

Union of India and Another Vs.Ashim Kumar Sinha and Others

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Court : Kolkata

Decided On : May-18-2011

Judge : The Honâ€™ble Mr. Justice Ashim Kumar Banerjee; The Honâ€™ble Justice Dr. Mrinal Kanti Chaudhuri

Appeal No. : W.P.C.T. No.198 of 2010

Appellant : Union of India and Another

Respondent : Ashim Kumar Sinha and Others

Advocate for Def. : Mr. L.K. Gupta; Mr. Bikash Goswami; Ms. Sanchita Burman Roy, Advs.

Advocate for Pet/Ap. : Mr. L.K. Chatterjee, Adv.

Judgement :

1. The petitioners in W.P.C.T. 198 of 2010 and respondent in W.P.C.T. 291 of 2010 (hereinafter referred to as the respondent) initiated selection process for the post of Apprentice Mechanic Inter-State (Electrical) which was a selection post. Out of twenty-two vacancies, three vacancies were reserved for Scheduled Caste, two for Scheduled Tribe and the rest seventeen for the unreserved category. The authorities held a written test on August 6, 2005 and published the result on November 14, 2005.

2. The authority published the final panel on February 21, 2006 where the petitioners in W.P.C.T. 291 (hereinafter referred to as the petitioners) were successful in getting their names empanelled. The private respondents challenged the panel by filing O.A. No.209 of 2006 before the Central Administrative Tribunal, Calcutta Bench. It was contended before the Tribunal by and on behalf of the private respondents that the private respondents were working as Electrical fitter, grade-II or grade-III. They applied for the post being eligible for the same. Their names appeared at serial no.14, 60, 29 and 22 respectively whereas the candidates, whose names were appearing below the private respondents, were given appointment.

3. The respondent contested the said application by filing rejoinder. According to the respondent, although the private respondents fared well in the selection process they could not be given appointment considering the overall merit as well as seniority. They relied upon paragraph 219 of IREM Volume-I 1989 edition wherein seniority was allotted fifteen marks. The Tribunal ultimately held that since it was a selection post the respondent committed illegality by giving preference to seniority.

4. The Tribunal allowed the application quashing impugned panel and directed the respondent to redraw the panel according to merit only keeping in view the provision of paragraph 219 and the decision of the Apex Court in the case of Ramjayaram -VS- General Manager, South Central Railway & Ors reported in 1996 Volume-II Service Law Reporter Page-655. The petitioners filed a review application being R.A.-16 of 2009. The Tribunal vide judgment and order dated January 20, 2010 dismissed the said application. Against the Tribunal's judgment and order dated July 29, 2008 the petitioners also filed an application before this Court being WPCT 242 of 2008. This Court dismissed the said application. The private respondents filed a contempt petition before the Tribunal.

5. Before the rule of contempt was served the respondent had redrawn the panel on January 5, 2009. Challenging the panel, the private respondents filed an application being O.A. No.1631 of 2009 inter alia praying for quashing of the panel, which according to the private respondent, was not redrawn in terms of the

order of the Tribunal in its true spirit. Pertinent to note, the Railways for the second time had redrawn the panel, however again given waitage to seniority taking recourse to the amended rule 219 and thereby the grievance of the private respondents as ventilated in the earlier litigation was by-passed and/or ignored despite being recognized by the Tribunal in its earlier judgment.

6. The Tribunal considered the matter and allowed the application and quashed the panel for the second time and directed the respondent to redraw the panel strictly in accordance with merit by following Railway Board's order dated June 19, 2009. Being aggrieved, the petitioners approached us by filing the above petition. We have heard Mr. L.K. Gupta, learned senior counsel appearing for the petitioners and Mr. Alok Kumar Banerjee for the private respondents and Mr. L.K. Chatterjee for the railways. We have also considered the judgments and orders of the Tribunal referred to above including the one impugned herein.

On analysis of the facts, it reveals as follows:-

- i) Selection process was for the post of Apprentice Mechanic Inter-Stage (Electrical). The post was a selection post and merit should be the guiding factor.
- ii) Both the groups passed out the written test, the private respondent group fared better than the petitioners did. The petitioners were given appointment considering their seniority.
- iii) The initial panel dated February 21, 2006 was prepared following paragraph 219 which, inter alia, provided allotment of fifteen marks in seniority category. The Tribunal set aside the panel by holding that the selection was on the basis of merit. The challenge to the said order failed before this Court in WPCT No.242 of 2008 as well as the review application before the Tribunal being R.A. No. 16 of 2009.

Hence, the Railways were obliged to follow the mandate of the Tribunal in its true spirit.

iv) Railways prepared the fresh panel on January 5, 2009 on the basis of the amended paragraph 219 which in effect again considered seniority over the merit. The Tribunal for the second time quashed the panel and directed redrawing of the panel in terms of its earlier mandate.

