Harish Chander vs Union Of India, Through Secretary, ... on 21 November, 1966

Author: Chief Justice

Bench: Chief Justice

ORDER

(1) In this petition, under Articles 226 and 227 of the Constitution, the petitioner prays for a writ of mandamus or any other appropriate writ order, or direction quashing the selection made by the respondents, as well as quashing the panel announced by respondent No.2 in his letter No. 754E 20 - H (Trip) (Elac) dated the 7th July, 1965.

(2) The impugned selection was made for the posts of Reservation Supervisors. The petitioner is impugning the selection on various grounds, namely -

1. Under Rule 9 (d) of the Indian Railway Establishment Manual (to be hereinafter referred to as the Manual) as there were only 24 vacancies, the Selection Board should have called for interview only 96 persons but they had called for interview as many as 152 persons. Thereby they contravened the aforementioned Rule.

2. It was the duty of the Railway Establishment to make available to the members of the Selection Board the confidential reports of the candidates called for examination even before the written test commenced; but in fact, those reports were made available to the members of the Selection Board after the tests were held but before the actual selection was made. This is a contravention of Rule 9 (b) of the Manual.

(3) As per the directions issued by the General Manager on the 7th December, 1962, again on the 4th January, 1963, at least 15 days notice should have been given to the can ... they were called upon to appear the test. But the petitioner was given only ... notice before he was asked to appear the test. Thereby the Establishment conducted ... the directions issued by the General Manager.

(4) In making the selection, the Selection ... did not adhere to the directions ... in Rule 9(I) of the Manual.

(5) During the process of the selection, the seniority that was changed, and that has adversely affected petitioner; and (6) The selection was made on collateral reasons.

(3) The respondents denied all the allegations made by the petitioner. According to them, the selection was made is accordance with rules. Their case is that the petitioner is not entitled to maintain this petitions as he is not an aggrieve person. It is said on their be half that the petitioner did not obtain the minimum marks prescribed for being eligible to be considered for selection.

Therefore any irregularity in the selection could not affect his interest Consequently he cannot be considered as an aggrieved person entitled to seek any relief from this Court and allegation of mala fides is denied (4) Except mentioning that the impugned selection was vitiated by mala fides no details of mala fides have been given in the petition. There is only an assertion on the part of the petitioner that the selection was vitiated by mala fides. Even at the time of the arguments no particulars of mala fides were placed before the Court. Hence I do not think that there is any substances in the allegation that the impugned selection is vitiated by mala fides.

(5) Before taking into consideration the other contention raised on behalf of the petitioner, it is necessary to consider whether he can be considered as an aggrieved person in this case.. According to R.9(c) of the Manual, the selection has to be made on the basis of merit Under the rules, -before a candidate can be put on the panel he must at least secure 30 out of 50 marks allotted for the written test. Further out of the total he must secure 60 per cent of the total marks. It is stated on behalf of the respondents that the petitioner did not secure the minimum marks prescribed. At the instance of the Court, the learned counsel for the respondents made available to the Court the marks sheet showing the marks obtained by the petitioner. It was made available to the learned counsel for the petitioner ass well. It is seen from the same that the petitioner had obtained in the written test 20 out of 50 marks. In the aggregate he had obtained 52 per cent marks. Hence it is clear that he had not obtained the prescribed minimum marks. The resulting position is that he could not have been considered for selection at all. Therefore assuming that there were any irregularities in the conducting of the tests, unless one or more of those irregularities have affected in any manner the result of the written and/or viva voce tests, held, the petitioner cannot complain against the same, as he cannot be said to be an aggrieve person.

(6) The fact that 152 persons had been called for the test whereas only 96 persons should have been called assuming that it amounts to a contravention of Rule 9(d) of the Manual, the same cannot in any manner affect the interest of the petitioner. As mentioned earlier, the petitioner had failed to secure the minimum marks prescribed. Therefore, it is immaterial for him as to how many candidates had been called for the test. Further I am unable to agree with Mr. S.C. Malik, the learned counsel for the petitioner, that Rule 9(d) of the Manual prescribes any maximum number of candidates to be called for tests. All that the Rule say is "Eligible staff up to four times the number of anticipated vacancies will be called for written and/or viva voce tests"

> In my judgment, that rule merely prescribes the minimum number of persons to be called for the tests. The interpretation stands to reason. For a proper selection the candidates to be interviewed must be sufficiently large. That is why the Railway Board prescribed that for every single selection at least four persons should be called for tests. If more qualified persons are called for tests, that cannot, in the very nature of things, vitiate the selections. But if less number is called, then it is bound to affect the selection. It is true that a contrary view has been taken by single Judge of the Calcutta High Court in Shanti Kumar Banerjee v Union of India. (1964) 2 Lab Lj (Cal) At p.583 this is what the learned Judge says:

