed before the General Manager and the General Manager made an endorsement "seen" on the said proposal which was taken to be an "approval" prior to the order, challenged before the Tribunal, was passed.

7. Sri Sanjay Kumar Om, the learned counsel appearing for the respondent No. 1 submitted that the respondent No. 1 came into zone of consideration solely on the basis of his seniority and not because of the relaxed standard. It was also contended by Sri Om, the learned counsel appearing for the respondent No. 1 that no other material was placed before the Tribunal to show that the respondent No. 1 had been selected for promotion by relaxing the standard and accordingly, the Tribunal was justified in allowing the original application.

8. RBE No. 97/1992 dated 16.6.1992 referred to as Circular by the Tribunal had been issued in view of interim orders passed by the Full Bench of C.A.T. dated 27.2.1992. The said Full Bench was constituted by the Chairman, C.A.T. with reference to an order dated 16th May, 1998 passed by a Division Bench of Central Administrative Tribunal, Hyderabad in O.A. No. 759 of 1987. In terms of the Full Bench order as stated above, the procedure in respect of reservation for SC and ST in the matter of promotion was reviewed and a fresh procedure was prescribed under the RBE No. 97/1992. Clause 2 of the said Circular provides for zone of consideration. It is provided that in case of selections, the list of eligible candidates has to be drawn on the basis of "3 X formula" and for the above purpose, the list should be drawn strictly as per seniority of eligible candidates. It is further provided that when the above list is prepared care should be taken to see that there are adequate number of SC and ST candidates i.e. three times of the number of vacancies reserved for each of them. In case, the number is less than three times, the vacancies reserved for SC and ST deficiency should be made good by picking up other eligible SC and ST candidates by going down the "seniority list". However, it must be ensured that number of persons called for selection should not exceed the number, three times the number of vacancies. Referring to Clause 3.1(ii), it was contended by the learned counsel appearing for the petitioners that Scheduled Caste and Scheduled Tribe candidates, who find

place in the panel on relaxed norms or under the best amongst failed policy should be placed below those who have qualified with the general standard and accordingly, the respondent No. 1 having been selected on relaxed standard has to be placed below in the list of candidates selected without relaxed standard.

9. So far as the first contention of the learned counsel for the petitioners is concerned, we are unable to accept the same. Clause 2.1(i) provides that in case of selection, the list of eligible candidates is to be drawn on the basis of "3 X formula". For this purpose, the list should be drawn strictly as per the seniority of the eligible candidates. Clause 2.1(ii) prescribes for relaxed standard in case of SC and ST candidates. There is no denial of the fact that the respondent No. 1 came into the zone of consideration on the basis of his seniority and therefore, the provision contained in Clause 2.1(ii) had not been extended to him.

10. So far second contention of the learned counsel for the petitioners is concerned, there appears to be some force in such submission. It was contended by the learned counsel for the petitioners that a candidate was required to secure 60 per cent in aggregate and the respondent No. 1 had secured less than 60 per cent for which relaxed standard had to be extended to put in the "select list". This ground was specifically taken in the counter-affidavit filed before the Tribunal and there is no denial of the same. Therefore, Clause 3.1(ii) shall be made applicable to the case of the respondent No. 1 and the said Clause provides that SC and ST candidates who find place in the panel on relaxed norms or under the best amongst failed policy, should be placed below those who have qualified with the general standard. The undisputed position being that the respondent No. 1 secured less than 60 per cent in aggregate and had been placed in the select list by relaxing the standard, this Clause becomes applicable and he is to be placed below those who have qualified with general standard.

11. So far as the third issue raised by the learned counsel for the petitioners is concerned, we find that the file was placed before the General Manager for his approval before the "revised seniority list" was published on 10.2.2007 placing the respondent No. 1 below respondent Nos. 4, 5 and 6. It also appears that the General Manager only made an endorsement to the effect "seen". Law is well-settled that an endorsement such as "seen" does not amount to approval as it requires application of mind. Therefore, there was no approval of the General Manager before the revised seniority list was prepared. We are, therefore, of the view that the matter should be remitted back to the stage where records were required to be placed by the General Manager for his approval. We accordingly, allow the writ application, quash the impugned order of the Tribunal as well as the revised seniority list published on 10.2.2007 and remit the matter back to the Department for placing the record before the General Manager for his approval. We further direct that before any order is passed by the General Manager, all the records shall be placed before him for perusal.