

K. Vijayalakshmi

Vs

Union of India and Others

Civil Appeal No. 464 of 1997

(K. Vankataswami, A. P. Mishra JJ)

03.03.1998

ORDER

1. This appeal by special leave is preferred against the order of the Central Administrative Tribunal in OA No. 367 of 1995 dated 12-1-1996.
2. The appellant volunteered in response to a notification issued by the Chief Personnel Officer, Southern Railway, dated 16-9-1991 for filling up the vacancies for the post of Assistant Personnel Officer (Group B) against 25% quota reserved for Limited Departmental Competitive Examination for the year 1990. No doubt, the appellant was successful in the preliminary examination and also in the main written examination. Based on that, she was called for viva voce. Interview was conducted and a panel of selected names was prepared for appointment to the post of Assistant Personnel Officer, but the appellant's name did not find a place in the panel. The appellant preferred an application before the Tribunal on an earlier occasion in OA No. 1178 of 1994 praying for quashing the order of the General Manager dropping her name from the panel. That application was dismissed at the admission stage directing the appellant to go before the appellate authority and exhaust her alternative remedies. The appellate authority also confirmed the action of the General Manager in dropping the name of the appellant from the panel.
3. The reason for dropping the name of the appellant from the selected panel was that she and also two others had adopted unfair means in the examination and after issuing show-cause notice and after verifying the unfair means practiced by the appellant and others by taking the opinion of experts, namely, the experts in the Forensic Department of Tamil Nadu Government, it was held proved that the appellant had adopted unfair means in the written examination. Consequently, the decision to drop her name from the panel was taken.
4. Aggrieved by the action of the authorities in dropping her name from the panel and confirmed by the appellate authority, once again the appellant moved the Tribunal and inter alia the appellant raised the ground before the Tribunal that the document, namely, the opinion of the Forensic Department which was mainly relied on by the Department for coming to the conclusion that she had adopted unfair means in the written examination, was not supplied to her. That document was not supplied to the appellant, was admitted by the respondent Union of India in the counter-affidavit filed before the Tribunal. It is also not denied that the appellant stood first in the test. In paras 14, 16 and 19 of the aforesaid counter-affidavit, the respondent had stated as follows :

"Regarding the grounds contained in para (d), it is submitted that the answer-books were sent for expert opinion to Forensic Science Department of the Government of Tamil Nadu. They sought permission to open the answer-books before they could

give a conclusive opinion and necessary permission was given in writing. As only expert opinion was obtained, the same was not shown in the show-cause notice. The allegations of the applicant that the papers were opened by the Vigilance Department and not by the Forensic Science Department is ill founded.

Regarding the ground contained in para (f), it is submitted that the report received from Forensic Science Department that papers were replaced in the answer-books is an expert opinion from an independent agency. When the reply to the show-cause notice of the applicant was examined, the opinion of Forensic Science Department was also taken into account. The opinion of Forensic Experts was not supplied to the applicant as it is only a supporting technical evidence for establishing the irregularity committed by the applicant.

The applicant's statement that she had scored the highest marks in the written test is not relevant, especially when the irregularities a committed by her have been established, her standing first in the written test has no relevance. The independent agency, i.e., the Department of Forensic Science of Government of Tamil Nadu had also proved that the answer-sheets had been replaced. Thus the findings of the Vigilance Department have ample support from the Forensic Science Department of Tamil Nadu."

5. Shri P. S. Poti, learned Senior Counsel appearing for the appellant, reiterated the same ground before us to challenge the order of the Tribunal which has not dealt with this point but dismissed the appellant's application on some other ground.
6. We are of the view that without going into the factual aspect of the case, the order of the Tribunal as well as the order of the General Manager confirmed by the appellate authority are liable to be set aside on the sole ground that the document based on which the conclusion came to be reached having not been supplied to the appellant, the decision cannot be sustained. The respondent ought to have given to the appellant a copy of the opinion of the Forensic Department based on which the impugned order came to be passed.
7. Accordingly, the order of the Tribunal as well as the order of the General Manager confirmed by the appellate authority are set aside and the matter is remanded back to the original authority and if the Department so desires, it can proceed further in the matter after supplying all the relevant documents to the appellant on which they propose to place reliance for taking further action against the appellant.
8. The appeal is, accordingly, allowed. No costs.