

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH NEW DELHI

MAS 2047/1998, 2972/2000, 2993/2000 and 894/2001 IN  
O.A. NO.1954/1998

New Delhi, this the 29th day of May, 2001

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

1. Smt. Vijay Tyagi, Reservation Supervisor,  
W/o Shri R.P. Tyagi  
R/o 58-A, Pocket-F, Phase-II,  
Mayur Vihar, Delhi-110091.

2. Shri Prem Sagar Goel,  
Reservation Supervisor,  
S/o Shri Ram Charan Goel,  
R/o B-1/50A, Vishnu Garden Ext.,  
New Delhi-110018.

.....Applicant  
(By Advocate : Shri S.K. Sinha)

Versus

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

2. The Divisional Railway Manager,  
Northern Railway, Paharganj,  
New Delhi.

3. The Chief Commercial Manager,  
C&PM, IRCA, Reservation Complex,  
New Delhi.

4. Shri Parveen Sharma,  
Chief-Enquiry-Cum-Reservation Supervisor,  
IRCA Building, Paharganj,  
Northern Railway, New Delhi.

5. Smt. Suman Sharma,  
Chief-Enquiry-Cum-Reservation Supervisor,  
IRCA Building, Under CCM/S&PM,  
Paharganj, New Delhi.

6. Smt. Suman Lata Nanawati,  
Chief-Enquiry-Cum-Reservation Supervisor,  
IRCA Building, Paharganj,  
Northern Railway, New Delhi.

7. Smt. Neelam Sharma,  
Chief-Enquiry-Cum-Reservation Supervisor,  
IRCA Building, Paharganj,  
Northern Railway, New Delhi.

8. Smt. Manju Bala Sharma,  
Chief-Enquiry-Cum-Reservation Supervisor,  
IRCA Building, Paharganj,  
Northern Railway, New Delhi.

9. Smt. Nisha Kohli,  
Chief-Enquiry-Cum-Reservation Supervisor,  
IRCA Building, Paharganj,  
Northern Railway, New Delhi.

10. Smt. Reeta Jhingan,  
Chief-Enquiry-Cum-Reservation Supervisor,  
IRCA Building, Paharganj,  
Northern Railway, New Delhi.

..... Respondents  
(By Advocate : Shri B.S. Jain)

O R D E R

By Hon'ble Shri Govindan S. Tampi, Member (A):

Smt. Vijay Tyagi and Shri Prem Sagar Goel, have in this application, sought to challenge orders dated 9.9.1998 passed by the respondents promoting 21 persons, including respondents Nos. 4 to 10 as Chief-Enquiry-Cum Reservation Supervisors (CERS) in Northern Railway.

2. MAS 2047/1998, 2972/2000, 2993/2000 and 894/2001 are allowed.

3. Heard Shri S.K. Sinha, learned counsel for the applicant and Shri B.S. Jain, learned counsel for the respondents. We have also perused the relevant records.

4. Brief relevant facts in this application are that the applicants, who are Reservation Supervisors in Northern Railway, and working satisfactorily were placed at Sl. Nos. 21 and 15, respectively in the panel from which selection to the posts of CERS, for the vacancies from 1996 was to be made. They had also passed the written test and qualified with the normal standards, while a few others had passed on the basis of relaxed standards and by addition of seniority marks. Though the applicants performed well in the viva-voce, they were not selected for promotion, while a few of their juniors,

including even those who did not have the requisite service for promotion were selected. Even as the applicants, represented against the selection, promotion of five of the candidates were cancelled. By the time the applicants moved the Tribunal in this OA, seeking their placement against the vacant slots, official respondents relaxed the rules and promoted those candidates once again. The entire selection process smacked of malafide and favouritism and had been gone through to hep certain favourites at the cost of genuinely deserving candidates like the applicants. The main grounds raised in the application are as below:-

