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UNION OF INDIA

v.

ASHUTOSH KUMAR SRIVASTAVA AND ANR.

OCTOBER 3, 2001

B

[S. RAJENDRA BABU AND DORAISWAMY RAJU, JJ.]

Service Law :

C

Interview—Non-selection—Allegation of malafide—Bias of Selection Committee not proved—Tribunal sitting in Judgment over interview and allotting marks—Correctness of—Held, not correct.

Malafide—Allegation of—Burden to prove—Held, is on the person who alleges—There is always presumption in favour of administration that it exercises powers in good faith and for public benefit—Evidence Act—Presumption.

D

Respondent No.1 having failed in *viva voce* test conducted by Selection Committee, was not selected for the post in question. He filed application before Central Administrative Tribunal alleging malafides against the Chairman of the Committee, stating that he was closely related to one 'S' who was placed under suspension pursuant to an inquiry which was conducted by Respondent No. 1 when he was in Vigilance Department. Tribunal on the basis of proximity of Secretary to the Chairman of the Committee concluded that it was highly probable that the Secretary could have influenced the Chairman of the Selection Committee against Respondent No. 1 and quashed the result of *viva voce* test in respect of Respondent No. 1. It further directed the appellants to subject Respondent No. 1 to a fresh *viva voce* test. Hence this appeal.

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Allowing the appeal, the Court

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HELD : 1. The approach of the Tribunal in concluding that it was highly probable that the Secretary could have influenced the Chairman of the Selection Committee against Respondent No. 1 is fallacious. The Tribunal ought to have considered the matter in right perspective, and should not have sat in judgment over the interview and allotted marks on its own and issued directions in the manner it did. [492-H; 493-F]

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2. So long as bias of the Selection Committee could not be proved,

the only aspect that the Tribunal ought to have considered was whether there was compliance with the relevant rules in the conduct of interview. It could not have considered the manner in which interview was concluded and whether the marks should have been allotted in a particular manner or otherwise and whether marks awarded was justified in the present case or not. [493-C; B]

3. There is always a presumption in favour of administration that it exercises powers in good faith and for public benefit. The burden is on the individual to produce sufficient material to suggest the malafides of the concerned authority and it is not easy to discharge the same. [492-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1567 of 1996.

From the Judgment and Order dated 20.10.95 of the Central Administrative Tribunal, Allahabad in O.A. No. 1057 of 1994.

M.N. Goswami, Niranjana Singh, Anil Katiyar, Arvind Kumar Sharma, for the Appellants.

Waziri and Irshad Ahmad for the Respondents.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. Respondent No. 1 herein was working as Chief Vigilance Inspector at North Eastern Railway. He appeared for written examination held on 12.3.1994 for selection to the post of Assistant Engineer, Grade 'B' for filling up 70% of the vacancies reserved for promotees. The result of the written test was published on 2.5.1994 and he was declared qualified in the written examination. Thereafter, respondent No. 1 appeared for interview before a Selection Committee consisting of Shri M.M. Goyal, Chief Engineer as Chairman, respondent No. 2 herein, Shri Ram Deo, Chief Personnel Officer (Admn.) and Shri Binod Prasad, Chief Electrical Engineer. His interview took place on May 20 and 21, 1994. The selection proceedings were finalised by the Selection Committee on May 25, 1994. On May 27, 1994 a cassette was delivered anonymously to the Chief Personnel Officer who in turn passed it on to the members of the Selection Committee. Thereafter, the Selection Committee met again on May 30, 1994 and took on record the transcript of the cassette anonymously delivered. After recording certain proceedings, the Selection Committee put the entire matter to the General Manager, North

A Eastern Railway, Gorakhpur, for approval. Thereafter, on June 3, 1994 respondent No. 1 alleged *mala fides* on the part of the Selection Committee and a case was also registered. However, the General Manager approved the selection made by the Selection Committee on July 11, 1994 and the approved panel of 28 candidates was published.

