

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1571 OF 2002

Union of India .. Petitioner
Vs.
Shri Bhimrao Kondiba Lokhande and ors. .. Respondents

**ALONG WITH
WRIT PETITION NO. 1572 OF 2002**

Union of India .. Petitioner
Vs.
Shri Rajesh Babu Gowali and ors. .. Respondents

Mr.Suresh Kumar, for the Petitioner in both the Petitions.
Mr.G.J.Mohan Rao a/w Mr.G.D.P Rao, for Respondent No.1.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 17th JANUARY, 2018

ORDER (PER M.S.KARNIK, J.) :

1. The challenge in these Petitions is to common order dated 22/01/2002 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai in OA/76/1997 & OA/77/1997. Before the Tribunal, the respondent No.1 in both

the Petitions had challenged the selection panel dated 09/04/1996 with direction to the petitioner that a fresh list of selection for the appointment of Junior Clerk-cum-Typist as per seniority-cum- fitness including name of the respondents No.1 in the panel of Scheduled Caste candidates be prepared with the declaration that action of fixing 50% marks for viva voce is illegal and bad in law.

2. The respondents No.1 in both the Petitions belong to Scheduled Caste category joined the service of the petitioner-Central Railway on 01/08/1988 on compassionate ground as Watchman-cum-Sweeper. The respondent No.1 in OA/1571/2002 was working as a labour in Signal and Telecommunication Workshop at Byculla and respondent No.1 in 1572/2002 was working as casual labour. Later on both of them started working as Khalasi.

3. A notification dated 07/10/1995 was issued by the petitioner for departmental examination for promotion of Group

'D' employees to Group 'C' against 33 – 1/3% quota by Railway Board's letter dated 30/09/1975 for 8 vacancies. Out of those 8 vacancies, 4 were for general category, 3 for Scheduled Caste and 1 for Scheduled Tribe. The respondents No.1 appeared for the written test on 10/01/1996 and qualified and placed at serial Nos. 22 & 23 respectively. Though they were called for viva voce on 08/03/1996, their names did not appear in the select panel. The respondents No.1 made representation on 23/04/1996.

4. The grievance of the respondents No.1 before the Tribunal was that the criteria for selection is seniority and same cannot be changed arbitrarily to seniority-cum-suitability. Respondents No.1 were not placed as per their seniority and according to the respondents No.1, criteria of seniority-cum-fitness ought to have been followed. The Tribunal allowed the OA.

5. Learned Counsel for the petitioner Shri Sureshkumar

relying upon the decision of the Apex Court in the case of **All India SC & ST Employees Association and anr. Vs. A.Arthur Jeen and ors. (2001) 6 Supreme Court Cases 380** urged that if the affected candidates who are included in the select lists are not made parties to the OA, OA ought to have been dismissed for non joinder of the necessary parties. We do not find any merit in this submission of the learned Counsel for the petitioner. Respondents No.2 to 8 were impleaded as respondents No. 6 to 12 in OA. The selectees thus are party – respondents to the OA.

6. The next contention urged by Shri Sureshkumar is that the employees who applied from various departments are called for written examination on the basis of the integrated combined seniority. According to him all those who qualified for the written tests are arranged in the order of seniority for empaneling and promotion. The list of eligible employees on the basis of combined integrated seniority was published by the petitioner vide letter dated 10/01/1996. The written

examination was held on 03/02/1996. In the submission of the learned Counsel the procedure adopted in the selection is as per notification. After the written examination and viva voce on 10/01/1996 and 08/03/1996 respectively, the panel was published on 08/04/1996 and thereafter posting orders were issued on 09/04/1996. Learned Counsel would contend that as the respondents No.1 failed to raise any objection between 10/01/1996 till 09/04/1996, they are estopped from challenging the selection.

7. The Tribunal took into consideration the notification dated 07/10/1995 for departmental examination for promotion and more particularly, following clause of notification.

“Oral test of successful candidates in the written test will be arranged to adjudge other factors of suitability. All those who qualify in written and oral test will be arranged in the order of their seniority for promotion against the yearly vacancies available from them in Group 'C' category.”

8. The Tribunal was of the view that as per stand of the petitioner, the candidates for written examination were called on the basis of integrated combined seniority which was not the

provision made in the notification. Admittedly, respondents No.1 in both the Petitions were senior to the selectees. It is not pointed out that on what basis the integrated combined seniority could be prepared for the purpose of selection.

9. In this view of the matter, the Tribunal has directed the petitioner to prepare the list of successful candidates both in written and oral tests in accordance with the last but one para of notification dated 27/10/1995. We do not find the view of the Tribunal is untenable.

10. We are in agreement with the Tribunal's view that as the notification itself provides that all those who qualify in written and oral tests will be arranged in the order of their seniority for promotion against the yearly vacancies available for the group 'C' category. The petitioner is therefore not justified in applying basis of integrated combined seniority for the purpose of selection. As indicated earlier, respondents No.1 in these 2 Petitions were admittedly senior to the selectees and therefore

we cannot find any fault with the reasoning of the Tribunal.

11. In this view of the matter, we do not find any merit in these Petitions. The Petitions stand dismissed. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)