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Central Administrative Tribunal, Principal Bench

Original Application No.2101 of 1998

New Delhi, this the day 23rd of March,2001

Hon'ble Mr.V.K.Majotra, Member (Admnv)
Hon'ble Mr.Shanker Raju, Member(J)

Kumari Anita Agarwal, D/o Sh.K.R.Agarwal,
Console Supdt (Adhoc), PRS Office, Central
Reservation Office, IRCA Building, State
Entry Road, New Delhi. - Applicant

(By Advocate S/Shri S.K.Sinha & S.S.Mishra)

Versus

1. U.O.I., through the General Manager,
Northern Railway, 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. - Respondents

(By Advocate Shri R.P.Agarwal)

O R D E R

By V.K.Majotra, Member(Admnv) -

Applicant is aggrieved vide Annexure-A-1 dated 9.9.1998 whereby her juniors were promoted to the post of Chief Enquiry-cum-Reservation Supervisor (for short 'CERS') allegedly dehors the relevant recruitment rules and guide-lines. The applicant has claimed appointment against one of the posts of CERS as promotions of five persons on the post of CERS have been cancelled vide order dated 10.9.1998 (Annexure-A-3). She has also impugned order dated 6.5.1998 (Annexure-A-2) i.e. the panel for the post of CERS in which aforesaid five persons were included who were not eligible and did not fall within the zone of consideration. She has further impugned result of written test dated 14.8.1998 (Annexure-2a) wherein candidates who had failed to pass the written test were passed by adding grace marks, alleging it to be malafide and arbitrary.

2. On 6.11.1998 the Tribunal has directed that "[I]n view of the fact that the selection process is to be held on 12.11.1998 and awarding grace marks etc. has

been challenged in this case, any selection made by the respondents to the post of Chief Enquiry-cum-Reservation Supervisor, during the pendency of this OA, shall be subject to the outcome of this OA". Accordingly, when the respondents had issued promotion order of 5 candidates on 16.11.1998 vide their Notice No.752-E/555-V/EIC they mentioned in that notice as follows:

"The empanelment and promotions of the above mentioned staff and the staff already promoted vide this office notice of even number dated 09.09.1998 are subject to final out-come ofO.A. No.2101/98 Km.Anita Aggarwal Vs. U.O.I. against the selection/ promotion of Chief Enquiry & Reservation Supervisor Gr.Rs.6500- 10500 (RSRP)".

3. The applicant is working as Console Superintendent(adhoc). On 8.5.1998 selection process for the post of CERS for years 1996 onwards was initiated. According to applicant, she was succeeded in the written test. The applicant participated in the viva voce test but was not included among the selected candidates, list of which was published on 9.9.1998, while many juniors to the applicant were selected. The applicant has stated that as per Annexure-A-3 dated 10.9.1998 promotion of five candidates at serial nos.17 to 21 has been cancelled indicating availability of five vacancies. The applicant has alleged malafide and favouritism against the respondents inasmuch as inclusion of candidates in the select panel of such candidates who did not possess qualifying number of years of service; declaring certain candidates passed in the written test by adding seniority marks; and not placing applicant's record of service before the interview board as it was reportedly missing. The applicant has contended that relaxation in the eligibility conditions can be accorded to candidates

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only considering the eligible candidates on the date of vacancy. The applicant has sought quashing and setting aside of promotion of respondents 4 & 5 (we may state here that the applicant has not arrayed them as respondents) and direction to the respondents to consider her case as per her seniority in the merit list against the vacancies which remained unfilled.

4. In their counter the respondents have contended that 63 candidates were allowed to appear in the written test for selection to 21 (21 General + 1 SC) posts of CERS. 39 candidates qualified in the written test and were called for viva voce. 21 of these were found suitable and their orders of promotions were issued vide notice dated 9.9.1998(Annexure-A-1) and 26.11.1998. The respondents have admitted to have accorded relaxation to certain candidates in the eligibility condition of two years service in immediate lower grade for promotions within Group 'C' with the personal approval of GM in special circumstances in terms of Railway Board's letter dated 11.10.1994. The respondents have denied any malafide treatment of the applicant. The respondents have filed an additional reply as well.

5. We have heard the learned counsel of parties and perused the ACRs of the applicant and records related to the selection in question produced by the respondents before us.

6. First of all we propose to deal with MA 2388/2000 filed by the applicant. Through this, the applicant has sought permission to raise following additional ground -

"because the act of the respondents failing her in the interview, despite the fact the applicant officiated on the higher post for more than six and half years and that too at

the time the selection was held is contrary to the principle laid down by the Hon'ble Supreme Court and this Hon'ble Tribunal".