B Respondent No. 1 filed an application in O.A. No. 1057 of 1994 before the Central Administrative Tribunal, Allahabad [hereinafter referred to as 'the Tribunal']. In the meanwhile, respondent No. 1 was repatriated to his parent Engineering Department. The Tribunal quashed the result of the *viva voce* test in respect of respondent No. 1 and directed the appellants to subject respondent

C No. 1 to a fresh *viva voce* test to be held by another Selection Committee to be constituted by persons at appropriate level other than those who constituted the earlier Selection Committee and if, as a result thereof, he is declared qualified, he shall be promoted with effect from the date on which his immediate junior was promoted with all consequential benefits, including arrears of salary.

D Against that order of the Tribunal this appeal is filed by special leave. This Court granted an interim order staying the operation of the order of the Tribunal.

Father of respondent No. 1 was employed on the establishment of the appellants and when he died in harness, respondent No. 1 was appointed to the post of Inspector of Works in the Grade of Rs. 2000-3200 on compassionate ground. On completion of his training he was posted in the office of the Chief Engineer, North-Eastern Railway, Gorakhpur. In April 1991 he opted for an assignment in the Railway Vigilance Department and was posted as Chief Vigilance Inspector. Thereafter, he was sent on deputation to the Indian Railway Construction Company and was posted in Malaysia for a period of one year from May 1992 to May 1993. On completion of his deputation period

E he returned to India in May 1993 and resumed his duties in the post of Chief Vigilance Inspector.

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Respondent No. 1 alleged in his application before the Tribunal that while he was in the Vigilance Department he had conducted an inquiry against one Shri Sanjai Mittal, Executive Engineer in the Construction Division and on the basis of a report submitted by him, Shri Sanjai Mittal was placed under suspension and was facing disciplinary proceedings; that Shri Sanjai Mittal is closely related to Shri M.M. Goyal, respondent No. 2, one of the members of the Selection Committee; that, therefore, he apprehended that he would not get

G a fair deal at the hands of Selection Committee consisting of respondent No.

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2; that his apprehension was confirmed by reason of only 3 marks being allotted to him out of 25 marks in the *viva voce* test in personality, leadership, ability and educational qualification as a result of which he was not finally selected. The allegation that respondent No. 2 is closely related to Shri Sanjai Mittal was denied as absolutely false. It was averred that respondent No. 2 was not even distantly related to Shri Sanjai Mittal; that the post of Assistant Engineer, Group 'B' is a very important and crucial post being directly involved in the safety of life of passengers and maintenance of critical and costly assets and selection for such a crucial post has got to be very rigorous and each step of selection is well-documented; that selection is carried out by a Board of three very senior officers of the rank of Head of Department or above with proven track record of unimpeachable integrity; that members of the Selection Committee individually and jointly assess the performance of the applicant to arrive at the suitability of the candidate for promotion; that *viva voce* test carries 50 marks out of which 25 marks are earmarked for the record of service and the remaining 25 marks are allotted for adjudging the personality, leadership, address, academic and technical qualifications, etc.; that it is essential for the candidate to secure a minimum of 15 marks out of 25 marks for the record of service also he must secure a minimum of 30 marks out of total 50 marks in the *viva voce* test; that there is no separate allocation of marks for personality, leadership, address, academic and technical qualifications, etc. Respondent No. 2 also filed an affidavit denying that he was related to Shri Sanjai Mittal. Respondent No. 1 thereafter filed a rejoinder affidavit alleging that respondent No. 2 is a cousin of one Shri J.P. Goel, who is the father-in-law of Shri Sanjai Mittal and that Shri J.P. Goel is also a senior batch-mate of respondent No. 2 in Roorkee University.

The Tribunal approached the matter in a rather strange way. Firstly, it took into consideration the allegation made by respondent No. 1 that Shri Sanjai Mittal is related to respondent No. 2. On that aspect no finding was recorded by the Tribunal, but it noted as follows :-

"Thus, it is clear that Shri Sanjai Mittal, whether or not he was related to the respondent No. 3 was working as Secretary to respondent No. 3 on the date when the *viva-voce* test took place."

