(2013) 11 AHC CK 0134

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 1717 of 2007

Union of India		APPELLANT
	Vs	
Nagendra Kumar and Another		RESPONDENT

Date of Decision: Nov. 25, 2013

Citation: (2013) 10 ADJ 735 : (2014) 102 ALR 319 : (2014) 1 ESC 89 : (2014) 140 FLR 688 : (2014) 1 UPLBEC 511

Hon'ble Judges: Rakesh Tiwari, J; Bharat Bhushan, J

Bench: Division Bench

Advocate: A.K. Roy, A.K. Gaur and M.K. Sharma, for the Appellant; A.B. Lal Srivastava and Shyamal Narain, for the Respondent

Final Decision: Allowed

Judgement

Rakesh Tiwari, J.

Heard learned counsel for the parties and perused the record. This writ petition has been filed challenging the validity and correctness of the judgment and order dated 5.9.2006 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as ''the Tribunal'') in Original Application No. 464 of 2004, Nagendra Kumar v. Union of India and others, by which the aforesaid OA was allowed.

2. Brief facts of the case are that respondent No. 1, who belongs to a Scheduled Tribe Community, was duly selected by the Railway Recruitment Board, Allahabad (hereinafter referred to as the RRB'') for admission to the Vocational Course in Railway Commercial Department (hereinafter referred to as the ''VCRC''), job-linked two years course conducted in 20 schools across the country, which are affiliated to the Central Board of Secondary Education. Respondent No. 2 was selected by the RRB against a Scheduled Tribe seat in the VCRC after he was found to have passed the entrance test and the class X examination conducted by the State Educational Board securing required marks in both the examinations. The total number of seats

in the VCRC at the school allotted to the applicants were 40 and admissions on these seats were made in accordance with the quota earmarked for different categories i.e. General/SC/ST candidates as per the reservation percentages prescribed under the Constitution. Thus, total number of posts available for being filled at the end of the course were 40 and these posts were to be filled up by observing the rules of reservation. It was precisely for this reason that admissions to the VCRC were also made observing the rules of reservation.

3. According to the scheme, while the candidates belonging to the General category were required to secure a minimum of 55% marks at the end of the VCRC in order to have offered appointment whereas 45% marks were required to be obtained by candidates belonging to SC/ST category, that is to say, all candidates securing the minimum marks fixed for their particular category, were assured of being offered appointment in the Commercial Department of Railways. However, respondent No. 1 could secure only 40.8% marks at the conclusion of the course and was, therefore, not offered any appointment. He moved representation raising his grievance before the authority concerned, which was rejected vide order dated 13.2.2003. Aggrieved, respondent No. 1 filed O.A. No. 464 of 2004 aforesaid before the Tribunal, which was allowed vide judgment and order dated 5.9.2006, hence the instant writ petition has been filed challenging the judgment and order dated 5.9.2006 aforesaid.

4. Learned counsel for the petitioner submits that the finding of the Tribunal is totally perverse, illegal and without jurisdiction so far as it relates to further lowering of standard for offer of appointment from 45% to 40.8 % just to accommodate respondent No. 1.

5. He submits that 50% marks for General and 40% prescribed in standard Xth for the SC/ST/OBC was to short list the candidates for qualifying in the entrance examination conducted for course and has nothing to do with the marks secured by a candidate in the vocational course in VCRC in class 12th where minimum qualifying marks for getting the job as Commercial Clerk or Ticket Collector in Commercial Department was 55% for general candidates and 45% for SC/ST/OBC candidate and if 40% was the criteria for evaluating efficiency for job then there would have been no minimum qualifying marks once a candidate got admitted in VCRC. It is further stated that there is no quantifying shortfall in the post with respect to reserved category candidate, hence the OM dated 17.10.1986 and 25.7.1970 are not applicable only to the direct recruitments.

6. He also submits that respondent No. 1 has already been provided relaxation of 7% & 10% of the seats at the time of admission into the VCRC.

7. It is argued by the learned counsel for the petitioners that the scheme of vocational course in Railway Commercial Department has been discontinued since March, 2005; that it is a policy matter of Ministry of Railway and unless its vires are successfully challenged before the Court of competent jurisdiction, it is beyond the

jurisdiction of the Tribunal to interfere in the policy matter, as such the order of the Tribunal is wholly without jurisdiction.

