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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1248/1999

New Delhi this the 3rd day of May, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri Govindan S. Tampi, Member (A)

D.C. Mishra,
S/O Shri N.K. Mishra
Station Superintendent,
Northern Railway, Naini Station,
Uttar Pradesh.

...Applicant

(By Advocate Shri A.K. Behera)

VERSUS

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

2. The Divisional Railway Manager,
Northern Railway, Allahabad.

... Respondents

(By Advocate Shri H.K. Gangwani)

O R D E R

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J))

In this application, the applicant has impugned the action of the respondents in not including his name in the panel for promotion to the grade of Assistant Operating Managers (AOMs) for the period 1998-2000.

2. The brief relevant facts of the case are that when the applicant was working as Station Superintendent at Naini Station, a Notification was issued by the respondents for selection to the post of AOM against 70 % quota for the period 1998-2000, to frame a panel for 22 posts which was to be done by holding a Limited Departmental Competitive Examination

(LDCE). According to the learned counsel for the applicant, as the applicant was eligible to appear in the examination, he had appeared in the written test and was declared passed by notification dated 9.10.1998. Thereafter, viva voce test was held on 29.10.1998 for which he had also appeared but his name was not included in the result of the examination notified on 30.11.1998. He states that he had submitted an application to the respondents against non-inclusion of his name to which no reply was given by the respondents. Hence this OA.

3. One of the main grounds taken by Shri A.K.Behera, learned counsel is that in the final result declared by the respondents only 21 persons were included in the panel, although 22 posts were notified. Secondly in the result so declared, the respondents had included 9 persons from the reserved categories whereas they had mentioned that only 5 posts, namely, 15 % for SC candidates and 7½% for ST candidates were reserved for those categories. He has, therefore, contended that the action of the respondents is illegal, arbitrary and prejudicial to applicant's interests. In the circumstances he has prayed that the records may be called for from the respondents so that they may be directed to include his name in the panel of AOMs for the period 1998-2000.

4. Notices on this OA had been issued in May, 1999 and thereafter a number of opportunities have been given to the respondents to bring the relevant records. It is seen from the Tribunal's orders dated

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8.3.2001 and 28.3.2001 that at the request of the learned counsel for the respondents that he had to obtain the necessary records from Allahabad, the case was postponed and listed for possible final hearing. Again the learned counsel for respondents had sought another adjournment for the same reasons i.e. to get the relevant records from Allahabad. It is further noted that the applicant himself has stated that the Notification dated 9.10.1998 pertaining to the result of the written test was declared by the Headquarters Office, Northern Railway, Baroda House, New Delhi. The respondents have merely denied these averments. It was, therefore, incumbent on the respondents to produce the relevant records which they have failed to do, ~~so~~ in spite of several opportunities having been granted to them, either from the Headquarters Office (NR) Baroda House, New Delhi or from Allahabad. It is also relevant to note that the Notification dated 9.10.1998 which is the result of the written test and supplementary test held on 25.7.1998 and 26.9.1998 for selection to the post of AOMs against 70 % quota for the period 1998-2000, has been issued from the Head Quarters Office, Baroda House, New Delhi. In the circumstances, presumably the rest of the records pertaining to the case would have been available at the Head Quarters Office (NR) Baroda House, New Delhi. In any case, as submitted by the learned counsel for the respondents, even if the records were to be obtained from the Allahabad office, more than sufficient time had been granted to the respondents to produce the same which they have failed to do. In the

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circumstances, the prayer for further extension of time for the same purpose is neither necessary nor reasonable and the same is accordingly rejected.

5. In the reply filed by the respondents, they have submitted, *inter alia*, that the applicant has qualified in the written test held in 1998 for the post of AOM and appeared in the *viva voce* test held on 29.10.1998. They have submitted that the applicant could not secure the qualifying marks as per his performance, that is the record of service and *viva voce* test and so his name was not placed in the panel of AOMs Group 'B' for the year 1998. The applicant had denied these facts in the rejoinder, reiterating his averments in Paragraph 4.6 of the OA, which averments deal with the selection held against 70 % quota for AOMs in the year 1995. The applicant has also submitted that he had filed an earlier OA 2066/1995, with regard to quashing the action of the respondents in not including his name in the panel of AOMs for 1995. However, it is noted that the respondents have submitted in Para 4.6 of their reply that the applicant could not secure the qualifying marks in the *viva voce* test held on 29.10.1998 for selection to the post of AOMs for the relevant years 1998-2000. In this application, the applicant's counsel has vehemently submitted that he seeks a direction to the respondents to include applicant's name in the panel of AOMs for the period of 1998-2000, without prejudice to his claim in OA 2066/1995 which is the panel for 1995, with which we are not concerned here.

6. It is seen from the averments made by the applicant in Para 4.9 of the OA that he had appeared in the viva- voce test held on 29.10.1998. When the result was declared by notification dated 30.11.1998 his name was not included. It is seen from the reply filed by the respondents that the applicant could not secure the qualifying marks as per his performance in the viva voce test and his record of service. In the circumstances, the contentions of the applicant's counsel that the respondents had exceeded the quota meant for the reserved categories or that they have in a malafide manner issued a panel only for 21 persons instead of 22 persons, will not assist the applicant. The question of filling up the posts is a matter for the executive to decide by taking an appropriate decision in the matter. It is also possible that in the cases of SC or ST candidates, some of them could have qualified in the tests on their merit and not on the basis of any relaxed standards meant for them. In any case, unless in the first instance, the applicant has qualified in the written and viva voce tests in accordance with the rules, he will not have any locus standi to question the further action taken by the respondents with regard to filling up the posts of AOMs. Nothing has been placed on record by the applicant to show that he has qualified in the tests to be placed in the panel of AOMs. He has also not questioned the constitution of the Selection Committee or the procedure adopted by them in conducting the viva voce test held on 29.10.1998. It is settled law that it is not for the Tribunal/Court to substitute its decision for that of the Selection Committee which

has not found the applicant fit enough to be placed in the panel prepared by them for the post of AOMs for the period 1998-2000.

7. Taking into account the facts and circumstances of the case, there is no justification to give any such directions as prayed for by the applicant in the OA to include his name in the panel of AOMs for the period 1998-2000. The OA accordingly fails and is dismissed. No order as to costs.

Govindan S. Tampi
Member(A)
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Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)