

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1542 of 2002

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New Delhi, this the 20th day of January, 2003

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri Tej Singh
Working as Head Telephone Operator,
Telephone Exchange, Railway Board,
New Delhi.

-APPLICANT

(By Advocate: Shri D.S. Mahendru)

Versus

Union of India through
The Secretary,
Government of India,
Ministry of Railways,
Rail Bhawan,
New Delhi.

-RESPONDENTS

(By Advocate: Shri R.P. Aggarwal)

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant has filed this OA as he is aggrieved of order Annexure A-1 dated 31.5.2002 vide which the respondents proposed to hold an interview in the Telephone Directorate for the post of Chief Telephone Operator in the pay scale of Rs.5500-9000. The applicant claims that he was also eligible but he had not been called for interview as per Annexure A-1. He made representations which are at Annexures A-2 and A-3 but the respondents did not reply to it. Hence, this OA.

2. The claim of the applicant is that he was initially appointed as Telephone Operator and belongs to reserved category and thereafter he was promoted as Sr. Telephone Operator and again as Head Telephone Operator.

3. It is further submitted that Shri V.K.


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Chakravorty was promoted as Chief Telephone Operator (hereinafter referred to as CTO) ignoring the fact that he was convicted for a criminal offence and was awarded a sentence of 2 1/2 years and a fine of Rs.2500/-, ultimately, Shri Chakravorty was made to retire compulsorily. The applicant claims that the appointment of Shri Chakravorty was irregular.

4. It is further submitted that as per the seniority list of Telephone Operators in the Railway Board, the applicant is the only next eligible candidate for promotion to the post of CTO having fulfilled all the requisite qualifications. The applicant made representations to the respondents for appointment to the reserved post of CTO and applicant being the senior-most SC candidate also being eligible for being promoted to the post of CTO should have been appointed but the respondents did not reply to the representations.

5. When the applicant filed the OA he had also asked for interim relief. This court allowed the relief to the extent that the applicant be allowed to appear for interview which was to be held on 6.6.2002 on the condition that the result of the selection will not be finalised pending further orders.

6. The applicant also prays that as per the dictum of the Hon'ble Supreme Court a reserved category falling vacant for any reason is necessarily to be filled by a reserved category candidate irrespective of the seniority in the cadre.



7. The applicant further claims that since no SC candidate has been called upon for interview but the respondents are going to fill up the post by general category candidate which is not permissible as per law.

8. The OA is being contested by the respondents. The respondents admit that the post of CTO is filled up by promotion from Head Telephone Operator through selection by a DPC consisting of three JA grade Officers. The respondents further submit that the reservation rules as per extant orders are applied to in initial recruitment grade post and also in promotional posts. As per the instructions issued by the DOP&I vide their OM dated 2.7.97 and subsequently by Ministry of Railways vide their letter dated 21.8.97, post based rosters have been adopted from 1997 onwards and in case of small cadres (upto 14 posts) for all the posts a separate model post based roster have been devised and such model post based roster is Annexure R-3 and in this case reserved points have been earmarked as per the cadre strength for reserved category candidates. According to this roster initial recruitment is to be made by the category for which the post is earmarked and replacement of incumbent shall be made by rotation as shown horizontally against the cadre strength applicable. While operating the relevant roster, cadre has to be taken to ensure that that on no occasion the percentage of reserved category candidate exceeds 50% of the cadre and if such a situation occurs at any time, the relevant reserved point occurring as a result of rotation will be skipped.

(as per Annex R-3)
12.
13.

[Signature]

9. As far the case of Shri Chakravorty is concerned, it is submitted that after the suicide of the wife of Shri Chakravorty, his mother-in-law had lodged an FIR. Shri Chakravorty was arrested and ultimately he was convicted and after examining his case, he was imposed with a penalty of compulsory retirement and was retired from service with the approval of the disciplinary authority.

10. The respondents further submitted that at the time of adoption of 14 point roster, 4 posts in the cadre of CTO were there and only 4 persons are working as CTO and none of them is from SC category and one Shri T.S. Saini was shown to be working against the post meant for SC category and on his retirement Shri Chakravorty was appointed against the said post as first replacement. The next post was vacated by Shri K.N. Jha on his promotion and that was meant for unreserved category candidate. Second replacement was filled by Shri Lalit Kumar Sharma, an unreserved category candidate. Post vacated by Shri Chakravorty is a third replacement which again is meant for unreserved category and is proposed to be filled by unreserved category candidate as per the roster point. Thus it is submitted that the applicant has no case and the OA merits dismissal.

11. We have heard the learned counsel for the parties and gone through the records of the case.

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12. Shri D S. Mahendra appearing for the applicant referred to Annexure R-11 (page 37 of the paper book) which is an OM No.36012/2/95-Estt (Res) dated 2.7.1997 wherein in paragraph 10 it is mentioned as follows:-

"The roster is to be operated on the principles of replacement and not as a "running account" as hitherto. In other words, the points at which reservation for different categories applies are fixed as per the roster and vacancies caused by retirement etc. of persons occupying those points shall be filled by appointment of persons of the respective categories".

13. Highlighting this paragraph 10 the counsel submitted that since the post has been vacated by SC candidate and as per paragraph 10 this post can be filled up only by a SC candidate.

14. In reply to this the learned counsel for the respondents referred to para 12 of the same Annexure which provides that in case of small cadres (upto 13 posts) all the posts shall be earmarked on the same pattern as in the model post based roster and initial recruitment against these posts shall be by the category for which the post is earmarked and replacements of incumbents of posts shall be by rotation as shown horizontally against the cadre strength as applicable. Shri Aggarwal appearing for the respondents submitted that this has been issued by the DOP&T but subsequently it was found that the small cadre roster upto 13 posts was not working properly so the Railways issued another circular adopting the same paragraph but made the roster

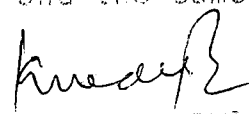


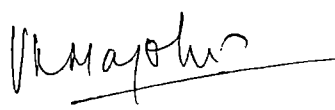
upto 14 posts. The said circular is at Annexure A-111 dated 21.8.97 where Clause 4(d) mentions about the small cadre, i.e., upto 14 posts and along with this there is another annexure showing the model roster for promotion for cadre strength upto 14 posts. According to this annexure, the posts vacated by Shri Chakraverty now goes to unreserved category candidate because the third replacement has to be made by unreserved category candidate.

15. We have gone through the documents and the circulars placed on record by the respective parties.

16. The circular dated 21.8.1997 issued by the Railway Board goes to show that the model roster for promotion upto 14 posts has to be applied in this case since the total cadre strength of CTO is 4 and the replacement of a post has to be made in accordance with the model roster. Paragraph 10 which has been relied upon by the learned counsel for the applicant will not apply to the present case as the cadre strength of the CTO is only upto 4 and paragraph 10 gets excluded from this because we have to read it along with paragraph 12 of the ~~order~~ ^{annexure} which has a specific provision for small cadres. Thus we find that the contentions raised by the counsel for the applicant has no merits and the OA has to be dismissed.

17. In view of the above, nothing survives in the OA and the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER (JUDL)


(W.K. MAJUMTRA)
MEMBER (AS)