

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 66/1999

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New Delhi this the 6th day of February, 2001

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

Attar Hussain
S/o Sh. M. H. Zaidi
Ticket No. 712/Diesel Cleaner
Northern Railway Diesel Shed,
Tughalabad, New Delhi.
Quarter No. 6/D Railway Colony,
Shahdara, Delhi.

...Applicant

(By Advocate Sh. G. D. Bhandari)

VERSUS

Union of India through

1. The General Manager
Northern Railway, Baroda House,
New Delhi.

2. Divisional Railway Manager,
Northern Railway/State Entry Road,
New Delhi.

...Respondents

(None for the respondents)

O R D E R (ORAL)

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

The applicant has filed this application being aggrieved by the action of the respondents in not promoting him to the post of JE-II DSL/Elect. against intermediate 25% quota and promoting certain juniors to him by Annexure A.1 order dated 20.11.1998.

2. This case has been listed at Serial No. 2 under regular matters. None has appeared for the respondents even on the second call. In the circumstances we have heard Shri G. D. Bhandari, learned counsel for the applicant and perused the documents on record.

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3. The main grievance of the applicant is that the respondents have failed to comply with the provisions of Note(ii) under sub-para (g) of Rule 219 of the IREM (Vol.I) on which he relies upon. Shri G.D.Bhandari, learned counsel has submitted that while reckoning the eligibility for viva-voce test the respondents should have notionally included seniority marks also, which has not been taken into account by the respondents in the present case. He has drawn our attention to the reply of the respondents to this specific averment in which the respondents have merely stated that each and every contentions raised by the applicant have shifted burden of strict proof on him. The reply of the respondents is not satisfactory because they should have categorically stated whether they have or have not included the seniority marks of the applicant notionally while reckoning the marks obtained by him i.e. 60 % marks in the written test for being eligible to be called for viva voce test. In the rejoinder, the applicant has reiterated his submission made in the OA, namely, that the respondents have failed to comply with the provisions of Note(ii) under sub-para(g) of Rule 219 of IREM(Vol.I) while assessing his eligibility for the viva voce test which should include notionally his seniority marks to the marks obtained by him in the written test.

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4. As observed above, we find that the reply of the respondents to the specific averments made by the applicant is vague. They have not give a categorical statement as to whether they have complied with the relevant rules and instructions on the subject. Applicant's counsel has submitted that Note (ii) sub- para (g) of Rule 219 of IREM (Vol.I) is the relevant Rule. This provides, inter-alia, that a candidate must secure 60% marks in the written test for the purposes of being called in the viva voce test. It is further provided that 60% of the total marks prescribed, for the written test and for the seniority will be the basis for calling candidates for viva voce test instead of 60% marks for the written examination. From these provisions, we find merit in the claim of the applicant that the respondents have not considered his case properly for calling him for viva voce test by including his seniority marks to the marks obtained by him in the written test. To rebut this, it was necessary for the respondents either to deny the averments in clear terms in the reply by either annexing the relevant records or at least bringing the relevant records for the perusal of the Court at the time of hearing. They have not cared to do so and none has also appeared for the respondents. We have not received any assistance from the respondents in this behalf.

5. In view of what has been stated above the OA succeeds and is allowed with the following directions:

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The respondents to re-consider the case of the applicant in terms of the aforesaid relevant rules and instructions and in case he is found eligible he shall be called for viva voce test. The applicant shall be entitled to the promotion to the post of JE-II DSL/Elect from the date his junior was so promoted, with all consequential benefits in accordance with the relevant rules and instructions. This shall be done within three months from the date of receipt of a copy of this order. No order as to costs.

(Govindan S. Vampi)
Member(A)

(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

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