

(1976) 09 KAR CK 0003
In the Karnataka High Court

W.G. Patil

APPELLANT

Vs

The Karnataka State Road Transport Corporation

RESPONDENT

Date of Decision : 16-09-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Road Transport Corporations Act, 1950 — Section 45

Citation : AIR 1977 Kar 38

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : R.S. Mahendra, for the Appellant; K.S. Puttaswamy, for the Respondent

Judgement

1. The General Manager of Karnataka State Road Transport Corporation, which I shall call as "the Corporation", invited applications for the post of Deputy Controller of Stores/Purchases, Class 1, Senior, by Advertisement No. 9 of 1974, dated 18-10-1974. The qualifications and experience prescribed thereunder were as follows:

" A degree of a University established by law in India or equivalent qualification with an experience of not less than 7 years in a responsible capacity in large public or private undertaking in handling automobiles stores involving thorough knowledge of automobile stores, stores procedure, management of stores and related matters, experience of the work at a supervisory level entailing decision-making and not merely handling automobile parts through indenting for usage etc."

The petitioner was one amongst those who applied in response to the said advertisement. His application was finally scrutinised and rejected by the Karnataka State Transport Corporation Board, hereinafter called as "the Boar&" on the ground that he did not possess the above qualifications. The petitioner in this petition under Article 226 of the Constitution, challenges the validity of the qualifications set out in the said advertisement and also the authority of the

Board to scrutinise and reject his application.

2. I will now set out in detail, the events leading up to the petition.

On 24th February, 1973, the General Manager issued an advertisement No. 1/1973 inviting applications for Class I and Class 11 posts. The petitioner then also applied for the post of the Deputy Controller. His application was considered by the General Manager of the Corporation having regard to the qualifications prescribed to the post. He was selected for a written test, along with several other eligible candidates. They appeared for the written test, but not called for the interview which ought to have followed in the normal course.

3. The circumstances that led to the cancellation of the interview are these:

One Chikke Gowda who was an applicant to the said post was not called for written test on the ground that he did not possess the required qualifications. He made a representation to the Board to relax the qualification in his case so that he could also be considered for the post. It is said that the Board was competent to relax certain qualifications in individual cases. His representation came up for consideration before the Board under Subject No. 9 in its meeting held on 20th June, 1974. The Board passed a Resolution No. 2842 constituting a Special Sub-Committee to examine the issue, and report the matter.

4. The Special Sub-Committee consisted of the General Manager, Sri C. J. Kamalani, Sri K. V. R. Rao and D. Kariyappa Gowda. The said Sub-Committee while considering the proposal regarding the relaxation of the service qualification of Sri Chikke Gowda, made a sweeping observation as follows:

"Having scrutinised the qualifications of the seventeen candidates permitted to take the written test for the post of Deputy Controller of Stores/Purchases, the Committee was of the view that the service qualification (experience) prescribed for the post namely "not less than seven years in a responsible capacity in handling automobile stores in large public or private undertaking" had been interpreted rather loosely and liberally with the result that a large majority of the candidates who were ineligible had been considered eligible for the post and had been permitted to take the test. Relatively, therefore, rejection of the candidature of Sri L. Chikke Gowda who was similarly placed was inappropriate. Therefore, the Committee recommends that the entire recruitment process until now be considered invalid and the posts be re-advertised.

"The Committee also recommends that with a view to avoiding recurrence of such a contingency "responsible capacity in handling stores" be interpreted as involving thorough knowledge of Automobile Stores, Stores procedures, management of stores and related matters, experience of work at a supervisory level entailing decision-making and not merely handling automobile parts through indenting for usage as a part of the duties entrusted.

With a view to attracting candidates of better calibre the Committee recommends that the advertisement be issued in the national news-papers of wide circulation

outside the State too, besides the local papers

The Board in its 138th Meeting held on 21st August 1974, accepted the above recommendation and further resolved that the entire recruitment process until then held for the post of Deputy Controller of Stores Purchases he rendered invalid and the post be readvertised. The Board further resolved that with a view to avoid recurrence of such mistake the qualification prescribed for the post, namely, "responsible capacity in handling stores" be interpreted as involving thorough knowledge of automobile stores, stores procedures, management of stores and related matters, experience of the work at a supervisory level entailing decision-making and not merely handling automobile parts through indenting for usage as a part of the duties entrusted". So, pursuant to the above resolution, Advertisement No. 9/1974 was issued on 18-10-1974 inviting fresh applications.