- i) the selection process was totally vitiated;
- ii) two of the private respondents (4 and 5) could pass the written test only by adding additional seniority marks;
- iii) applicants deserved to be considered against two of the five vacant posts;
- iv) the respondents had considered for promotion, candidates who were not eligible for promotion in the relevant years i.e. 1997 and 1997;
- v) two of the private respondents (5 and 6), who were promoted did not have the minimum qualifying service in the feeder cadre;
- vi) grant of relaxation of qualifying service was improper and malafide;

vii) relaxation in terms of Railway Board's OM dated 10.11.1994 was applicable only when persons with two years of service in the feeder Cadre were not available, which was not the position in the instant case;

viii) applicants having cleared the written examination should have been declared suitable, especially keeping in view their excellent record; and

ix) power vested in the General Manager for relaxing the qualifying service, vide Railway Board's letter No.E(NG)-1-94/PMI/17 dated 11.10.1994 was incorrect and grossly violative of the Articles 14 & 16 of the Constitution.

Hence, this application seeking the following reliefs:-

- (a) allow the instant application;
- (b) quash the promotion of Respondent Nos.4 and 5, who have been selected after awarding grace marks/seniority marks;
- (c) direct the respondents to consider as per their seniority in the merit list against the vacancies which remain unfilled;

"S (CC)" quash the promotion order dated 16.11.1998 passed by the respondents whereby the aforesaid five persons have been promoted; and

"S (CCC)" quash the Railway Board's order dated 11.10.1994 whereby the General Manager has been given uncannellised power to grant relaxation in the recruitment rules".

- (d) award cost in favour of the applicants;
- (e) and pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts of the case prayed accordingly.

5. During his oral submissions, Shri Sinha, learned counsel for the applicants argued that while some of the private respondents have been given seniority marks, the same were denied to the applicants. Further, inspite of there being no separate minimum for viva-voce, the applicants have been assigned considerably poor marks in the viva-voce, to facilitate the selection of a few others who were not even eligible. In the above circumstances, cancellation of the promotion orders of the respondents and grant of promotion of the applicants would alone render them justice, pleads Shri Sinha.

6. Learned counsel for the applicant also drew our attention to two decisions of the Tribunal - order dated 4.10.1996 in OA No.834/1996 and order dated 23.3.2001 in OA No.2101/1998 - which, according to him, would show that the decisions taken by the Selection Committee, can be interfered with, if the same was faulty and malafide.

*[Handwritten signature/initials at the bottom left]*

7. Shri B.S. Jain, learned counsel for the respondents vigorously refutes the points raised on behalf of the applicants. According to him in the written test held on 27.6.1998 and 4.7.1998 for selecting 21 CERS, 63 individuals appeared, out of whom 39, including the two applicants, qualified for viva-voce, at the end of which 21, who were found suitable were placed in the panel for promotion on 8.9.1998. Empanelled individuals were promoted on 9.9.1998, but after noticing that 5 of them had not completed 2 years minimum service in the lower grade, as required in Railway Boards's letter dated 11.10.1994, their promotion orders were cancelled on 10.10.1998 but subsequently after obtaining the approval of the General Manager, this condition was relaxed and they were promoted once again on 26.11.1998. All the 21 posts have been filled up leaving no vacancy. According to the respondents the challenge by the applicant on the order dated 11.10.1994 permitting relaxation of qualifying service, delegated to the General Manager, was clearly time barred and could not be entertained as shown in the case of Udham Singh, Kamal & others Vs. UOI (2000 SCC L&S 53). Further, grant of power for permitting relaxation of rules was a policy matter not subject to judicial review as laid down in S.P. Shiv Prasad Pipal Vs. UOI & Anr., (1998 (3) SLJ 108). It is true that the two applicants had been amongst those who were called for the viva-voce but their performance in the same was not upto the mark to earn for them final selection. The respondents also concede that amongst those originally selected were 5 candidates who did not possess the minimum of 2 years of service, prescribed for the purpose, but this period was to be reckoned at the time of promotion only and not at the time of selection. Still, their promotion orders issued on 9.9.1998 were cancelled on 10.9.1998, but after

