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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.85/1989

New Delhi, This the 20th Day of July 1994

Hon'ble Shri C J Roy, Member (J)

Hon'ble Shri P.T.Thiruvengadam, Member (A)

Shri Juel Kajur
Assistant Commercial Officer/Claims
Northern Railway
NDCR Building
New Delhi.

...Applicant

By Shri B S Mainee, Advocate

Versus

Union of India: Through

1. The Secretary
Ministry of Railways
Railway Board
Railway Bhawan
New Delhi.

2. The General Manager
Northern Railway
Baroda House
New Delhi.

...Respondents

By Shri R L Dhawan, Advocate

O R D E R

Hon'ble Shri P.T.Thiruvengadam, Member (A)

1. The applicant belongs to Scheduled Tribe Community. He was promoted as Asst Commercial Officer on adhoc basis in the year 1986 and has been continuing as such. A notification was issued on 28.2.87 (Annexure A-2 to OA) listing the names of candidates who are eligible for the supplementary selection for promotion to Group B in the Transportation (Traffic) and Commercial Department against 75 percent vacancies and in the enclosed list the applicant figures at serial No.86. The notification mentions that a written test was to be held on 8.3.87. It is the case of the applicant that a copy of the notification

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though endorsed to various offices was not endorsed to the officer where the applicant was working namely that of the Supdt Claims in New Delhi and that the applicant came to know of the selection after the written examination had taken place. Immediately, on 10.3.87 he represented for an opportunity being given to him for attending the above test. He made a number of representations and since no reply was given to him this OA has been filed seeking the following reliefs:

(a) Respondents may be directed to consider the applicant for the said selection and for placing him on the panel as per extant rules.

(b) The impugned order dated 13.3.87 announcing the results of the selection may be quashed.

2. At the time of argument the learned counsel for the applicant mentioned that he was not pressing the relief regarding quashing of the panel.

3. The main ground of the applicant is that he had not been advised about the date of written examination. A copy of the notification was not endorsed to the office in which he was working. On 10.3.87 itself he made a representation for being given an opportunity to be considered in the selection and in his representation he had brought out that he had not been informed about the selection and that even the notification had not been addressed to his controlling office. This representation was forwarded on the same date by the Controlling Officer and in the forwarding letter nowhere it has been stated that the controlling office had received the notification.

4. The applicant also refers to the communications from the Railway Ministry to the Northern Railway dated Mar 87 (Annexure VI of OA), June 87 (Annexure VII of OA) and 15.12.87 letter (Annexure A-10 of OA). From these letters from the Railway Ministry it is clear that

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his case was considered by the Railway Ministry and repeatedly the Zonal Railway was asked to hold a supplementary selection for the applicant with due consideration against the ST vacancy. In spite of such instructions from Railway Ministry the Railways which was in a hurry to complete the proceedings had issued the results of the selection on 13.3.87 itself and did not take any corrective action.

5. It is further argued that in the said selection there were 3 ST vacancies and the total number of ST candidates who were called for selection including the applicant was only three and depending upon the performance of the applicant he would have been considered for the empanelment straightaway had he passed the selection or would have been considered for "in service training" even if he had failed, since such a scheme has been provided for promotions to reserved community candidates against the quota mentioned for them.

6. The stand taken by the respondents with regard to service ^{of} notice on the applicant about selection is that due to certain orders of this Tribunal in some other OA the process of selection had to be completed within a tight time frame and accordingly at the time of issue of notification calling for the holding of written test etc an endorsement was issued to the Personal Asst. to the Chief Operating Superintendent, directing him to inform all concerned on 'Hotline'. This was an additional precaution taken and in the reply it is stated that it is confirmed by P.A. to COPS that Supdt Claims where the applicant was working was informed about the selection.

7. We are not convinced that the applicant was duly informed of the holding of the selection in pursuance of the notification dated 28.2.87. The mere statement in the reply that the controlling officer of the applicant was informed of the date of selection does not establish

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that the applicant had been ^{made} aware of the test. The notification was not endorsed to the controlling office even though a copy of the notification had been issued to large number of offices. We also note that the applicant immediately reported on 10.3.87 and his representation was duly forwarded by the controlling officer on the same date and in the forwarding letter the controlling officer has not taken the stand that he had advised the applicant about the selection. No where in the reply it has been brought out that the controlling officer specifically advised the applicant about the date of selection. We also do not see as to why the applicant would not have appeared in the written test on 8.3.87 had he been informed regarding the date of the test. The applicant would have been aware that he was one of the 3 ST candidates to be considered for the 3 vacancies reserved for STs and as per his understanding he had to be necessarily considered for empanelment or for 'in service training'. Under the circumstances we have ^{on the basis} to proceed ^{that} the applicant was not informed of the contents of the notification dated 28.2.87 and thus denied the opportunity to appear in the written test held on 8.3.87.

