

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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C.A./T.A. No. 2386 of 1994 Decided on: 3.9.96

ALL India SC/ST
Rly. Emp. Assn. APPLICANT(S)
(By Shri G.S. Beqarar Advocate)

VERSUS

UOI & Ors. RESPONDENTS

(By Shri H.K. Gangwani Advocate)

ORAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~XXX/XMK~~ DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal ? Yes

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(S.R. ADIGE)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 2386 of 1994

New Delhi, dated the 3rd Sept.

1996

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HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. All India SC/STs Railway Employees Association, H.O. 171/B/3/Railway Colony, Basant Road, New Delhi.
2. Shri Avadh Kishore, S/o late Shri Ram Lal, H.S. Electric Fitter, C/o All India SC/STs Railway Employees Association, 171/B/3/Rly. Colony, Basant Road, New Delhi. APPLICANTS

(By Advocate: Shri G.S. Begrar)

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Sr. Divl. Elec. Engineer, T.R.S./N. Railway, Ghaziabad.
3. The Sr. Divl. Personnel Officer, Northern Railway, Allahabad.
4. The Sr. Divl. Elec. Engineer, T.R.S., Northern Railway, Kanpur.
5. The Commissioner, Safety, Baroda House, New Delhi.
6. The Chief Vigilance Officer, Northern Railway, Baroda House, New Delhi.
7. Shri Vinod Kumar Sharma, Trainee ELC Through DEE/TRS/Ghaziabad.
8. Shri P.K. Srivastava, Trainee ELC Under CTFO, Tughlakabad, N. Rly., New Delhi. RESPONDENTS

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(By Advocate: Shri H.K.Gangwani for Respondents 1 to 6, Shri B.S.Mainee for Respondents 7 & 8)

JUDGMENT

BY HON'BLE MR.S.R.ADIGE, MEMBER(A).

In this application the All India SC & ST Association and one other have sought quashing of the impugned order dated 22.4.94 (Annexure-A1) by which two posts of Electrical Chargemen 'B' Gr. (Rs.1400-2300) reserved for ST candidates were dereserved, and also for quashing of the impugned order dated 13.9.94 (Annexure-A2) by which Respondent No.7 Shri V.K.Sharma and Respondent No.8 Shri P.K. Srivastava (both general candidates) were promoted to the said posts along with prosecution of the officials concerned who allowed the allegedly illegal dereservation.

2. The material facts are that the posts of Electrical Chargeman 'B' Group (Rs.1400-2300) are filled 50% through direct recruitment, 25% by promotion and 25% by Ltd. Departmental Competitive Exam. in which those Class III Staff having educational qualification of Matric with II I and 3 years service as Fitters are eligible to apply. The LDCE involves both written test and interview. 9 vacancies were to be filled through LDCE including 5 general vacancies, and 2 each reserved for SC & ST. A total of 25 candidates appeared in the written examination including 18 SC., but no ST, which was held on 23.12.90. The result of the written test was declared vide letter dated 17.1.91

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(Annexure-A4) and 13 candidates including 1 SC candidate and also Respondents 7 and 8 were declared suitable for being called for viva voce test, which was held on 20.2.91. As a result of that viva voce test, a provisional panel of 6 was announced vide letter dated 15.7.91 (Annexure-C4) including 1 SC candidate.

3. Thereupon by Endorsement dated 13.9.91 (appended with the Respondents' addl. affidavit dated 12.12.95) a proposal was sent in the prescribed proforma for dereservation of 2 ST vacancies. It was pointed out that against 2 SC and 2 ST vacancies only 1 SC candidate had successfully cleared the written test and interview and no ST candidate was available within the zone of consideration for that selection, and as general candidates were available who had successfully cleared the written test and interview, the proposal for dereservation of 2 ST vacancies was being sent. It was certified that the officer sending the proposal had personally checked the roster and vacancy position and the reserved quota had been correctly assessed. It was also certified that this was not the case of single vacancy in the first recruitment/promotion year, and no ST candidate was available inspite of applying all relaxations provided for SC/STs by Railway Board instructions. A copy of the roster was also enclosed. This was followed up by letter dated 11.10.91 from DRM, Allahabad's