obtaining the relaxation in the qualifying service by the General Manager, they were promoted once again on 26.11.1998. The learned counsel states that the representation of the applicants have been duly replied on 26.11.1998. The promotion orders in fact were cancelled on 10.9.1998 prior to the receipt of the notice in the OA, on 22.10.1998. They were promoted again on 26.11.1998. According to Shri Jain, the proceedings have been gone through correctly and, therefore, there was no reason for any modification in their order. In fact the selection has been conducted in terms of para 219 (g) of IREM Vol.I 1989 where - under the candidates were expected to obtain 60% marks for professional ability and 60% marks in the aggregate. The two applicants have not obtained the same and could not, therefore, have been placed on the select panel. Shri Jain also points out that having appeared for the examination, on their own, with full knowledge of the conditions, thereto it was not open for the applicants to assail the procedure of selection and the power of relaxation vested in the General Manager. The learned counsel also placed before us the minutes of the proceedings of the selection committee.

8. We have carefully deliberated upon the rival contentions. In this case, the two applicants, who on passing the written test, were called for the viva-voce, but did not make the grade in the same and, therefore, were not empanelled among the candidates selected for promotion as CERS. The applicants state that they have been wrongly dealt with, denied the benefit of seniority marks and were made to lose selection to benefit persons, who did not even have minimum qualifying service. In this connection it would be relevant for us to examine the proceedings of the Selection Committee.

The instant selection has been done in terms of the para 219 (9) of IREW.M (Vol.I) of 1989, providing that applicants should have obtained 60% for professional ability and 60% in the aggregate. Relevant extracts of the proceedings, as far as they relate to the two applicants are given below:-

| Name                 | Seniority<br>marks<br>15 | Record<br>of<br>service<br>marks | Professional<br>ability<br>Written Oral<br>marks |       | Personality<br>address &<br>leadership<br>Addl. Tech.<br>quality<br>20 marks |
|----------------------|--------------------------|----------------------------------|--|-------|--|
|                      |                          |                                  | marks  | marks |  |
| 9. Prem Sagar Goel   | 12.4                     | 09                               | 21.7   | 8     | 10   |
| 13. Smt. Vijay Tyagi | 11.2                     | 09                               | 21.0   | 7     | 9  |

It is evident, therefore that while Prem Sagar Goel, applicant No.2 has scored more than 60% in the aggregate, he has not obtained 60% in professional ability primarily due to his poor performance in the viva-voce though no separate minimum is fixed for the viva-voce. Applicant No.1, has not obtained 60% in either. It is also seen that both the applicants have been assigned marks for seniority as well as record of service. Applicants' averment to the contrary are not based on facts. Still in the circumstances of the case, we cannot escape the conclusion that at least in the case of the applicant No.2 (Prem Sagar Goel) viva-voce, has been used to thwart his selection, by declaring him as having failed in professional ability by 0.3 marks. Nothing has been brought on record to show as to how and why rounding of the parts of marks to the nearest full number was not ordered, in which case <sup>this</sup> applicant would have correctly got 30 marks for professional ability and would have legitimately passed. The same is not the position in the case of applicant No.1, who has lost out in both - professional ability and aggregate. Therefore, the grant of

relief has to be confined to only to applicant No.2. However, as all the 21 posts are indicated to have been filled up, it would appear that the promotion already ordered cannot be disturbed. The position is strictly not so. Though 21 persons were originally empanelled and promoted on 9.9.1998, promotion order in respect of last five of them have been cancelled on the very next day i.e. 10.9.1998, as they had not completed two years' service in the existing grade and promotions had been inadvertently issued. Subsequently only after the receipt of notice in the OA on 22.10.1998, i.e. on 26.11.1998 they were promoted once again after obtaining the relaxation from the General Manager. Obviously, therefore, when the OA was filed, five posts of CERS were vacant. Case of the applicant No.2 would deserve consideration against one of those posts as his non-selection appears to be artificial. Interestingly in the remarks column in the proceedings, relating to him, the word "passed" is found to have been scored out and replaced by the word "failed"! This applicant has to be rendered justice.