5. In response to the Advertisement No. 9/1974, there were as many as 60 applications including one from the petitioner. Those applications were scrutinised by the Assistant Administrative Officer in charge of the recruitment. He rejected the application of the petitioner and several others on the ground that they did not hold responsible posts. He found only 15 candidates eligible to take the written test.

6. On coming to know of the rejection of the application, the petitioner made a representation to the Chairman of the Corporation, The Chairman placed the representation before the Board along with the papers connected with the scrutiny of the applications. The Board endorsed the view taken by the Assistant Administrative Officer. The candidates who were found eligible by the Assistant Administrative Officer were allowed to take the written test. It is said that only nine appeared for the test out of whom, six were said to have passed. The successful candidates were asked to appear for the interview on 6-1-1976. On 5-1-1976, the petitioner presented the writ petition challenging the validity of the rejection of his application.

7. When the writ petition came up for preliminary hearing, Mr. Puttaswamy, learned counsel for the Corporation, took notice and submitted to the Court that the Board would not proceed with the interview until the disposal of the writ petition.

8. With these facts, let me now consider the contentions urged for the petitioner. It is not necessary for me to consider whether the Board was justified in cancelling Advertisement No. 1/1973 and directing re advertisement for the same post, although, it was urged that that cancellation was solely motivated to favour Chikke Gowda who was not then qualified to apply for the post of Deputy Controller of Stores/ Purchases.

9. On the rival contentions urged, the first question that arises for consideration is whether the Board was competent to scrutinise and reject the application of the petitioner. This question has to be examined with reference to the provisions

in the Karnataka State Road Transport Corporation Cadre and Recruitment Regulations, hereinafter called shortly as "the Regulations". The Regulations were framed by the Corporation with the previous sanction of the Government u/s 45 of the Road Transport Corporations Act, 1950. By the Regulations, the Appointing Authority and the Selection Authority have been constituted for recruitment to the various posts under the Corporation. The mode of selection and the qualifications have also been prescribed. Regulation 2 (2) defines "Appointing Authority" to mean, the authority specified by the Corporation by Resolution to make appointments to posts in the service of the Corporation in accordance with the methods of recruitment specified in the Regulations. Regulation 2 (15) defines "Selection Authority" to mean "the Authority specified under Regulation 10". Regulation 10, so far as it is relevant, provides as follows:--

"10. SELECTION AUTHORITIES:

Selection Authorities shall be as follows:-

Class of Selection Authorities. Posts.

(a) Class I Committee consisting of Senior and the Chairman, Vice Junior and Chairman, General Manager,

Class II and two Non-official members of the Corporation. The Chairman of the Corporation shall be the Chairman of the Committee. The two non-official Members shall be nominated by the Chairman. In case a person belonging to a Scheduled Caste/Scheduled Tribe is a member of the Corporation, he shall be nominated as one of the Non-official members of the Selection Committee. The other nonofficial Member may be nominated by rotation.

(b) xx xx xx

(c) xx xx xx"

So, the Selection Authority for the Deputy Controller of Stores /Purchases, is a Committee consisting of the Chairman, ViceChairman, General Manager and two nonofficial members of the Corporation. Now, I will come back to Regulation 3. It provides the method of recruitment out of which direct recruitment is one of the methods prescribed. Regulation 5 provides procedure for appointment. It states that all appointments by direct recruitment shall be made by the Appointing Authority from the list of approved candidates. The Chairman of the Corporation is stated to be the appointing authority for Class I and Class II posts. Regulation 6 provides procedure for selection. It states that the applications received in response to an advertisement shall be registered and the applicants may be required to undergo a written test or such other test as may be decided by the Selection Authority, or such other officers as may be authorised by the Selection Authority from time to time. It also states that those applicants who have passed in the written test may be called for interview by the Selection Authority. The Selection Authority after interviewing the candidates shall prepare a list of candidates in the order of merit, keeping in view the reservation required for

scheduled castes, scheduled tribes and backward classes.