The applicant relied on for raising the above ground, an order of the Hon'ble Supreme Court in the case of R.C.Srivastava Vs. Union of India and another, arising out of SLP(C)9866/93 decided on 3.11.1995 which was followed by this Tribunal in OA 812/196 Satish Chandra Khare Vs. Union of India, decided on 1.2.2000. The ratio of these cases is that a person who has been working on a higher post on adhoc basis for a substantial number of years and his/her work is satisfactory, he/she should not be declared unsuccessful in the interview. In the case of Satish Chandra Khare (supra) respondents' circular dated March 19, 1976 has been quoted, which inter alia provides as under:-

"Panels should be formed for selection posts in time to avoid adhoc arrangements. Care should be taken to see while forming panels that employees who have been working in the posts on adhoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment".
(emphasis supplied)

In view of the ratio of aforesaid judgments MA 2388/2000 is allowed and the applicant is permitted to raise the additional ground quoted above.

7. The learned counsel of applicant took exception to participation of 75 candidates in the written test against availability of 21 vacancies in violation of the instructions permitting 3 times of the number of vacancies. The respondents have explained that whereas initially it was proposed to fill up 25 vacancies, the same were reduced to 21 because the anticipated vacancies were excluded due to enhancement of age of retirement from 58 to 60 years. Thus, they allowed 63 candidates only in the written test for 21

vacancies. The contention of the respondents is established from the records. So the objection of the applicant does not hold good.

8. The learned counsel of the applicant has alleged that applicant's service record was not considered in the selection at all due to the fact that it was reported to be missing at the relevant time. From the record of selection produced by the respondents it is established that certainly record of service of applicant was not considered. Whereas 15 marks were earmarked for 'record of service', the column relating to assessment of 'record of service' was left blank in the case of applicant.

9. In regard to consideration of promotion of 5 candidates at serial nos. 17 to 21 in relaxation of eligibility condition of two years qualifying service in the feeder grade, the learned counsel of the respondents contended that they were accorded relaxation of two years condition of service in the immediate lower grade within group 'C' by the General Manager in terms of circular dated 11.10.1994. The learned counsel of the applicant contended that such relaxation could have been accorded to the candidates before the beginning of the selection process. The respondents did not know about non-completion of two years service of these candidates. They permitted them to appear in the written test. There was no application of mind at the level of General Manager as required by aforesaid circular before initiation of the selection process. According of relaxation to these candidates was post-selection which is impermissible. This circular states that if persons with two years service in the immediate lower grade are not readily available for filling up vacancies in the higher grade and it is also not practicable to operate

the post in the lower grade relaxation may be accorded by the General Manager from these conditions in the interest of administration subject to the condition of minimum qualifying service of one year in the immediate lower grade. In the present case, it appears that the facts of these candidates were not examined before hand. They were allowed to participate; they were declared successful; and later on, on discovery of this flaw, relaxation from the said eligibility condition was accorded. Obviously the respondents have faulted on following the spirit of the circular. Vide order dated 10.9.1988 (Annexure-A-4) the promotion of these five candidates was cancelled. However, the respondents had again issued promotion order of aforesaid 5 candidates on 16.11.1998 vide their Notice No.752-E/ 555-V/EIC.

10. The next issue for consideration before us is whether the applicant can be accorded any benefit for having officiated on the higher post for 6-1/2 years immediately prior to the selection in question on the basis of aforesaid circular dated 19.3.1976 quoted above. The applicant has been officiating as Console Superintendent on adhoc basis since 1992. At the time the selection for the post of CERS the selection process was initiated on 8.5.1998, she had already rendered about 6 years of service on the post of Console Superintendent. The respondents have stated that whereas the post of ERS is the feeder post of promotion to the post of CERS, the applicant had not been officiating on the post of CERS but on a different post in the ex-cadre, namely, Console Superintendent. In our view the applicant could have been given the benefit of officiating in a superior post in terms of aforesaid circular dated 19.3.1976 only if she had been working in the post of CERS on adhoc basis satisfactorily. She was

holding an ex-cadre post of Console Superintendent on adhoc basis and as such she is not entitled to any benefit of the said circular and aforesaid judgments of the Hon'ble Supreme Court and this Tribunal.

