

**Central Administrative Tribunal
Principal Bench**

OA No. 4203/2014

New Delhi, this the 27th day of February, 2020



Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)

Kedar Nath Tiwari
Working as Inquiry Inspector/HQ
Office of the E.O/HQ (vigilance)
Room No. 402, 4th Floor
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And also at:

R/o F-454, Sector-9, Vijay Nagar Colony
Ghaziabad.

...Applicant

(By Advocate : Sh. S.K. Jha)

Versus

1. Union of India
Through General Manager, Northern Railway
Baroda House, New Delhi.

2. Chief Personnel Officer, Northern Railway
Baroda House, New Delhi.

...Respondents

(By Advocate : Ms. Vandana Mishra with Ms. K. Vaijayanthi)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

The applicant was appointed as Inquiry cum Reservation Clerk (I&RC) in the Northern Railway on 28.12.2001, on compassionate grounds. Next promotion from that post is to Assistant Commercial

Supervisor (ACS). There is also a provision of appointment through Limited Departmental Competitive Examination (LDCE). A notification in this behalf was issued in the year 2006 and the applicant participated in the examination conducted in the year 2007. The selection was finalized and the applicant was promoted to the post of ACS on 15.02.2010. It is stated that one Sh. Jasvinder Singh was also promoted through LDCE process, to the post of ACS and that, in the provisional seniority list of “Commercial Supervisor (PS+GS+BS and CS)”, PB-II, 9300-34800 + 4200 Grade Pay, the applicant was shown at Serial No. 444 whereas Sh. Jasvinder Singh was shown at Serial No. 445.



2. Next promotion from ACS is to the post of Assistant Commercial Manager (ACM). There again, the facility of promotion through LDCE exists. A notification in this behalf was issued on 20.12.2013. The list of eligible candidates, to take part in the LDCE was published on 22.08.2014. The name of the applicant, however, did not figure therein. When he made a representation in this behalf, he was informed through an order dated 15.10.2014, that a candidate must complete five years of service in the post with Grade Pay of Rs. 4200/- and since he had only three years of service in that Grade Pay by the time, notification was issued, he is not eligible to be included.

3. In this background, the applicant challenged the notification dated 22.08.2014 and with a prayer to declare the examination conducted on 19.10.2014 as null and void. He has also sought relief,

by placing reliance upon Clause 203.2 of IREM (hereinafter, referred to as Manual), Volume I. The applicant contends that though he did not complete the prescribed length of service to become eligible to apply, Clause 203.2 of the Manual provides that, in case, the junior is conferred eligibility to appear, he too, is entitled for that facility. He compared himself with Sh. Jasvinder Singh and claims that, he too ought to have been included in the notification dated 21.02.2014.



4. On behalf of the respondents, counter affidavit is filed. It is stated that the applicant did not have to his credit, the length of service stipulated under Clause 203.2 and accordingly, his name was not included. As regards the comparison with Sh. Jasvinder Singh, it is stated that the list was only provisional in nature.

5. Through an additional affidavit, the respondents stated that Clause 203.2 was amended and according to that, the facility of conferring eligibility upon a senior on the sole ground that his junior was eligible, is restricted to the 70% selection and not to the LDCE. It is also stated that in Para 6.3 of the Master Circular, an unconditional stipulation is made in respect of LDCE selections from Group C.

6. We heard Sh. S.K. Jha, learned counsel for the applicant and Ms. Vandana Mishra, learned counsel for the respondents.

7. The applicant got promotion to the post of ACS by participating in the LDCE. There was no doubt about his eligibility to participate therein, and on the basis of the performance in the Examination, he was extended the benefit of promotion through an order dated 15.02.2010. The notification for next higher post through LDCE, was issued on 20.12.2013. The eligibility to appear in the LDCE for the post of ACM is stipulated in the notification, as under:



“3. In terms of instructions as contained in PS No: 8208, such candidates who fulfil the requisite conditions of eligibility i.e. 05 years Non-fortuitous service as on 01.11.2012 including Apprenticeship/ training period in P.B. Rs 9300-34800-Grade Pay Rs. 4200/- and above are also eligible to appear in the above LDCE selection. In case, any of the candidate has joined Northern Railway on transfer from other Railway on acceptance of bottom seniority the instructions contained in PS N: 11382, 13129 and 13466 may also be taken into consideration for adjudging eligibility of the candidate concerned.”