9. The applicants have challenged the powers delegated to the General Manager in Railway Board's letter & No.E(NG)1-94/PM1/17 dated 11.10.1994, for permitting relaxation in qualifying service into the immediately lower grade for all promotion in Group 'C' as excessive and violative of Articles 14 and 16 of the Constitution. However, this challenge has come too late in the day, to be considered, as correctly pointed out by the respondents, relying upon the decision in the case of Udham Singh Kamal and Others (supra). The same is also a policy decision and cannot be assailed in view of the decision in S.P. Shiv Prasad Pipal Vs. UOI and Anr. (supra). Therefore, we hold the challenge by the

applicant on the vires of the Railway Board's delegation as being without basis. However, in the facts and circumstances of the case, the power of relaxation, is found to have been exercised not properly. It is seen that quite a few persons, who were considered for promotion, including five selected did not have the requisite period of service in the feeder cadre and their case should have been considered only after obtaining relaxation earlier. Respondents' view that the experience need be reckoned only on the date of promotion and not on the date of selection has no procedural or legal sanction. Here, after completing the selection process and issuing promotion orders, the respondents have realised their error, and accordingly cancelled the promotion orders. Subsequently, after receipt of the notice in the OA on 22.10.1998, they have obtained the order for relaxation and promoted the private respondents once again, also to prejudice the OA. This was a wrong procedure to have been adopted and has undoubtedly turned out to be a ruse to give post facto sanction to irregular and illegal selection of those, who did not have the requisite eligibility period. Grant of this relaxation in qualifying period, on a subsequent date and the second promotion order on 26.11.1998 were incorrect and have to be set aside.

10. We have had opportunity to peruse both the OAs referred to by the applicants OA No.834/1996, decided on 4.10.1996, refers to the selection/promotion from the post of Head Clerk to that of Office Superintendent. Though the posts, are different from the posts concerned in this OA, Selection procedure is similar and governed by the same instructions - i.e. Para 219 of IREM Vol.1. Tribunal's decision directing that the impugned selection be reviewed by

a second DPC, points to a few specific irregularities found to have been committed in that case and also refers to certain inconsistencies in the marking pattern. To that extent the said decision is relevant now also, on account of the manner in which marks for viva-voce - though no separate minimum is needed for the same - have been given to disqualify applicant by 0.3 marks. OA No.2101/1998, decided on 23.3.2001, assails the very selection process and promotion order dated 9.9.1998, impugned in the present OA. Applicant in OA 2101/1998, who is placed below applicant No.2 and above applicant No.1, in the present OA also had failed in to make the grade, which the Tribunal on perusal of the records, has observed was on manipulation of records. The said decision, at least as far as the said applicant, was concerned has cast serious doubts about the concerned selection process. The observation of the Tribunal in that case becomes applicable here as well.

11. We also observe that the selection process, adopted in this case, casts doubts about the implementation of the scheme by the respondents. It definitely points to some nepotic attitudes, adopted to ensure the selection of juniors, who were not even eligible for being considered, at the cost of seniors with experience like the applicant. Respondents have even resorted to ~~facte~~ relaxation of eligibility conditions to circumvent the due process. This would have to be stopped to create or sustain, confidence of the general public in the system.

12. In the result the application succeeds, though partially and is accordingly disposed of. Respondents order of 26.11.1998, by which five persons, who did not have the requisite period of qualifying service in the feeder cadre were

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promoted by post facto relaxation of eligibility period is quashed and set aside. The posts are deemed to be lying vacant from 10.9.1998 when the promotion orders in respect of five persons were cancelled. Respondents are directed to reconsider the case of applicant No.2 - Prem Sagar Goel, for promotion against one of such posts and if found fit, to promote him from the date on which ~~this~~ candidate junior in the list has been promoted, with all consequential benefits including arrears of pay and allowances. This should be completed within two months from the date of receipt of the copy of this order.

13. The application fails and is dismissed as far as applicant No.1 - Smt. Vijay Tyagi - is concerned.

14. No costs.

(Govindan S. Tampli)  
Member (A)

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
Vice Chairman (J)

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