7. If we consider paragraph 219 we would find that the said paragraph provided for fifteen marks in seniority category. The Supreme Court in the case of Ramjayaram (Supra) categorically observed that such allotment of fifteen marks giving priority to the senior candidates was liable to be set aside. Supreme Court struck down allotment of fifteen marks. The Supreme Court in Ramjayaram (Supra) observed that selection should be made primarily on the basis of overall merit. The Supreme Court, while considering so, observed that Rule 320 would have no application in deciding the issue. Pertinent to note, Rule 320 of the Railway Establishment Code prescribed the method for determination of relative seniority in an intermediate grade. Following the Apex Court decision in the case of Ramjayaram (Supra) the Punjab and Haryana High Court in an identical situation observed that merit would prevail over seniority.

8. Special leave petition filed as against the order of the Punjab and Haryana High Court was dismissed. The Railways, to circumvent the true spirit of the decision of the Apex Court in the case of Ramjayaram (Supra), amended paragraph 219 and again gave waitage to seniority. The Railways while redrawing the second panel relied on the amended paragraph 219 which, inter alia provided that the final panel should be drawn up in order of seniority from amongst those who secured a minimum of sixty per cent marks in the professional ability and sixty per cent marks in aggregate provided that those securing a total more than eighty per cent marks would be classed as outstanding and placed at the top of the panel in order of seniority.

9. In short, if someone gets more than eighty per cent marks he could be considered strictly on the basis of his merit and the persons getting less than eighty per cent marks would have to depend on his seniority and any one senior to him, although getting less marks in the written test and/or the other category, would supersede him by dint of his seniority. The Tribunal for the second time

quashed the said panel by observing that such amended rule would not be applicable and in our view, very rightly. Mr. Gupta contended before us that the Apex Court did not consider Rule 320 in its true perspective in the case Ramjayaram (Supra).

10. According to him, Rule 320 prescribed the procedure for determination of the relative seniority. According to Rule 320, when a post (selection or non-selection) is filled up by considering staff from different category the total length of continuous service would be the guiding factor, meaning thereby the seniority in case of selection or non-selection post would be a relevant factor to be considered. According to Mr. Gupta, in the case of Ramjayaram (Supra) the Apex Court struck down fifteen marks to be allotted to seniority. The Apex Court, however, did not consider the issue involved herein.

11. In his usual fairness Mr. Gupta however conceded, if the Punjab and Haryana High Court judgment would be followed the Tribunal judgment could not be interfered with. He, however, contended that mere dismissal of the special leave petition would not per se be held as affirmation of the said decision by the Apex Court. In this regard he relied on the decision in the case of Union of India - VS- Jaipal Singh reported in 2004 Volume-I Supreme Court Cases Page-121. Mr. Gupta further contended that fresh panel was prepared after amendment of paragraph 219. Hence, the amended rule would be applicable and the Tribunal erred in holding it otherwise. Mr. L.K. Chatterjee, learned counsel appearing for the Railways adopted the submission made by Mr. Gupta and also prayed for setting aside of the judgment and order of the Tribunal. Opposing the application, Mr. Banerjee relied on the Employment Notice that did not speak of seniority. He also relied upon the decision of the Tribunal in the Review Application being R.A. No.16 of 2009 and contended that the issue was res integra. We have considered the rival contentions.

12. In our view, the Tribunal approached the problem in a right direction. Paragraph 219 prescribed the procedure for filling up the post whereas paragraph 320 was a general clause for determination of inter se seniority and/or relative seniority when persons from different cadres are considered for selection in any

post (selection or non-selection). In our view, once a specified guideline is prescribed in the Recruitment Rule the generalized rule would not prevail. Paragraph 219 prescribed the rule for selection of the concerned post. The said rule came up for consideration before the Apex Court in the case of Ramjayaram (Supra). The Apex court struck down allotment of fifteen marks in seniority category by observing that the selection must be based upon merit. Such decision was followed by Punjab and Haryana High Court that reached finality on dismissal of the special leave petition. It is true that mere dismissal of special leave petition would not amount to approval of the said decision by the Apex court.

13. Even if we ignore the decision of the Punjab Haryana High Court, on the strength of the ratio decided in the case of Ramjayaram (Supra) we can safely conclude that the Tribunal approached the problem in a right direction. The Apex Court considered paragraph 219 and observed that the selection must be on merit. The Tribunal followed the said decision and directed redrawing of the panel. The order of the Tribunal was passed on July 29, 2008 whereas the amendment was done on June 19, 2009. We fail to appreciate as to how the said amendment could be made applicable for a panel re-drawn on January 5, 2009. In any event, a fresh panel must be drawn on the basis of the original paragraph 219 as it stood immediately after the decision in the case of Ramjayaram (Supra). The petitions fail and are hereby dismissed.

14. There would be no order as to costs. Urgent Photostat copy will be given to the parties, if applied for.

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