

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1726/96

New Delhi, this 10th day of April, 2000

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastri, Member(A)

G.S. Gupta
31A/30/10, Madhu Nagar
Agra (UP)

.. Applicant

(By Shri K.B.S.Rajan, Advocate)

versus

Union of India, through

1. General Manager
Central Railway
Bombay VT, Bombay
2. Chief Engineer (P&D)
Central Railway
Bombay V.T., Bombay
3. Divisional Railway Manager(CR)
Near Jhansi Station, Jhansi
4. Sr. Divisional Engineer (North)
DRM Office, Central Railway
Near Jhansi Station, Jhansi

.. Respondents

(By Shri Rajeev Sharma, Advocate)

ORDER(oral)

Reddy, J. -

The matter pertains to promotion from Inspector of Works (IOW, for short) Grade II to Grade I in the Central Railway. The facts in brief are as follows.

2. The Railway Administration published a notification for conducting a test for promotion to the posts of IOW Grade I against 45 vacancies. Applicant being IOW Grade II participated in the test and was declared successful in the written test and his name appeared at Sl.No.46. He was called for viva voce and on completion of viva voce the result was published on 28.6.91. Applicant was not selected. The case of the applicant is that the incumbent at Sl.No.14 did not attend the interview, hence the applicant should have been selected in his place.




3. On 1.3.93, restructuring of Group C and D cadres of the Railways was introduced to the posts of IOW Grade I. As per the applicant, the resultant vacancies should have been filled up from the panel approved before 27.1.92 and current on that date and the selection should be based on seniority subject to consideration of CRs. Applicant however was not selected even in the resultant vacancies.

4. There was a charge pending against the applicant vide order dated 9.1.92 which was however dropped and the applicant was exonerated by order dated 24.11.95. The applicant should therefore have been promoted with effect from the date his junior has been promoted against the 45 vacancies or in the resultant vacancies that arose due to restructuring of certain posts.

5. Respondents have averred in the counter that all the 45 vacancies have been filled up. As the written test and viva voce have been held for 45 vacancies and since all vacancies have been filled up on the basis of selection the applicant at Sl.No.46 in the list was not entitled to have been promoted in preference to others. Applicant was not entitled for this promotion in the resultant vacancies on the basis of empanelment as 46th candidate in the selection held during 1990 as the said panel was not current on the relevant date.

6. We have heard the learned counsel for the applicant. None appeared for the respondents either in person or through counsel.



7. The facts are in short compass. A written test was held during 1990 for the purpose of promotion to the post of IOW Grade I. Though the applicant had qualified in the test but as he was at Sl.No.46 in the select list he was not eligible for promotion as there were only 45 vacancies. All the 45 vacancies have been filled up from among the persons who were selected. It is however contended by the learned counsel for the applicant that the candidate at Sl.No.14 in the written test could not have been promoted because he did not appear in the viva voce and in his place the applicant should have been promoted. It is further contended that there was no rule or any provision of law to allow a person who did not appear on the date when the viva voce was held, to conduct special viva voce for him on the ground of illness. Admittedly, Shri Naik at Sl.No.14 could not appear for the viva voce as he was in sick list. After his fitness, viva voce was conducted and he was placed on the panel. In our view, it is the discretion of the competent authority to take a decision to give a chance or not depending upon the facts of each case to appear in the viva voce at a later date fixed by the Government in the absence of any rule or any other provision of law prohibiting such a course.


8. As seen in the proceedings dated 27.1.93 which was issued by the Railway Board as to the filling up of resultant vacancies which arose on restructuring of certain cadres, they could be filled up either from the panel approved before 1.3.93 and current on that date in the manner indicated in para 4 of the above proceedings.

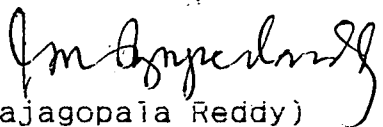
9. The learned counsel Shri Rajan vehemently contends that the applicant having been already empanelled in the panel he was entitled to have been considered for promotion in the resultant vacancies arising out of the restructuring of the post. We do not agree. The empanelment was for the selection for 45 vacancies. All the posts were filled up and a period of one year had expired. Hence it cannot be said that the panel was current on the date of 1.3.93. Hence the applicant cannot be promoted against any resultant vacancy on the basis of his empanelment in the above panel.

10. The contention regarding the exoneration in the departmental enquiry in 1995 has no relevance for his promotion because he was not qualified for selection in the available vacancies.

11. ^hAs it has been stated in the counter that the applicant has been promoted and placed in the panel of 16.11.94 and is entitled to be considered for seniority and for all consequential benefits in accordance with the scheme of restructuring w.e.f. the date of promotion.

12. With the above observations, the OA is disposed of.
No costs.


(Smt. Shanta Shastri)
Member(A)


(V. Rajagopala Reddy)
Vice-Chairman(J)

/gtv/