(2001) 11 AP CK 0039

Andhra Pradesh High Court

Case No: Writ Petition No. 7689 of 1999

Union of India (UOI) and Others		APPELLANT
	Vs	
Syed Gayaz Chisty, Helper, South Central Railway and Another		RESPONDENT

Date of Decision: Nov. 22, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14
- Recruitment and Training of Group "C" and Group "D" and Workshop Staff of the Indian Railways Rules - Rule 127, 127(1)

Citation: (2002) 3 ALT 31

Hon'ble Judges: S.R. Nayak, J; L. Narasimha Reddy, J

Bench: Division Bench

Advocate: Pushpinder Kaur, for the Appellant; Pratap Narayan Sanghi, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.R. Nayak, J.
The Union of India and its authorities who are the petitioners in this writ petition, being aggrieved by the order of the Central Administrative Tribunal, Hyderabad Bench at Hyderabad (for short "the CAT") dated 31-3-1998 made in O.A.No. 656 of 1995 have filed this writ petition.

2. The 1st respondent herein is the applicant in O.A.No. 656 of 1995. In the O.A., the 1st respondent assailed the validity of the Notification No. B/P (RC) 563/GDCE/ VOL.1 dated 16-1-1995 issued by the 3rd petitioner herein calling for applications from the eligible candidates to fill-up the vacancies through General Departmental Competitive Examination ("GDCE" for short) for filling up the vacancies of Pro-Commercial Clerk, Pro-Ticket Collector and Pro. ASMs against 25% of the Direct

Recruitment Quota. The notification prescribed 40 years as the maximum age limit for General/O.C. Candidates and 45 years for S.C. and S.T. candidates as on 20-8-1993. The petitioner had also assailed another notification bearing No. B/P.563/ GDCE/VOL.I dated 31-1-1995 issued by the Vijayawada Division fixing the date of examination. The 1st respondent assailed the validity of the above notification because as on 20-8-1993 he was more than 40 years of age, he being the candidate belonging to open category. The learned Tribunal allowed the Original Application by its order dated 31-3-1998. The operative portion of the order reads, thus:

"Hence, we issue following directions:-

(a) As we have already decided that the restriction of age is not called for and the same has been set aside, the applicant should be subjected, to a supplementary examination if he is otherwise eligible for appearing for the examination as per the notification dated 16-1-1995.

(b) if he comes out successful in that supplementary selection, then his name should be included in the panel at that appropriate place as per the integrated seniority list and he should be sent for training.

(c) If he completes all the formalities in accordance with law then he should be posted as Ticket Collector on par with his juniors in the integrated seniority list who were selected and posted as Ticket Collector.

The case of others who responded to the notification dated 16-1-1995 and are similarly placed as the applicant herein their cases should also be considered as per the directions given above.

The O.A. is ordered accordingly."

Hence this writ petition by the Union of India and its authorities.

3. Smt. Pushpinder Kaur, learned Standing Counsel for the Railways while assailing the correctness of the decision of the CAT, would maintain that the prescription of age qualification for any post by way of direct recruitment or by way of promotion is very much within the domain of the discretion of the Employer and the cut-off date prescribed by the Recruiting Agency that the General/O.C. candidate should not have completed the age of 40 years as on 20-8-1993 cannot be faulted and therefore, by allowing the Original Application of the 1st respondent, the CAT has exceeded its jurisdiction. The learned Counsel would also submit that as a matter of fact, the Recruiting Agency has shown a concession by relaxing the age qualification by fixing 40 years of age in the case of General/ O.C. Candidates and 45 years of age in the case of SC and ST candidates, and but for this concession, no candidate who is aged more than 25 years could be considered for appointment to the post of Ticket Collector by way of direct recruitment against 66-2/3% earmarked under Rule 127(i) of the Rules for the Recruitment and Training of Group "C" and Group "D" and Workshop Staff of the Indian Railways. The learned Standing Counsel would place

reliance on the decisions of the Apex Court in Dr. Ami Lal Bhat Vs. State of Rajasthan and others, . and Shamkant Narayan Deshpande Vs. Maharashtra Industrial Development Corporation and another, .