And, thereafter, the Tribunal referred to the transcript of tape indicating that during the course of *viva voce* test respondent No. 3 called his Secretary and told him that the applicant had only been in Vigilance Department and had

A no exposure to the field work and, therefore, should be posted in the first as Inspector of Works. Thus, the association of respondent No. 2 and his Secretary was taken by the Tribunal to be sufficient to vitiate the interview.

B In the first place, the Tribunal should have given a definite finding as to whether Shri Sanjai Mittal was related to respondent No. 2 or not and, if that ground failed, it should not have allowed respondent No. 1 to change his stance that somehow and in some other manner Shri Sanjai Mittal is connected with respondent No. 2. The Tribunal should not have proceeded on line proving moral indicated in one of Aescop's Fable of the lamb and the wolf when the complaint was that the stream was being polluted by the lamb and if not by C it by any of its forefathers. The approach of the Tribunal in this regard is by no reason good enough to chastise the said respondent No. 2 and condemn the proceedings conducted not only by him but other officers who are of equivalent rank. There is always a presumption in favour of administration that it exercises D powers in good faith and for public benefit. The burden is on the individual to produce sufficient material to suggest of the *mala fides* of the concerned authority and it is not easy to discharge the same.

The Tribunal considered the tape recorded part of the interview and noticed as follows :

E "There is nothing wrong about the questions which sought to elicit the Applicant's experience as the same is very relevant to his ability or the lack of it to handle work situations in the higher post. It is, however, the manner in which disparaging remarks were made about the Applicant's lack of field experience which tends to indicate that the purpose of the question was not merely to elicit facts. That part, the F very fact that the Secretary was called in during the interview he was told about lack of field experience on the part of the Applicant, is quite strange and cannot but give an impression that the Chairman of the Board was not making an objective assessment of the Applicant's mental attributes which are really the purpose of the *viva* G *voce* test."

H On this basis, the Tribunal concluded that it was highly probable that the Secretary could have influenced the Chairman of the Selection Committee against respondent No.1. This approach of the Tribunal is once again plainly fallacious. Firstly, the allegation was that the Chairman was biased because of

his close relationship with Shri Sanjai Mittal and thereafter the proximity of the Secretary was considered sufficient to influence the Chairman of the Selection Committee. If this kind of approach is allowed, no administration can be safe and, therefore, we do not appreciate the manner in which the Tribunal proceeded in this matter.

The Tribunal proceeded further to consider in what manner the interview should have been conducted, whether the marks should have been allotted in a particular manner or otherwise and whether awarding 3 marks out of total 25 marks was justified in the present case or not. So long as the bias of the Selection Committee could not be proved, the only aspect that the Tribunal ought to have considered was whether there was compliance with the relevant rules in the conduct of interview.

The Tribunal upheld the contentions of the appellants that allotment of marks need not be faculty wise and it is open to the members of the Selection Committee to make an over all assessment of the interviewed candidate. Again, the contention as regards tape-recording the questions and answers urged on behalf of respondent No. 1 was rejected. The Tribunal observed that over all assessment made by the Selection Committee and allocation of lump sum marks for the same, taken by itself, cannot be considered to have vitiated the test. However, the Tribunal proceeded to make its own assessment of respondent No. 1 by reference to his experience as a trainee for a commissioned post in Defence Services and what marks should have been allotted to him. The Tribunal also sat in judgment as to whether for academic and technical qualifications the marks allotted by the appellants to respondent No. 1 are justified or not.

The Tribunal ought to have considered the matter in right perspective by considering the various contentions raised in the matter and not sit in judgment over the interview and allotted marks on its own and give the directions in the manner it did.

Therefore, we set aside the order made by the Tribunal and dismiss O.A. 1057 of 1994 filed in the Tribunal. The appeal is accordingly allowed. No costs.

K.K.T.

Appeals allowed.