

Union of India and others

Vs

K. V. Vijeesh

Civil Appeal No. 4032 of 1996

(CJI A. M. Ahmadi, M. K. Mukherjee, K. Venkataswami JJ)

27.02.1996

JUDGMENT

1. Special leave granted. Heard the learned counsel for the parties.

2. By its Employment Notice No. 1/90, the Railway Recruitment Board invited applications for 308 vacancies in the post of Diesel Assistants in Palghat and Trivandrum Division of the Southern Railways. Among others the respondent applied for the above post, and on his success in the written examination and viva voce test held for the purpose, the Board included his name in the select list, published under Notification No. 4/91, dated March 25, 1991, and forwarded the same to the Southern Railway Administration recommending appointments therefrom. As in spite of his such inclusion in the panel he was not being given any appointment, he filed an application before the Central Administrative Tribunal, Ernakulam, contending inter alia, that even though in the select list his rank was 172 he had not been given appointment but persons lower in rank were appointed. Accordingly, he prayed for necessary directions for his appointment as a Diesel Assistant in accordance with his position in the panel.

3. In contesting the application the appellant-Railways contended that subsequent to the issuance of the notification dated March 25, 1991, the Railways had taken a policy decision that the requirement of Diesel Assistant Staff had to be reduced owing to impending absorption of Steam surplus staff. As a result, the bottom 25 persons in the select list had to be withdrawn from the list recommended for employment. The Railways further contended that the select list was not prepared in order of merit and that the respondent's contention that his rank in the list was 172 was incorrect. Indeed, according to the Railways, the respondent was at the bottom of the list and consequently his name, besides other's, had to be withdrawn on the reduction of the number of vacancies.

4. While accepting the Railway's contention that the select list was not prepared in order of merit and conceding their right to adjust the number of vacancies according to requirement or according to policy, the Tribunal observed that there must be some protection given to those who had been declared successful. The Tribunal further observed that the least that was that such of the candidates who were successful but could not be accommodated as a result of reduction in the number of vacancies could be employed subsequently when the vacancies arose. In making the above observations the Tribunal quoted and relied upon the following passage from the judgment of this Court in Prem Prakash v. Union of India, AIR 1984 SC 1831 (at P. 1837) :

"Once a person is declared successful according to the merit list of selected candidates which is based on the declared number of vacancies the appointing authority has the responsibility to appoint him even if the number of vacancies

undergoes a change after his name has been included in the list of selected candidates."

5. With the above observations the Tribunal directed the Southern Railways to consider the respondent for appointment as Diesel Assistant in any existing or next available vacancy on the basis that his name had been recommended by the Railway Recruitment Board for appointment. The above order of the Tribunal is under challenge in the present appeal at the instance of the Railways.

6. In the context of the facts of the instant case the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of a competitive examination acquires a right of appointment in Government service in an existing or a future vacancy. The above question has been answered by a Constitution Bench of this Court in *Shankarsan Dash v. Union of India*, AIR 1991 SC 1612 : (1991) 3 SCC 47, with the following words :- (para 7 of AIR.)

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment tests, and no discrimination can be permitted." (Emphasis supplied)

7. In view of the above pronouncement of this Court the order of the Tribunal directing absorption of the respondent solely on ground that his name was included in the select list cannot be sustained. The reliance of the Tribunal on the judgment of this Court in *Prem Prakash's case*, (AIR 1984 SC 1831), (supra), particularly, the above quoted passage was wholly misplaced for, in that case, the notification regarding recruitment specifically providing that once a person was declared successful according to the merit list of selected candidates the appointing authority had the responsibility to appoint him even if the number of vacancies had undergone a change after his name had been included in the list of selected candidates. It further provided that where selected candidates were awaiting appointment, recruitment should either be postponed till all the selected candidates were accommodated, or alternatively, intake for the next recruitment reduced by the number of candidates awaiting appointment. Relying solely on the above notification this Court made the earlier quoted observations in *Prem Prakash case*, (supra). In absence of any such rules governing the appointment of the respondent, the Tribunal was therefore not justified in passing the impugned order.

8. Though the above discussion of ours was sufficient to set aside the impugned order, we had, - keeping in view the observations of this Court in *Shankarsan Dash's case*, (AIR 1991 SC 1612), (supra), - called for and looked into the relevant records of the Railways to ascertain whether the Railway Administration had acted arbitrarily in rejecting the respondent's claim and, for the matter, whether appointments had been made according to the comparative merits of the candidates or not. The records not only indicate that the contention of the Railways that the respondent was placed at the bottom of the list is correct but also that the appointments have been made according to the

comparative merits of the candidates. It cannot, therefore, be said that the rejection of the respondent's claim was arbitrary or discriminatory.

9. For the foregoing discussion we allow this appeal and set aside the impugned order of the Tribunal. There will be no order as to costs. Appeal allowed