4. The learned Counsel for the 1st respondent, on the other hand, would contend that the Railways have not prescribed any minimum age qualification for the in-service candidates who are entitled to be considered and promoted under Rule 127(1) (ii) of the Rules against 33 1/3% of vacancies reserved for them, and, therefore, there was absolutely no justification or rationality in prescribing the maximum age qualification only for those in-service candidates who are entitled to be considered and appointed to the same post of Ticket Collector against 25% of vacancies culled out from 66 2/3% meant for direct recruitment, and, therefore, the prescription of maximum age qualification only for the petitioner and similarly circumstanced candidates would tantamount to the Railways practising an invidious discrimination violating Article 14 of the Constitution. The learned Counsel for the 1st respondent in support of his submission would place reliance on the Judgment of the Apex Court in Indravadan H. Shah Vs. State of Gujarat and Another, .

5. Having regard to the rival contentions of the learned Counsel for the parties, the only question that arises for our consideration is whether the maximum age qualification prescribed in the impugned notification for the candidates who are entitled to be considered and appointed to the post of Ticket Collectors and other allied equivalent posts against 25% of the vacancies culled out of 66-2/3% of vacancies meant for direct recruitment in favour of in-service candidates would offend Article 14 of the Constitution or not.

6. It is true that prescription of age qualification or cut-off date for appointment to any public post is very much within the domain and discretion of the Recruiting Public Agency and the Courts normally would not interfere with such a prescription, unless it is established that such prescription is totally irrational and arbitrary in the facts and circumstances of the case. At the same time, it is pertinent to note that since the guarantee of equal protection provided in Article 14 of the Constitution embraces the entire realm of ''State Action'', it would extend not only when an individual is discriminated against in the matter of exercise of his rights or in the matter of imposing liabilities upon him, but also in the matter of granting privileges and concessions. But, what Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. If the Legislature takes care to reasonably classify the persons for legislative purposes, and if it deals equally with all persons belonging to a ''well defined class'', it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons. However, in order to pass the test of permissible classification, two conditions must be fulfilled, viz. (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that, that differentia must have a

rational relation to the object sought to be achieved by the Statute in question.

7. In the instant case, it cannot be gainsaid that the in-service candidates in the feeder cadre constitute a ''well defined'' class. Like should be treated alike is the constitutional creed flowing from Article 14 of the Constitution. Merely because the petitioner and the similarly circumstanced candidates are required to be considered for appointment to the post of Ticket Collectors or other equivalent allied posts against 25% of vacancies carved out of 66 2/3% of vacancies originally meant for direct recruits, that fact itself would not be a proper justification to make a reasonable classification permissible under Article 14 of the Constitution. We do not find any rationale behind the classification sought to be made by the Recruiting Agency. The in-service candidates where they are appointed to the post of Ticket Collectors or the allied equivalent posts, out of 25% of vacancies or 33 1/3% by way of promotion would constitute a single ''well-defined'' class. After perusing the pleadings of the petitioner authorities and after hearing the learned Standing Counsel for the Railways, we do not find any rationale behind the classification made by the Railways in the matter of appointment to the same post out of the personnel belonging to the same class of feeder posts. Therefore, we find force in the contention of the learned Counsel for the 1st respondent that the impugned classification would amount to the Recruiting Agency practising an invidious discrimination offending Article 14 of the Constitution. The Judgment of the Apex Court in Indravadam''s case (3 supra) would also support the contention of the learned Counsel for the 1st respondent. The two Judgments of the Apex Court in Dr. Amilal Bhat''s case and Shamkant Narayan Deshpande''s case (1 and 2 supra) cited by the learned Standing Counsel for the Railways have absolutely no bearing on the decision-making in the present case. The decision of the Apex Court in Dr. Amilal Bhat''s case (1 supra) is an authority to state that fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is in the descretion of the rule making authority or the employer and that such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. The decision of the Apex Court in Shamkant Narayan Deshapandes case (2 supra) is an authority to state that in the absence of Statutory Rules, conditions of service of employees can be determined and they can also be changed subsequently by executive instructions. Merely because prescription of such cut-off date would operate as prejudice to some one, that ground itself cannot be a valid ground to declare such prescription as invalid.

8. In the light of the opinion formed by us, we do not find any ground whatsoever to interfere with the impugned order of the learned Tribunal. The writ petition is devoid of merits and accordingly it is dismissed. No order as to costs.