

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 436 OF 2004

Union of India and anr. ...Petitioners
Versus
Kanubhai G. Makwan and ors. ...Respondents

Mr. Suresh Kumar a/w. Ms Mohinee Chougule for the
Petitioners – UOI.

None for the Respondents.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE OF RESERVING THE JUDGMENT : 08th August 2018.
DATE OF PRONOUNCING THE JUDGMENT : 10th August 2018.

JUDGMENT:

1] Heard Mr. Suresh Kumar, learned counsel for the
petitioners – UOI.

2] Although, Rule was issued in this petition on
14.3.2005, it is apparent that no proper steps were taken to
serve the respondents.

3] Ultimately, on 26.4.2018, we made the following
order:

*“1. Issue fresh notice to respondent Nos.1 to 38
returnable on 14.6.2018. In addition, the petitioners to
serve the respondents by private mode and to file*

affidavit of service on or before the next date.

2. If any of the respondents remain to be served on the next date, the matter shall stand dismissed against such respondents.

3. S.O to 14th June, 2018."

4] In pursuance of the aforesaid order, affidavit of service has been filed on 25.6.2018. The affidavit of service filed by Mr. Atmaram Meghwal, Chief Law Assistant, working in the office of Divisional Railway Manager, solemnly states that the copy of the writ petition has been served by hand to the respondents. Thereafter, names of 38 respondents have been set out along with the dates of service.

5] The office noting indicates that when notices were issued by the post, they could not be served upon respondent Nos.17,35 and 26, because they were reported to be dead. Despite this, the affidavit of service states that respondent Nos.17,35 and 36 have been served "*by hand*". The affidavit even states that these respondents were served on 19.6.2018, 2.7.2018 and 17.7.2019. Obviously, such affidavit of service cannot be accepted.

6] The petition is abated at least insofar as the legal representatives of respondent Nos.17,35 and 36 are

concerned.

7] The office noting also reports that postal service of respondent Nos.1,19,21,26,29,34 and 37 was returned unserved with remark that they have “retired”. Again, it is not quite clear that as to how service has been effected upon these persons, because the documents annexed to the affidavit of service state that the persons on whom service is effected are working as Guards under Mumbai Division of Western Railway.

8] Apart from the issue of service, we find that the view taken by the Central Administrative Tribunal (CAT), Mumbai in the impugned judgment and order dated 21.3.2003 does not really warrant interference particularly, at this point of time. By the impugned judgment and order, the CAT has issued the following operative directions:

“13. We are not persuaded to take a view different than the view expressed in the aforesaid OA No. 570/2000. Accordingly, therefore the seniority in the selection post has to be on the basis of merit i.e., marks obtained in the written test and viva-voce test and at the end of the training. Accordingly, we quash and set aside the impugned seniority list of Goods Guards dated 18.04.2000 as well as the letter dated 11.06.2001 and direct the respondents to recast the seniority list based on merit obtained in the selection

and assign proper seniority to the applicants. This shall be done within a period of three months from the date of receipt of copy of this order. Accordingly, the OA is allowed. No costs."

9] The CAT, has held that seniority of the Goods Guards by recast on the basis of merit obtained in the selection process and not on basis of seniority in the feeder cadres. In the facts and circumstances of the present case, it cannot be said that such a direction runs counter to the rules referred to in the impugned judgment and order and upon which reliance has been placed by Mr. Suresh Kumar. Admittedly, this was not a case of promotions based only on seniority from a single feeder cadre. This is a case where employees from several distinct cadres were eligible to be considered for promotion to the cadre of Goods Guards. For this purpose, the petitioners held written test as well as Viva-voce. Based upon the merit as determined by the petitioners themselves in such written test and Viva-voce panels were prepared for promotion. From this, the CAT, has concluded that this was a case of promotion on the basis of merit and therefore, seniority in the cadre of Goods Guard had to be determined on the basis of such merit. As noted earlier, this is also not a case of promotion from one single

feeder cadre. Thus construed, there is really no case made out to warrant interference with the impugned judgment and order.

10] The CAT, has based its decision on its earlier judgment and order in O.A. No. 570 of 2000. The CAT has observed that its earlier judgment and order in O.A. No. 570 of 2000 has attained finality as it has not been pointed out that such judgment and order has been challenged any further. This is yet another consideration which dissuades us from exercising our extraordinary jurisdiction under Article 226/227 of the Constitution of India in the present case.

11] For all the aforesaid reasons, we dismiss this petition. Rule is discharged. There shall, however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Dinesh
Sadanand
Sherla

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by Dinesh
Sadanand Sherla
Date: 2018.08.10
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