" I now turn to the second branch of the argument by Sri De. He invited my attention to para 2 of Clause (Ii) of the rules set out in Annexure D to the petition (which I have herein before set out) and argued that the selection board could call up to four times the number of anticipated vacancies' for written or viva voce tests. He contended that the number called exceeded the number of vacancies. He argued that there were fourteen vacancies for upgraded posts of ticket collectors and eight vacancies or upgraded posts of travelling ticket examiners. Therefore for the 22 posts, up to 88 eligible candidates could be called but 135 were called instead. This argument in the from made is not very well-conceived. I appears from Paras 9 and 11 of the affidavit - in - opposition, herein before quoted that the selection was being made for (1) Incumbents to be upgraded 22 (2)Existing vacancies 8 (3) Anticipated vacancies 8 ____ Total 32 What was done, therefore, was that for 32 vacancies as in items (1) to (3) above 32 X4=128 candidates were decided to be called at first. But it was there after detected that under Railway Board's order for reservation of seats for scheduled castes, it was necessary to reserve three seats out of the existing and anticipated vacancies. It was therefore decided to call 3 X 4= 12 scheduled caste candidates. But only nine such candidates were available and that also, excepting one, from much lower grade. As such 128+9= 137(135 according to the petitioner) candidates were called to stand the test.

Sri D e tried to pick holes in the afore said statements in affidavit-in-opposition with the following alternative line of argument. He contended that if reservation of seats for scheduled caste candidates were necessary, what should have been done was to take the figure 32 as the number to be promoted immediately or in the future and out of that to subtract 3 seats reserved for scheduled caste candidates. The maximum number of candidates to be called on such basis would be as follows: For 29 non -scheduled caste posts candidates to be called 29 X 4 116 For 3 scheduled caste posts candidates to be called 3 X 4 12 _____ 128 Since more than that number than that number was called to stand the test, Sri De contended that the rule as in Para 2 of C1. (Ii) of Annexure D was not complied with * * * * * * In my opinion, the alternative argument of Sri De is off substance. According to the rules, as in Annexure d no more than 128 should have been called for the test. Mrs. Lakshmi Menon, Assistant Personal Officer of Eastern Railway, affirmed a supplementary affidavit in this rule in which she sought to justify the number called with the following statement: 'Out of all these categories, staff not less than the four times the number of existing vacancies and anticipated vacancies for the whole of year should be called for selection'. She was orally examined on her supplementary affidavit. Her answers show that she was labouring under some misapprehension when she stated that candidates numbering 'not less' than four times the number of vacancies should be called for selection test (see her answer to questions 131 to 146). She took time to look into the files and find out the rules but she failed to produce any rule justifying her statement that not less than four times should be called. I therefore, hold that Sri De makes out his point that more people than were permissible, were called for the selection text"

In that case the learned judge proceeded on the basis that the rule in question stated that the board could call "up to four times the number of anticipated vacancies". I do not know what was the say so, What it says, as mentioned earlier, is that eligible staff up to four times the number of anticipated vacancies will be called for written/ and/or viva voce tests". This does not mean that the Board could call up to four times the number of anticipated vacancies'. The rule as mentioned earlier means according to me, at least that number of candidates should be called for test (7) The fact that the confidential reports of the candidates were made available to the Selection Board not before the tests commenced, but before the actual selection was made in the first place, cannot affect the interests of the petitioner. As already mentioned, the petitioner had failed to secure the minimum marks prescribed. Therefore, in his case the question of considering the confidential reports did not arise at all. Further admittedly, the confidential reports were before the selection Board before it actually made the selection.. Hence the non-compliance of rule 9(b) of the Manual is trivial in character an the same does not enter into the merits of the case. As such the selection made cannot be challenged on that ground.

(8) The complaint of the petitioner that the seniority list was changed in the course of the selection has also not much substance. In his case, as mentioned earlier, the question of his seniority did not arise for consideration, as he had failed to secure the minimum marks prescribed. That apart it is seen from the counter affidavit filed on behalf of the respondents, that the seniority list, originally prepared, was only a provisional list. The final seniority list was made ready prior to the date the candidates were interviewed by the Selection Board.

(9) I am unable to see any force in the contention of Mr. Malik that there was any contravention of Rule 9(j) of the Manual. In his client's case the question of considering the seniority did not arise at all. That question would have arisen only if he had secured the minimum marks prescribed.

(10) The only remaining contention of Mr. Malik is that sufficient notice of the written test, to beheld, was not given those client. It is true that as per the direction issued by the General Manager, 15 days notice of the test should have been given to all the candidates. It is also urged that the petitioner was given only 10 day's notice. According to the respondents, the service personnel had been duly informed about the test to be held about a month prior to the date fixed for that purpose. But in serving individual notices some of the officials were not prompt, and therefore, it may be that the petitioner got notice of the test only on the 3rd February, 1965. But then, the petitioner did not objection. Now that he has failed to secure the minimum marks prescribed, he turns round and objects to the test itself.

It was stated on behalf of the respondents that for such of the candidates, who could not appear in the test held on 12th February, 1965. Supplementary tests had been held on the 3rd April, 1965, again on the 18th April 1965. It was not open to the petitioner to inform the authorities that he had not done so. He might have been called for the supplementary tests. He cannot be permitted to sit on the fence and now that he had failed to secure the necessary marks, turn round and question the propriety of the test held. Further, it may be noted that the instructions issued by the General Manager are purely administrative instructions. They have no legal force and the petitioner can only succeed by showing that the principles of natural justice were contravened. He has not made out any

such case.

(11) For the reasons mentioned above this petition fails and the same is dismissed. No costs.

(12) Petition dismissed.