8. Per contra, contention of learned counsel for the respondent is that a bare reading of the Scheme of VCRC, in conjunction with the Railway Recruitment Board advertisement would leave no doubt that the same was to be implemented in two-stages i.e. direct recruitment exercise, offering confirmed or guaranteed appointment in the Commercial Department of the Railways to all candidates who, after selection by RRB, could successfully complete the two-year course with the prescribed percentage of marks. According to him, the number of seats against which selection was made by the RRB were in total conformity with the number of vacancies sought to be filled-up by the Railways through the VCRC scheme. In this view of the matter, total number of such vacancies available and earmarked were both quantifiable and identifiable. Even the quota of vacancies for the different categories-SC/ST/General was fixed and known at the earliest stage of selection by the RRB for admission to the course, since the candidates were selected for admission strictly observing the rules of reservation. Thus, grant of appointment to candidates through the combined agency of RRB and VCRC was, on all parameters not different from any other normal direct recruitment exercise. Therefore, the O.Ms. of 1970 and 1986, referred to above, were as much applicable to recruitments through VCRC, as to any other conventional method of recruitment process.

9. It is argued that the applicant/respondent was duly selected by the RRB against the scheduled tribe quota, for one of the forty seats in the VCRC leading to appointment in the Railways as Commercial clerk, upon successful completion of the said course. As such, the course in question was not just job-oriented, but job-linked, and the entire exercise, starting from selection of candidates for the course by the RRB, through the two-year specialized study of special subjects prescribed by the Railways, up to the stage of appointment of candidates declared pass at the course, was one integrated recruitment process and, hence all benefits of relaxation in standards etc. as available to reserved category candidates in any direct recruitment exercise, were also, and equally, admissible to the selection and recruitment of reserved category candidates for the post of Commercial clerks by means of VRCC.

10. It is further argued that since the number of seats in the educational institutions running the VCRC were distributed amongst candidates belonging to different categories in accordance with the rules of reservation while corresponded to the vacancies sought to be filled through VCRC, it logically follows that every time a candidate from one or the other reserved category failed to pass the VCRC, the vacancy he would have filled up, if successful, went a begging, resulting in a shortfall in that category, thereby giving rise to the condition for invoking the provisions of the O.Ms. referred to above to make good the shortfall. It is the specific case of the applicant/respondent vide para 4.12 of the O.A. filed before the Tribunal that there was a shortfall of ST candidates qua the vacancies reserved for

them, and therefore, they were entitled to relaxation of the minimum standard fixed for them in the VCRC, in terms of the provisions of the O.Ms. of 1970 and 1986 (supra).

11. Next contention of learned counsel for the respondents is that the Railways have neither questioned the validity of the aforesaid O.Ms. nor been able to point out any distinguishing feature or facts in the present case that can render those O.Ms. inapplicable. The averments of the applicant/respondent that there was indeed a shortfall in ST vacancies has gone completely un-rebutted, and the contention of the Railways in their written argument that the said O.Ms. relate to direct recruitment hardly help their case since appointment to posts in the Commercial Department of the Railways, through the agency of the RRB, and via the scheme of VCRC, by all reckoning, is indeed a case of direct recruitment and not one of appointment by any other mode such as promotion, deputation or transfer, therefore, the O.Ms. are fully applicable; that in view of the above, it is contended that the applicant/respondent, under the O.Ms. referred to above, was entitled to relaxation of the prescribed pass percentage of 45% fixed for ST candidates in the scheme of VCRC and the Tribunal has committed no illegality in extending the benefit of the same to the applicant/respondent and its judgment calls for no interference by this Court. Learned counsel for respondent No. 1 has placed reliance upon reasonings given in paragraph Nos. 10 and 12 of the judgment of the Tribunal, which read thus:
10. Now, therefore, what is to be examined in this case is whether by allowing the claim of the applicant, there would be any breach of the provisions of Article 335 or the same would be in accordance with the provisions of Art. 16(4) read with Article 335 of the Constitution. Answer to this question lies with the policy of the Government in framing certain provisions in the relaxation of standard for SC/ST in order to fill up the deficiency in the number of SC/ST candidates. Order dated 25.7.1970 reads as under :

If sufficient number of SC/ST candidates are not available on the basis of general standard to fill all the vacancies reserved for them, candidates belonging to these communities may be selected to fill up the remaining vacancies reserved for them provided they are not found unit for such post or posts. Thus to the extent the number of vacancies reserved for SC/ST cannot be filled on the basis of General standard, candidates belonging to these communities will, at present, be taken on relaxed standard to make up the deficiency in the reserved quota.

