

Mangej Singh and Others

Vs

Union of India and Others

Civil Appeals Nos. 4486-88 of 1992

(Sujata V. Manohar, D. P. Wadhwa JJ)

16.12.1997

ORDER

1. The Railway Administration by a circular of 22-7-1982 invited applications, inter alia, from Class IV employees of Transportation and Commercial Departments for selection as Ticket Collectors in the grade of Rs. 260-400. The circular which was issued by Northern Railways, Bikaner Division, set out that all regular non-technical Class IV employees of Transportation and Commercial Departments, inter alia, who have completed three years' continuous service on 11-8-1982 and who can write and read English can apply for the said posts. It further stated that to test the ability of the employees, a written test will be held and those employees who are successful in the test will be required to appear before the Selection Board for a viva voce.

2. Accordingly, the appellants and Respondents 5 to 8 applied for the post of Ticket Collector. Respondent 5 passed in the written examination but he failed in the viva voce. Respondents 6 to 8 failed in the written test and were not called for interview. The appellants qualified in the written test and were also selected in the viva voce. They were, therefore, selected for regular appointment.

3. Respondents 5 to 8, however, filed a writ petition before the High Court which was subsequently transferred to the Central Administrative Tribunal, Jodhpur Bench, challenging the selection test so held. The Tribunal by its order dated 4-8-1992 set aside the selection and directed that fresh selection be made within a period of six months as set out therein. It further gave a direction that Respondents 5 to 8 as well as the appellants who were working on the posts of Ticket Collectors on an ad hoc basis at the time of the Tribunal's order shall not be reverted until they are given three opportunities to appear in the written test excluding the impugned test which was being quashed. Hence, the appellants have filed the present appeal.

4. The Tribunal has set aside the selection test on two grounds : (1) It has held that vacancies arising from 1979 to 1982 were clubbed together and this has caused prejudice to some candidates because, in respect of vacancies which arose in 1979, only those who had completed three years' service in 1979 should have competed and so on for each year up to 1982. There is, however, no factual data on record to show how many vacancies arose in 1979 and in each of the subsequent years up to 1982; and whether, and if so, how many of the selected candidates had completed three years of service in 1979 or in any subsequent year up to 1982. In the absence of any factual data we fail to see how the Tribunal could have held that the clubbing of vacancies from 1979-1982 has caused any prejudice to Respondents 5 to 8.

5. The other ground on which the Tribunal has set aside the selection relates to the written test which was held. The Tribunal has quoted the letter of the Railway Board dated 29-11-1962 to the

effect that the posts (sic tests) to which Class IV staff to be promoted to Class III posts should be subjected, should be correlated to the standard of proficiency that can reasonably be expected from employees who are generally non-matriculantes. The aim of the examiners should be to assess the general suitability of the Class IV employees offering themselves for promotion to Class III posts from the point of view of knowledge of English and their general standards of intelligence. There is a subsequent letter of the Railway Board of 27-2-1980 stating that ordinarily it is not necessary to test the working knowledge of English for such promotions for employees in Hindi-speaking areas. There is also an earlier circular dated 24-12-1979 which is issued by the Northern Railways to the same effect. The present circular which is a subsequent circular of the Bikaner Division of the Northern Railways dated 22-7-1982 clearly requires ability to write and read English as a qualification for promotion from Class IV to Class III posts. The policy, therefore, in relation to the tests to be administered for promotion from Class IV to Class III has varied from time to time, presumably depending upon the Railways' perception of their requirements. It is for the Railways to decide qualifications relating to promotion from Class IV to Class III. They alone are the judges of their requirements relating to employees who can be considered for such promotions. If the circular of 22-7-1982 requires working knowledge of English for promotion, the Tribunal cannot fault this requirement. Also the Tribunal was wrong in deciding that because an essay and a translation were required in the written examination, the test was too difficult. This again is the Tribunal's assessment of the kind of examination which should have been conducted. The Tribunal's assessment cannot be substituted for the assessment of the Railways. Clearly, a large number of applicants belonging to the Class IV category passed this examination and did qualify. If they had a better knowledge of English and better general proficiency than Respondents 5 to 8 who failed, the selection of better qualified candidates cannot be faulted. The appellants relied upon two judgments of this Court; one in the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla* (1986 Supp SCC 285 : 1986 SCC (L&S) 644) (para 24) and the other in *Madan Lal v. State of J&K* ((1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603) (para 9). They contended that since the respondents had appeared in the examination without protest, they cannot challenge the examination only because they have failed. We need not examine this question because in any view of the matter we do not see any reason for faulting the examination. Respondents 5 to 8 had failed in the examination and were, therefore, not qualified for the selection.

6. Learned counsel for Respondents 5 to 8 has urged that Respondents 5 to 8 have been working as ad hoc Ticket Collectors since 1983 and have been further promoted. If the ad hoc appointment of Respondents 5 to 8 is de hors the order of the Tribunal, we are not concerned with such appointment. If, however, their appointment is pursuant to the Tribunal's order and is continued under the order of this Court of 14-9-1992 directing status quo to be maintained, then they will have to face the consequences of the outcome of this litigation. In any event, even if they continue in service as ad hoc Ticket Collectors they cannot get seniority over regularly-selected employees such as the appellants. The appeal is, therefore, allowed with costs and the impugned order of the Tribunal is set aside. The writ petitions/applications of Respondents 5 to 8 are dismissed.