

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.06.2017
Delivered on : 30.06.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P.Nos.30170 to 30172 of 2014 and
and M.P.No.1 of 2014

S.Ramakrishnan ...Petitioner in all W.Ps.

Vs

1. The Registrar
Central Administrative Tribunal
Chennai Bench, High Court Buildings
Chennai - 600 104.
2. Union of India
Owning Railway Board
Rep.by its Chairman
Rail Bhawan, New Delhi - 110 001.
3. The General Manager
Integral Coach Factory
Chennai 600 038 ...Respondents 1 to 3 in all W.Ps
4. The Senior Personnel Officer
Office of the Chief Personnel Officer
Integral Coach Factory,
Chennai 600 038 ...4th Respondent in
W.P.Nos.30170 and 30171 of 2014
5. The Chief Personnel Officer
Integral Coach Factory
Chennai - 600 038 ...4th respondent in
W.P.No.30172 of 2014

6.P.Gunasekaran
7.V.Ramachandran
8.S.Sivaraj
9.V.Ramnath

10.V.Sugumaran
11.M.Venkateswara Rao

...Respondents 5 to 10 in
W.P.No.30170/2014

12.B.Srinivasalu
13.P.Sreetharan

....Respondents 5 and 6
in W.P.No.30171/2014

14.Brijesh.B
15.Kumar.R.

...Respondents 5 and 6
in W.P.No.30172/ 2014

W.P.No.30170 of 2014 filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, calling for the records of the first respondent relating to the common order dated 03.09.2014 in O.A.Nos.677 of 2011, 683 of 2011 and 568 of 2012 quash the same in so far as O.A.Nos.677 of 2011 is concerned and direct the 2 to 4 respondents to consider and select the petitioner for the post of Intermediate Apprentice Mechanic/Mechanical with effect from 22.04.2008 under the 25% qualified serving employees quota for the year 2007-2008 with all consequential benefits including monetary benefits and seniority and issue.

W.P.No.30171 of 2014 filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, calling for the records of the first respondent relating to the common order dated 03.09.2014 in O.A.NOs.677 of 2011, 683 of 2011 and 568 of 2012 quash the same in so far as O.A.No.683 of 2011 is concerned and direct the 2 to 4 respondents to consider and select the petitioner for the post of Intermediate Apprentice Mechanic/Mechanical with effect from 22.04.2006 under the 25% qualified serving employees quota for the year 2005-2006 with all consequential benefits including monetary benefits and seniority and issue.

W.P.No.30172 of 2014 filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, calling for the records of the first respondent relating to the common order dated 03.09.2014 in O.A.Nos.677 of 2011, 683 of 2011 and 568 of 2012 quash the same in so far as O.A.No.568 of 2012 is concerned and direct the 2 to 4 respondents to redo the entire selection process for the post of Intermediate Apprentice Mechanic/Mechanical under the 25% qualified serving employees quota for the year 2011 and further direct the 2 to 4 respondents to consider and select the petitioner for the said post and issue.

For Petitioner : Mr.V.Prakash
Senior Counsel for
Ms.Ramapriya Gopalakrishnan (in all WPs)

For Respondents : Mr.V.Radhakrishnan
Senior Counsel for Mr.P.T.Ramkumar
Central Government Standing Counsel
for R2 to R4 (in all WPs)
R1 - Tribunal
R5 to R10 in W.P.No.30170/2014
-No appearance
R5 and R6 in W.P.Nos.30171 and
30172 of 2014 - No appearance

C O M M O N O R D E R

K.K. SASIDHARAN, J.

These three writ petitions are directed against the common order dated 3 September, 2014, in O.A.Nos.677, 683 of 2011 and 568 of 2012, dismissing the original applications filed by the petitioner, claiming appointment to the post of Intermediate Apprentice Mechanic/Mechanical against 25% Qualified Serving Employees (hereinafter referred to as "QSE") quota for the year 2005-06, 2007-08 and 2011-12.