From the above Regulations, it is clear that although the Chairman is the appointing authority, for the post of Deputy Controller of Stores/Purchases, the appointment is required to be made in accordance with the select list approved by the Selection Authority, I have already stated that the Selection Authority consists of the Chairman, the Vice-Chairman, the General Manager and two non-official members of the Corporation. It is this authority that has to select candidates due regard being had to the qualifications and their relative merits. The process of selection consists in the determination of eligibility and suitability of candidates. The scrutiny of the applications is just one step in that process. It has to be determined with reference to the qualifications prescribed by the Regulations. Therefore, the duty to determine the eligibility is also that of the Selection Authority unless it is properly delegated to others. The Board has no part to play in the matter of selection although it is a statutory authority with supreme powers. The Board, as any other authority, is bound by the Regulations. Under the Regulations, the Board cannot exercise the powers conferred upon the Selection Authority. Therefore, the scrutiny and rejection of the petitioner's application by the Board was clearly without authority of law.

10. The second question that arises for consideration is whether the qualifications set out in Advertisement No. 9/1974 were in variance with the qualifications prescribed for the post of Deputy Controller of Stores/Purchases. The qualifications prescribed under the Regulations for the post of Deputy Controller of Stores/Purchases (Class 1, Senior) are as follows:-

"2. Category - Deputy Controller of Stores/Purchases

Stock Verification Officer (Class I Senior) By promotion (a) A degree of a University by selection established by Law in India with not less than five (5) years service junior Officer as Stores/Purchase Officer (Class I junior) or chase Cadre), or Diploma in Automobile or Mechanical Engineering from a recognized AND Institution or equivalent qualification with not less than seven (7) years service as Stores/Purchase Officer (Class I junior) If no suit- (a) A degree of a University established by Law in India is found or equivalent qualification for promotion with an experience of not less than seven (7) years by Direct in a responsible capacity Recruitment in handling Automobile Stores in large Public Private-Undertaking. b) Preference will be given to those with Administrative and Accounting experience and knowledge of import and Export Regulations. (c) Must not be above 45 years of age."

11. It is seen that for direct, recruitment a degree of a University established by Law in India or equivalent qualification with not less than seven years experience in a responsible capacity in handling Automobile Stores in large Public or Private Undertaking has been prescribed. The Board, however, in the resolution No. 2897 passed in its meeting held on 21st August, 1974, has construed the said

experience to mean "thorough knowledge of Automobile Stores, stores procedure, management of stores and related matters, experience of the work at a supervisory level entailing decision making and not merely handling automobile parts through indenting for usage as a part of the, duties entrusted. The same has been prescribed by Advertisement No. 9/ 1974. The question is whether it was competent for the Board to lay down that qualification. Mr. Puttaswamy for the Corporation said that the Board only laid down what should be the meaning of the term of "experience in a responsible capacity did not add anything to the qualification prescribed by the Regulations. It is difficult to accept the contention if one compares the qualifications set out in the said Advertisement with that prescribed under the Regulations. The term "experience in a responsible capacity" cannot have any definite connotation. It cannot be put into a water-tight compartment. It depends upon the nature of posts and the duties attached thereto. The, Regulation has conferred upon the Selection Authority to select candidates on their relative merits having regard to their experience in a responsible capacity. Whether the post held or the experience gained by a candidate was in a responsible capacity or not, is a question which the Selection Authority alone must consider and not the Board. The Board by adding or explaining the meaning of the said expression has not only curtailed the discretion of the Selection Authority, but also went beyond its jurisdiction.

12. Before I part with the case, I have to consider one other contention urged for the Corporation. It was urged that the petitioner should not be given any relief in this petition since he had approached this Court belatedly. I do not find any merit in this contention. When the petitioner came to know that he was not permitted to take the written test, he immediately made a representation to the Chairman. The Chairman placed that representation before the Board. On 24th September, 1975, the Board considered that representation and endorsed the view taken by the Assistant Administrative Officer. But the decision of the Board was not intimated to the petitioner. It was only when the petitioner came to know that the Selection Authority invited six candidates for interview, he approached this Court on 5-1-1976. The Selection Authority has not yet interviewed any candidate. The petitioner, therefore, cannot be denied relief's on the ground of laces.

13. In the result, the rule is made absolute, A direction shall issue to the Corporation to place the petitioners application before the appropriate Selection Authority for consideration strictly in accordance with the qualification prescribed under the Regulations and in accordance with law.

14. The petitioner is entitled to his costs. Advocates fee Rs. 100/-.

15. Rule made absolute.