

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.7111 of 2017
& WMP No.7715 of 2017

- 1.Union of India,
Represented by the General Manager,
Southern Railway, Park Town,
Chennai-600 003.
- 2.The Divisional Railway Manager,
Southern Railway,
Madurai Division -625 016.
- 3.The Divisional Personnel Officer,
Southern Railway,
Madurai Division -625 016. . . Petitioners
- Vs.
- 1.The Registrar,
Central Administrative Tribunal,
Madras Bench.
- 2.S.Raymond D' Sylva,
Cabinman 'T'
Madurai Jn. Madurai Division,
Southern Railway.
- 3.Banwarilal Meena,
Senior Train Clerk,
Rameswaram. . . Respondents

Writ petition is filed under Article 226 of the Constitution of India seeking to issue a writ of certiorari to call for the records of the first respondent Tribunal relating to the impugned order of the first respondent Tribunal in O.A.No.1799 of 2013 dated 15.09.2016 and quash the same.

For petitioners : Mrs.A.Sri Jayanthi,

For Respondents : R1-Tribunal
No appearance for R2 & R3

ORDER

(Order of the Court was made by M.M.SUNDRESH,J.)

Heard the learned counsel appearing for the petitioners.

2. Despite service of notice and the name of the second respondent having been printed in the cause list, none appeared for him.

3. 16 candidates participated in the selection to the post of Goods Guards. Accordingly, they have been empanelled as Goods Guards. After filling up of the vacancies, one Scheduled Tribe viz., third respondent was empaneled as unreserved category as he stood third in the selection on his own merits. The second respondent, who is also Scheduled Tribe employee, challenged the abovesaid empanelment of the third respondent herein. From the above, it is clear that what has been challenged is the empanelment of the third respondent in the unreserved quota. A notification was issued calling for volunteers for filling up of 60% of the vacancies under the Promotional Quota. Total number of vacancies declared was 18 and the communal break up of vacancies is SC-8, ST-1 and UR-9.

4. In the examination conducted, the third respondent has secured 81 marks as against the second respondent, who secured 79 marks. All the candidates were given 18 marks uniformly. The additional marks have been given for the educational qualification. The educational qualification of the second respondent was Nil as against the third respondent, who got a degree in his favour. Accordingly, the third respondent was filled up in the unreserved quota. This was challenged before the Central Administrative Tribunal. The Tribunal was pleased to pass an order by placing reliance upon the earlier order passed and thus, held that the empanelment was not in accordance with the rules. Thus, the selection based upon Office Memorandum was struck down. Reliance has been made on the judgment of the Constitution Bench of Apex Court in M.Nagaraj and others Vs. Union of India and others (2006 (8) Supreme Court Cases 2112) and directed the appellants herein to re-examine the promotions impugned and reconsider the case of the second respondent. Challenging the same, the present writ petition has been filed.

5. We find that the Tribunal was wrong in passing an order directing the petitioners to re-examine the promotion and reconsider the case of the second respondent for empanelment to the post of Goods Guard. Having participated in the selection process, it is not open to the third respondent to challenge the procedure. Secondly, declaring the entire process as wrong

would amount to setting aside the entire selection made. Thirdly, the third respondent was considered only in the unreserved quota as per the process being adopted by the Railway Board. Admittedly, the third respondent has secured higher marks. There is no material to substantiate that more marks have been awarded wrongly. Merely because the second respondent belongs to Scheduled Tribe community, he is not entitled to be considered in the unreserved quota, as a matter of right, especially when he secured lesser marks than the third respondent. The Tribunal was wrong in relying upon the judgment of the Constitution Bench of the Apex Court as facts involved before us are totally different. It is also not the case of the third respondent that he is entitled to be considered in the reserved category. In such view of the matter, we are of the view that the order of the Tribunal is liable to be interfered with. Accordingly, the same stands set aside and consequently, O.A.No.1799 of 2013 stand dismissed.

6. In fine, the writ petition is allowed. No costs. Consequently, connected writ miscellaneous petition is closed.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

raa

To

The Registrar,
Central Administrative Tribunal-Madras Bench,
Chennai

+1 cc to the Government Pleader, S.R.No.4555

KJ(CO)
SSM(21/02/2019)

सत्यमेव जयते W.P.No.7111 of 2017

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