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Office to G.M., Northern Railway, New Delhi for communicating early approval on the dereservation proposal, as for want of derservation, posts were lying vacant which was impinging on work. A copy of the prescribed proforma sent with endorsement dated 13.8.91 was also enclosed for ready reference. Upon receiving this proposal the G.M. Northern Railway's Office in letter dated 2.12.91 made certain detailed queries, which were replied to by DRM., Allahabad's Office vide letter dated 29.1.92, together with further information in the prescribed proforma. The G.M's Office does not still appear to have been satisfied and made further observations in letter dated 14.2.92 that the prescribed proforma be got signed by the Sr. Divisional Personnel Officer of the Division, which was got done vide DRM, Allahabad's Office letter dated 25.2.92. The G.M.'s Office however still did not accept the proposal and in letter dated 2.4.92 made further queries which were replied to by DRM's Office, Allahabad in letter dated 21.4.92. In this letter it was pointed out that the promotions to the post of Electrical Chargemen was made through selection through IDCE. 18 SC candidates who came within the zone of consideration had appeared in the written test of whom only one qualified. No ST candidates came within the zone of consideration. As the selection was made through IDCE, it was not

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possible to consider the reserved candidates for adhoc promotion under the "Best among failure Scheme who could not qualify in the written test. The G.M.'s Office however still did not accept the proposal. They pointed out in their letter dated 27.5.92 that the review of the failed SC/ST candidates should be carried out through Sr. Personnel Officer and whether in accordance with rules the SC/ST candidates had been given pre-selection coaching/training. It was also pointed out that as there was an element of direct recruitment quota, the shortfall of SC/ST be made good by placing indent on the concerned Railway Recruitment Board. In reply the DRM's Office, Allahabad in their letter dated 3.7.92 pointed out that as there was no ST candidate available within the zone of eligible candidate, the question of review by SPO, or of pre-selection coaching/training did not arise. Furthermore as the post which were proposed to be dereserved fell within the 25% LDCE quota, the same could not be filled up by direct recruitment through R.R.B. Nearly 2 years thereafter by letter dated 7.7.94 the G.M.'s Office communicated sanction for the dereservation of the 2 ST posts. It was made clear in that letter that the short fall of ST candidates must be made good in/terms of relevant instructions contained in PSN. 9975 and 102287 so that ST candidates could become available in due course against the quota reserved for them.

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It is only after receipt of the GM's Office letter dated 7.7.94 that Respondents 7 and 8 who are general candidates were ordered to be placed in the provisional panel vide DRM, Allahabad Office letter dated 12.9.94.

4. The first ground taken is that the respondents did not follow the principle of carry forward given in paragraph 4.2 at page 9 of the Brochure on Reservation for SC & ST which specifies that vacancies can be exchanged between SC and ST. In the case before us the question of exchanging these ST vacancies for SC does not arise because only 1 SC candidate qualified in both the written test and interview, against 2 posts reserved for SC and that SC candidate was selected. It might have been another matter if more than 2 SC candidates were successful in the written exam as well as the interview, and the number of available SC posts were only two, but that was not so. Hence this ground fails.

5. The next ground taken is that the respondents have not obtained the approval of the competent authority, nor have they sent any proposal to the Commr. of SC & ST and Department of Personnel nor waited for their reply. Admittedly the post of Electrical Chargeman is a Class III Technical Category post and Railway Board's letter No.E(SCT) 63G 15/6 dated 2.7.73

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empowers the GMs to dereserve the posts temporarily. In the present case, the G.M. has permitted temporary dereservation of the two vacancies reserved for ST, with the clear stipulation that the ST quota should be made up in the next selection. No materials have been produced by the applicants to establish that Railway Board's letter dated 2.7.73 has been superceded by any subsequent letter withdrawing the power granted to GMs to dereserve posts temporarily. Under the circumstance, this ground also fails.

6. The next ground taken is that the procedure laid down in Chapter 10 of the Brochure for dereservation (Annexure-A10) specifies that a vacancy reserved for SC/ST may be filled by a general candidate in the case of non-availability of a suitable SC/ST candidate by dereserving it in accordance with the prescribed procedure and in case of direct recruitment (emphasis supplied) PRIOR APPROVAL OF DPAR should be obtained which was not done in the present case. This is not a case of direct recruitment but promotion through IDCE. Furthermore extracts of Chapter 10 on Dereservation at Annexure-A10 filed with the OA relates to a Brochure other than that applicable to the Railway Services, who have their own Brochure on Reservation for SC & ST

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in Railway Services which has been referred to in paragraph 5 above. Hence this ground also is not applicable to the facts of this case.