12. The above observation talks of a general standard for general candidates and lower standard for candidates belonging to the Scheduled Castes and the Scheduled Tribes and the standard being required to be relaxed in their case to make up the deficiency in the reservation quota''. Here, the word, the standard being required to be relaxed'' is meant for making up the deficiency which would then mean that the standard is the lower standard which has to undergo a further downward revision. Thus, when 45% is the lowered standard for all the SC/ST and even with the lower

standard if adequate number of SC/ST could not be available, there is required a further relaxation with a view to make up the deficiency in the reservation quota, subject, of course, to the condition that in that case the candidates are not found unfit for the post concerned. What the respondents have done is to stick to the lowered standard i.e. 45% and that has become inflexible and any deficiency in the reservation quota would remain unfilled. This was not the contemplation as per the provisions of OM dated 25.7.1970. There shall be a further lowering of the standard. In that case, whether the candidate who has secured only 40.8% be considered as fit for appointment. The difference in marks is just 4.2% in aggregate. The minimum of 33% in English is already available and this would suffice in accordance with the provisions of OM dated 23rd December, 1970 vide Annexure A-13 (page 47 of the OA). Thus, the candidate cannot be considered as unit for the post.

12. He argued that that the contention of the Railways that the VCRC scheme was withdrawn after 2005 and is no longer in existence is also fallacious and irrelevant since the claim of the respondent relates to a point of time much earlier than 2005 and candidates of his batch have been given appointment and are in service by virtue of the Scheme of VCRC.

13. No other point has been argued by the learned counsel for the parties.

14. After hearing learned counsel for the parties and on perusal of the record the undisputed facts culled out from record are that the petitioners have challenged the impugned judgment and order dated 5.9.2006 passed by the Tribunal, by which the OA was allowed. Pursuant to notification dated 25.10.1997, respondent No. 1, who belong to Scheduled Tribe Community, applied for vocational course in Commercial Department (2 years full time job-oriented course) in academic year 1998-99. The scheme of VCRC came to an end in March, 2005. Relevant criteria for admission and qualifications etc. are :

1. Criteria for Admission in VC.-- Class 10 with 50 marks for General Candidate and 40% for SC/ST candidate and clearing entrance examination alongwith medical examination.

2. Qualification for the post.--55% General and 45% SC/ST/OBC in Railway Commercial working subject and 55% General and 45% SC/ST/OBC in aggregate of subjects i.e. English, A secondary language offered by the school or Business studies, General Foundation Course, Railway Commercial Working (Theory & Practical), and Economics, Accountancy.

3. Rule 6 provides the number of students for different categories as per reservation aforesaid in following manner.

6. RESERVATION:

Reservation Rules in vogue are applied. The number of students for the different categories are as follows:

4. Maximum Strength for the Admission in Vocational Course.--40 per school and 9 C.B.S.E. Schools were to be selected for this purpose.

5. The procedure for admission is provided in Rule 4.2 to 4.5. which reads thus:

4.2 Students appearing in the Secondary School Examination of a recognised Board at the end of the current academic year, are eligible to compete in the Entrance Examination.

4.3 The Entrance Examination consists of a written test of objective type on General Knowledge, General English, General Arithmetic and General Intelligence/Psychology and Aptitude followed by a personal interview. Students qualifying the Entrance Examination are offered admission to the Vocational Course provided they pass the Secondary School Examination with at least 50% marks in the aggregate (40% in case of SC/ST candidates) and subject to medical examination.

4.4. Students shall have to make their own arrangements for studying in the school where they get admitted and bear all expenses in connection with their education in that school viz. fees, boarding/lodging etc. The students are not required to execute a bond to serve the Railways.

4.5 Students, if they so desire, can pursue higher education even after successful completion of the Vocational Course. For this purpose, the course content has been designed in such a way as to provide linkage with higher education.

6.3.2 Keeping in view the capacity of the Railways to absorb every year the students, who complete the course successfully, the number of schools have been restricted to nine with one section each and a maximum strength of 40 students.

15. The scheme introduced by the Railway was a pilot scheme to secure improvement in service to the customers but has been closed in the year 2005.