11. As regards the question of awarding of marks for record of service, referring to para 219(g) of IREM Vol.I, 1989 in their additional reply the respondents have stated that among other conditions empanelment requires that candidate must obtain 60% marks in professional ability and 60% marks in aggregate. From the record of selection, we find that the applicant had secured the following marks:

Seniority marks	15 marks	Record of service	15 marks	Professional ability	50 marks	Personality address & leader ship & Addl.Tech Qualifications
				Written	Oral	20 marks
				35 marks	15 marks	
11.5		-		22.8	8	9

12. The applicant has secured 30.8 marks out of 50 for professional ability. Thus, she has secured more than 60% marks in the professional ability. She has secured a total of 51.3 marks in the aggregate out of 100 while column against 'record of service' carrying 15 marks has been left blank in view of non-ability of her service record. We find that candidates who had secured 60 and above marks were empanelled for the post of CERS. If the applicant had been allowed 8.7 marks out of 15 for 'record of service', she would have definitely made the grade.

13. As regards method of allotment of marks for 'record of service' the respondents in para 3 of their additional reply dated 22.2.2001 have stated as follows:

"Method of Allotment of Marks for Record of Service.

CRs for last 3 years to be taken into account

Outstanding - 5 marks
Very good - 4 marks
Good - 3 marks
Average - 2 marks
Below Average-1 mark

For cash awards merit 1 mark for each cash award/merit (maximum 5 marks).

For Major penalties Deduct 1 mark for each penalty.

For minor penalties Deduct 1/2 marks for each penalty.

On a perusal of record of selection, we find that the respondents have considered the ACRs of the candidates for three years i.e. 1995-96, 1996-97 and 1997-98 and allotted them the marks in terms of the provisions quoted above. In respect of the applicant no marks were allotted. We have also seen the statement showing commendation & punishment during aforesaid 3 years and we found that in respect of the applicant in all the columns 'Nil' has been recorded.

14. We have also perused the ACRs folder of the applicant and found that as the ACRs of the applicant for afore-said 3 years i.e. 1995-96, 1996-97 and 1997-98 were missing, her self appraisals were obtained on 4/5.9.1998, and the reporting and reviewing officers recorded their remarks on the ACRs of the applicant for aforesaid three years on 7.9.1998 and 9.9.1998 respectively.

15. Thus, we find from record that whereas selection process was completed on 3.9.1998 without taking into consideration the service record of the applicant, her ACRs for the last three years i.e.

1995-96, 1996-97 and 1997-98 were got completed after the selection had been completed and the issue of appointment orders. When the relevant ACRs were written after the selection process was already over in the absence of the applicant's service record, ACRs for the three relevant years become totally meaningless and are liable to prejudice the case of the applicant. Even otherwise some of these delayed ACRs contained adverse remarks as well which have not been communicated to the applicant and when the general grading became inferior to that of the previous years, the same was also not communicated. Their adverse effect in the selection cannot be allowed to visit upon the applicant. In our view in such a case in the interest of justice ACRs for three previous years i.e. 1992-93, 1993-94 and 1994-95 can certainly be made basis for assessment of the record of service. We also find that the applicant has been assessed as 'very good' in the ACRs for aforesaid 3 years i.e. 1992-93, 1993-94 and 1994-95. As the applicant had been graded as 'very good' during these three years, she is certainly eligible to obtain 12 marks under item 'record of service' in terms of the criteria laid down and adopted by the respondents for the aforesaid selection. When these marks are added to marks obtained by her under other items, they aggregate to 63.3 placing her above six other candidates who had secured less marks than 63.3 and had been declared passed.

16. In the result, the O.A. is allowed. The respondents are directed to promote the applicant to the post of CERS with effect from the date her immediate junior on the merit list was promoted and grant her all

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consequential benefits including the arrears of pay & allowances.

17. Before we may part we may observe that from perusal of the ACRs of the applicant for the years 1995-96, 1996-97 and 1997-98 which had been recorded after the actual ACRs were found to be missing at the time of the selection, apparently have been recorded with a prejudiced mind as there is a mention in two of the ACRs about filing of the case before the Tribunal, recording of certain adverse remarks^{etc.} whereas the previous record of the applicant had been continuously graded as 'very good'. The attempt of the respondents in down grading the applicant in these ACRs is found to be intentional so that she is not able to attain the qualifying marks and also in the event of the OA being decided in her favour ~~too~~ the record of service does not yield any positive result for the applicant. The malafide intent of the authorities and unseemly hurry in getting the ACRs completed after holding of the selection is highly condemnable and we do so accordingly.

18. A cost of Rs.1,000/- (Rs. one thousand only) is directed to be paid by the respondents to the applicant.

S. Raju

(Shanker Raju)
Member (J)

rkv

V.K. Majotra

(V.K. Majotra)
Member (Admnv)