The Relevant Facts:

2. The petitioner was initially appointed as Khalasi on 9.1.1992 by the Management of Integral Coach Factory. Subsequently, the petitioner was promoted as Khalasi Helper on 12.01.1994. The petitioner was selected under QSE Quota for the post of Technician Grade III and promoted with retrospective effect from 31.10.1994. The petitioner was later promoted to the post of Technician Grade II with effect from 08.06.2001 and Technician Grade I with effect from 21.08.2009.

3. While the petitioner was working as Inspector Grade I/Ex-cadre, the Integral Coach Factory, Chennai, issued a notification dated 2.1.2006 for appointment to the post of Intermediate Apprentice Mechanic/Mechanical in respect of Quota for QSE. The petitioner qualified in the written test. However, he was not selected taking into account the seniority prepared to maintain inter se position among different trades. The non-selection was challenged in O.A.No.683 of 2011. Subsequently,

the Integral Coach Factory issued another notification dated 19.12.2007 for the year 2007-08. The petitioner submitted application in respect of QSE Quota. The petitioner was qualified in the written test conducted by the Integral Coach Factory. Since the seniority of the petitioner was 157, he was not selected for the 14 vacancies under QSE Quota. The non-selection was challenged in O.A.No.677 of 2011. Similarly, notification was issued on 7.7.2011 for appointment against 25% QSE Quota for the year 2011-12. The petitioner took part in the written test. The name of the petitioner was included in the list of candidates succeeded in the written test. However, he was not selected again on the ground of his position below other seniority. The petitioner, therefore, filed O.A.No.562 of 2012.

4. Before the Madras Bench of the Central Administrative Tribunal (for short "Tribunal"), the second respondent contended that the seniority was assigned to the employees based on the grade and length of service by maintaining inter se positions among different grades. The candidates, who secured 60% and above in aggregate in the written test were eligible to be empanelled. The panel was drawn according to the seniority position in the integrated seniority to the extent of vacancies notified in the relevant notification. According to Railways, though the petitioner secured marks in the written test, he was not selected on account of his seniority position.

5. The Tribunal taking into account the instructions issued by the Railway Board dated 19.06.2009 and the relevant seniority position of the petitioner dismissed the Original Applications. Feeling aggrieved, the petitioner has come up with these writ petitions.

Submissions:-

6. The learned Senior Counsel for the petitioner contended that in view of the judgment of the Hon'ble Supreme Court in M.Ramjayaram v. General Manager, South Central Railway and others [(1996) 8 SCC 266], the Selection Committee was not correct in giving weightage to seniority. According to the learned Senior Counsel, the Supreme Court made it clear that since the candidates for selection were from different units, Rule 320 of the Indian Railway Establishment Code would not be applicable. It was contended that merit should be the only criteria for empanelment and not seniority. The learned Senior Counsel contended that the employees, who appeared in the written test belongs to different units and empanelling and selecting candidates by drawing up integrated seniority would run contrary to the judgment in M.Ramjayaram (cited supra). The learned Senior Counsel contended that the petitioner secured

high marks. However, the employees, who secured marks lower than him were all selected and the same shows that the selection process was arbitrary and unjustifiable.

7. The learned Senior Counsel for the Railways supported the order passed by the Tribunal. According to the learned Senior Counsel, the selection prior to M.Ramjayaram (cited supra) was made in accordance with the Circular issued by the Railways dated 20.11.1986. According to the learned Senior Counsel, selection was made taking into account the seniority position as the employees were from different trades. It was contended that the combined seniority list in respect of those qualified in the written test was prepared in accordance with Rule 320 of the Indian Railway Establishment Code. The learned Senior Counsel further contended that the selection against inter-apprentice quota is a General Selection as all grades right from Technician Grade III to MCM fulfilling educational qualification and having three years service as technicians are eligible for consideration. The learned Senior Counsel further contended that the candidates were selected taking into account the seniority position in the integrated seniority list of those qualified in the written test and as such, the Tribunal was correct in dismissing the Original Applications.