7. The next ground taken is that in accordance with Railway Board's letter dated 6.9.88 (RBE No.183/88) in cases where the posts are reserved but could not be filled due to non-availability or non-qualifying by candidates appearing in selection, the normal procedure of dereservation and carrying forward should be continued, which has allegedly has not been done in this case. The applicants have not made clear what the official respondents have failed to do. It is clear that steps to fill those posts commenced late in 1990. The written test and interview were completed and results declared around mid 1991. The official respondents did not dereserve the posts immediately. It took three years for the G.M., who as stated earlier is the competent authority to dereserve technical posts of Electrical Chargeman, to give his approval to the dereservation, and even that approval was subject to the condition that every effort would be made to make up the ST quota in full in the next selection. Admittedly no IDCE has been held after the one under discussion, ^{except now in June-July 1996} Hence prima facie we are unable to discern any violation of Railway Board's letter dated 6.9.88.

8. The next ground taken is that the respondents failed to follow the procedure of dereservation as circulated by DRM, Allahabad vide order dated 24.11.84 but what specific failure of procedure there has been, has not been made clear.

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9. The next ground taken is that the respondents should have initiated the pre-selection coaching/training for the ST candidate. This aspect has been dealt with by the GM's office and in their letter sanctioning de-reservation they have called upon the DRM, Allahabad for taking measures to see that the ST quota is filled up for future years. In any case such coaching/training would apply only prospectively and cannot be made a ground to impugn the de-reservation already made.

10. The next ground taken is that Railway Board's letter dated 1.2.85 required 2 years service in lower grade for promotion to safety categories such as the present vacancies which the person whose appointment has been challenged, does not possess. This point would be relevant only if the applicants could establish that there were eligible SC/ST candidates with 2 years service in lower category who qualified in written test and viva-voce but their candidature was overlooked, but as stated above, there was no ST candidate and only one SC candidate who cleared the written test and interview. Hence this ground also fails.

11. The next ground taken is that the reserved candidates should have been judged by relaxed standards, which was not done. While giving the certificate on de-reservation proforma, it had been certified that relaxed standard was applied but only one SC candidate was successful in written test/interview.

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The applicants have not produced any evidence to make us doubt the genuineness of this certificate.

12. Next it has been contended that the names of Respondents 7 and 8 did not figure in the panel of 15.7.91 and in any case the life of that panel which itself was provisional, was only 2 years and hence hence Respondents 7 and 8 could not have been placed on that provisional panel by the DRM, Allahabad's letter dated 12.9.94. In this connection, Shri Begar has also cited the CAT PB ruling in OA No.850/93 Shri Satya Sharma Vs. UDI & others 1995(2) ATJ 428, in which it has been held that if the vacancies reserved for SC/ST are de-reserved, then these constitute a fresh vacancies for which fresh selections have to be held.

13. We have considered these contentions carefully. While doing so, our attention has also been drawn to the Hon'ble Supreme Court's ruling in Ashok Kumar & others Vs. Chairman, Banking Service Recruitment Board and others- AIR 1996 SC 976, wherein it has been held that the appointments of the persons kept in the waiting list by the respective Recruitment Boards, to the vacancies that had arisen subsequently, without notifying them for recruitment is unconstitutional.

14. In the light of these rulings, the respondents should nodoubt have treated the

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two de-reserved vacancies as fresh vacancies to which fresh selections ought to have been held but following the Hon'ble Supreme Court's ruling in Ashok Kumar's case (Supra), wherein they had not interfered with the appointments already made, we are not inclined to interfere with the action taken by the official respondents in placing Respondents 7 and 8 in the provisional panel at this stage, owing to the considerable period of time which has elapsed since they were brought on the provisional panel.

15. During hearing, we were told by Shri Gangwani that after the 1990-91 selection, the next selections have been held only in June-July, 1996 and applicant No.2 Shri Avadh Kishore, who along with the All India SC/STs Railway Employees Association had filed this OA, has been successful in that selection against one of 10 vacancies, consisting of 5 general category vacancies; 3 SC vacancies including 1 carried forward from 1991; and 2 ST vacancies comprising both those carried forward from 1991. In this connection, a copy of the respondents' letter dated 3.7.96 confirming the placement of applicant Shri Avadh Kishore on the provisional panel of intermediate apprentice for appointment as Electrical Chargeman, has also been filed which is taken on record.

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16. In the result, we see no good reasons to intervene in the matter. The OA is dismissed. No costs.

A Vedavalli
(DR.A. VEDAVALLI)
MEMBER (J).

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(S.R. ADIGE)
MEMBER (A).

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