The requirement is, five years of service in the PB 9300-34800 with Grade Pay of Rs. 4200/-. The applicant had only 3 ½ years of service by that time. Reliance is placed upon by the applicant, on Clause 203.2 of the Manual. It reads as under:

“203.2 In case a junior employees is considered for selection by virtue of his satisfying the relevant minimum service conditions all persons senior to him shall be held to be eligible, notwithstanding the position that they do not fulfil the requisite minimum service conditions”

8. From a perusal of this, it becomes clear that if a senior is otherwise ineligible, he is entitled to be conferred with eligibility, in case, his junior in the same cadre is permitted to appear. The applicant has drawn comparison with Sh. Jasvinder Singh. Though,

the respondents seriously dispute the nature of the seniority list, we take seniority as reflected in the provisional list published by them, as the proper one, for the purpose of this OA. The applicant was shown at Serial No. 444 and Sh. Jasvinder Singh at Serial No. 445. Sh. Jasvinder Singh had to his credit, the service in that status, since the year 2003. Therefore, he was conferred eligibility.



9. Had Clause 203.2 remained in the same condition, as extracted above, the applicant was certainly entitled to be treated as eligible. However, the clause has been amended in the recent past. The various amendments to the Manual are complied in the form of a Master circular No. 68 in July, 2019. Para 6.2.3 thereof deals with the Clause 203.2 of the Manual. It reads as under:

“6.2.3. If a junior employee is considered for 70% selection by virtue of his satisfying the relevant minimum service conditions, all persons senior to him shall be held to be eligible, notwithstanding the position that they do not fulfil the requisite minimum service condition. This provision is not applicable to LDCE.”

10. In other words, Clause 203.2 was amended in the manner indicated above. The earlier provision did not make any distinction between ordinary promotions on the one hand, and LDCE promotion, on the other. The amended provision maintains such distinction and restricted the benefit of relaxation in favour of the seniors, only in cases of the promotions by seniority, i.e., 70% selection category. To be more precise, the administration has incorporated another Para, as under:

“6.3 LDCE

6.3.1. for LDCE, all Group ‘C’ employees working in Pay Band-2 (Rs. 9300-34800) with Grade Pay of Rs. 4200 and in higher Group ‘C’ grades will be eligible for consideration provided they have rendered not less than five years of non-fortuitous service in the grade.”



11. This was brought into existence way back on 29.03.2010 and updated on 06.05.2014. The result thereof is that, in case of promotions through LDCE, from Group C, an employee would become eligible if only, he puts in not less than five years of non-fortuitous service in the Grade. Admittedly, the applicant does not comply with that.

12. Though, learned counsel for the applicant made an attempt to argue that, the amendments were not in exercise of power under Article 309 of the Constitution of India, it is too difficult to take the same into account. There is always a presumption in favour of the validity of the provisions of law, till the otherwise is proved. Except making an oral assertion, learned counsel for the applicant did not make any effort to convince, that the amendment was not properly effected.

13. Reliance is placed upon the judgment of the Hon’ble High Court of Madras in WP (C) No. 12382 of 2015. Clause 203.1 of Manual was pressed into service by the petitioner therein. However, the effect of the recent amendment to the Clause was not taken in

account. It is also not known whether the amendment applied to the facts of that case.

14. We do not find any merit in the OA and, accordingly, the same is dismissed. There shall be no order as to costs.



(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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