16. Admittedly, the representation of respondent No. 1 for substituting English a compulsory subject with Hindi was rejected vide order dated 13.2.2003 as English was one of the compulsory subject for VCRC and could not be replaced by Hindi for arriving at minimum required marks. Therefore, respondent No. 1 could not qualify with 40.8 marks without qualifying in compulsory subject, which were secured by him in the compartmental/supplementary examination. Thus, respondent No. 1 failed even in the second opportunity given to him. The OMs dated 17.10.1986 and 25.7.1970 were not applicable for the reasons that there was no quantifiable shortfall in the post with respect to reserved category candidate and in any case the said O.Ms. are applicable only for appointment of direct recruitment.

17. The arguments of the learned counsel for respondent No. 1 that he has given up better prospects of future by taking admission in this vocational course is not acceptable as he was only given an option to choose this course. The respondent had the privilege to join job-oriented 10+2 course where on being successful he

would have got the job immediately after passing standard 12th whereas the students of other stream like science, commerce or arts do not have this opportunity of getting a job immediately after passing intermediate.

18. Let us now consider the ratio laid down in the decisions rendered in Ashok Kumar v. Union of India and others (Civil Misc. Writ Petition No. 22943 of 2006) and A.P. Public Service Commission Vs. Baloji Badhavath and Others, .

In Ashok Kumar (supra) it has been held that-

....the petitioner has not been able to obtain the minimum marks for selection and there is no illegality and infirmity in the order passed by the Tribunal.

19. The Apex Court in the case of Baloji Badhavadh (supra) held that-

Proviso to Article 335 is applicable only for the purpose of promotion. Lowering of marks for the candidates belonging to the reserved candidates is not a consequential mandate at the threshold. Policy decision & policy matter when is permissible. A procedure evolved for laying down the mode and manner for consideration of a right can be interfered with only it is arbitrary, discriminatory or wholly unfair. There can be no relaxation or waiver of a basic standard of performance. No compromise with the maintenance of administrative efficiency which is barred by Article 335 of the Constitution of India.

20. Fixing of criteria for exam/selection is a prerogative of Railways and cannot be interfered by the Tribunal unless the same is arbitrary and mala fide. The Tribunal could not have therefore, lowered down the qualifying marks from 45% to 40% in compulsory subject.

21. Admittedly, according to the scheme, the candidates in general category as well as SC/ST were granted relaxation who had obtained 55% and 45% at the end of VCRC. It is only after a candidate had obtained minimum marks fixed for his particular category which he belongs was assured of being offered appointment in the commercial department of Railways. Respondent No. 1 has already been granted relaxation of 10% and 7% at the time of admission and at the time of qualifying the course. He is not entitled to the benefit of offer of employment as he failed to achieve the minimum pass marks, the standard fixed for this purpose.

22. As regards application of Article 355 of the Constitution of India in this case is concerned, we are of the considered view that in view of the judgments rendered by this Court as well as the Apex Court in the cases of Ashok Kumar (supra) and Andhra Pradesh Public Service Commission (supra) this provision would not apply. Furthermore, the question of appoint-ment being policy matter of the Railways was not liable to be interfered by the Tribunal on this ground also and it could not have stepped into the shoes of decision/policy making body of the Railways or the Railway Recruitment Board. The Tribunal was only required to see as to whether the applicant before it could qualify on the basis of criteria fixed i.e. 55% for general

category candidates and 45% for SC/ST category candidates. In our considered opinion, the Tribunal had no power to lower down the educational qualifications for the job oriented course. It is only on Completion of course in VCRC the job could be made available to them. In fact, it was a job oriented course and not job linked course as appears from the scheme. It would have been very fatal to the scheme if the Railways were bound to appoint any person who failed in VCRC and obtained minimum standard/qualification required for the job. Therefore, the question of short fall of seats raised by the respondents is misconceived arguments. The Tribunal could not have lower down the marks as it had no authority or jurisdiction to fix qualifying mark on which candidates have been selected earlier or to lower down the qualifying marks to accommodate a candidate. The Tribunal was not in the shoes of the examining body and the interpretation of the Tribunal in paragraph Nos. 10 and 12 of the judgment is not acceptable for the reason given in our judgment. For all the reasons stated above, the writ petition is allowed and the impugned order is quashed.