Analysis:-

8. The petitioner submitted application for selection to the post of Intermediate Apprentice Mechanic/Mechanical for absorption as Junior Engineer/Mechanical for the year 2005-06, 2007-08 and 2011-12. The notification issued by the Integral Coach Factory indicates that selection will be made by conducting written test and thereafter, appointment would be given taking into account the seniority position. The petitioner was not given appointment on account of his inter se seniority position. The respondents justified his non-selection on the ground that seniority was assigned based on the grade and length of service duly maintained in the inter se position among different grades and the names of the petitioner was shown far below the names of other selected candidates. The petitioner filed Original Applications before the Tribunal with a grievance that merit was given a go by. It was the specific contention of the petitioner that notwithstanding the marks obtained by him, others who secured less marks were selected only on the ground that they were senior to him in the combined seniority list.

9. The petitioner placed heavy reliance on the judgment of the Hon'ble Supreme Court in M.Ramjayaram (cited supra). The Supreme Court in the said decision made it clear that selection should be made primarily on the basis of overall merit. The

Supreme Court indicated that the award of 15 marks for seniority is illegal.

10. The Tribunal was expected to consider the factual matrix in the light of the circulars issued by the Railways and the decision of the Hon'ble Supreme Court. The Tribunal, without discussing the issues raised by the petitioner, simply dismissed the Original Applications taking into account the reply filed by the Railways. It was only before this court the Railways produced the inter se seniority list indicating the seniority position of the petitioner. The order passed by the Tribunal does not contain any indication that the larger issues raised by the petitioner were considered before dismissing the Original Applications.

11. The Tribunal observed that there is no anomaly in awarding marks for the record of service in respect of each candidates. The very same Tribunal in its order dated 18 February 2015 in O.A.No.155 of 2012 [M.Balamurugan and another vs. Union of India represented by General Manager, Integral Coach Factory] observed that allotting 30 marks for record of service uniformly for all the candidates is not justifiable. The Tribunal should be consistent in its views, in case, the facts are similar. The Tribunal, without making any attempt to consider the larger issues raised by the petitioner dismissed the Original Applications. The very same Tribunal allowed the Original Applications filed by two other employees in a similar matter.

12. The Tribunal adopted a short-cut method for disposal of cases. The reply affidavit filed by the respondents was taken as the basis to reject the contentions taken by the petitioner without making any attempt to consider the instructions given by the Railways and the law on the subject. We are therefore of the view that the issue requires fresh consideration by the Tribunal.

13. In the result, the common order dated 3 September, 2014 is set aside. The Original Applications in O.A.Nos.677, 683 of 2011 and 568 of 2012 are restored to file. The petitioner and the respondents are given liberty to produce materials to substantiate their respective contentions. The Tribunal is requested to consider the matter on merits and as per law. Since the Original Applications are of the year 2011 and 2012, we request the Tribunal to dispose of the matters as expeditiously as possible, and in any case, within a period of three months from the date of receipt or production of a copy of this order.

14. The writ petitions are allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar
Central Administrative Tribunal
Chennai Bench, High Court Buildings
Chennai - 600 104.
2. The Chairman,
Union of India
Owning Railway Board
Rail Bhawan, New Delhi - 110 001.
3. The General Manager
Integral Coach Factory, Chennai 600 038.
4. The Senior Personnel Officer
Office of the Chief Personnel Officer
Integral Coach Factory,
Chennai 600 038.
5. The Chief Personnel Officer
Integral Coach Factory
Chennai - 600 038.

+3cc to M/s.Sudalaikannan,Advocate,S.R.No.46727

+1cc to M/s.Southern Railway Standing Counsel,S.R.No.46208

W.P.Nos.30170 to 30172 of 2014

RR(CO)
CU(18/07/2017)