8. The next issue that arises is what would be the consequence if notice regarding written test was not given to the applicant. It is not necessary to go into the exchange of communications between the Railway Ministry and Zonal Railway and the reason as to why a supplementary test in favour of the applicant was not held despite advice from the Railway Board repeatedly to hold such a test. The respondents have taken ^{the} stand that the applicant had appeared in the subsequent selection for Asst Commercial Supdt (ACS) i.e. the written test for which was held in July 87 and results announced in July 89 but the applicant failed

in the same. It is the stand of the respondents that in view of the failure of the applicant in the next selection the question of giving him the benefit of consideration in the earlier selection would not arise. We have already ^{concluded} ~~that~~ that the applicant had been denied the benefit of appearing in the selection held as per notification dated 28.2.87 in view of non advise to the applicant. Hence the benefit of the performance of the applicant in the very next selection should at least be extended to him with reference to the earlier selection. Such a procedure is followed whenever there is an administrative error.

9. The next aspect to be considered is whether by extending the benefit of performance of the applicant in the written test held in July 87 in the next selection to the written test held in Mar 87 the applicant in any way gets an advantage. The learned counsel for the applicant stated that for promotion to the post of ACS the instructions with regard to non safety categories applies. Such instructions provides for reserved community candidates being given special consideration. If ~~the~~ they pass the selection as per acceptable standards they get empanelled and in case they do not come up to the acceptable standards the best amongst the failed from these candidates should be considered against the quota reserved for them and such candidates should be sent ^{for} ~~to~~ 'in service' training. Thereafter depending upon the performance during the 'in service' training which is to be conducted in the higher posts on adhoc promotion they should be considered for empanelment. It is the case of the applicant that in the selection initiated in Feb 87 there were three vacancies reserved for ST candidates and in the eligible list of candidates called for the written examination there was totally only

3 ST candidates and hence the applicant had a right to be considered for in service training and further empanelment depending upon the performance during the in service training as ad hoc ACS.

10. This argument was hotly contested by the learned counsel for the respondents stating that the selection initiated in Feb 87 was a combined one for Traffic and Commercial Departments and as per relevant circulars of the Railway Ministry, traffic department is included in the safety category and for safety category selection concessions quoted by the applicant are not available. However we noted that in the notification dated 28-2-87 it has been indicated that in the written test to be held on 8-7-87 there would be separate examination for transportation department and commercial department. On our specific query and after taking time for instructions the learned counsel for the respondents confirmed across the bar that candidates called for the relevant selection had option to appear in either the transportation or commercial papers ^{or in both}. We also find from the final list of selected candidates issued on 13-3-87, some of the candidates have been shown as fit for operating and commercial, some have been shown as fit for commercial only and some have been shown as fit for operating only. The Railway Board circular No.82/E(SET)41/6 dated 15-11-83 classifies only traffic department and some other departments as coming under safety category. The commercial department is not shown as coming under safety category. We are not convinced that if combined selection is held for traffic and commercial the entire selection should be deemed as if being conducted for safety category. The basic facts that the candidates are allowed to appear only in commercial categories or only in transport categories or both categories

if they so choose and also the further ampanelments separately for commercial and separately for operating and separately for operating and commercial would indicate that for operating category more rigid stipulations which go with safety guidelines could be applied and for commercial category relaxations envisaged for non safety category can be applied. No specific reasons as to why different considerations could not be shown for commercial category have been brought out by the respondents. It has been stated that subsequent selections have been bifurcated between the two departments. Under the circumstances we are convinced that the benefit of best amongst the failed scheme as applicable to non safety categories should have been extended to the applicant vis a vis that selection initiated vide notification dated 28-2-87. We have already held that the performance of the applicant in the later selection for which the written test was held in July 87 should be taken as the performance of the applicant with reference to the earlier selection. Even if the applicant had failed in the second test and he had not come up to the minimum standard he cannot be denied the benefit of consideration of in service training scheme. At this stage the respondents stated across the bar that the applicant has already been put to in service training during 25-11-93 to 24-5-94 based on his performance in a later selection held during 1991-92.

11. Accordingly we direct that the applicant should be included in the panel issued ^{on} 13.3.87 (Annexure 1 to DA) if he is found fit for inclusion in ^{Group} Grade B Panel at the end of the in service training which is stated to have been conducted during 25.11.93 to 24.5.94 and the results of which are awaited. The DA is disposed of accordingly. No costs.

P. J. Thiruvengadam

20/7/94

(P.T. THIRUVENGADAM)
Member(A)

C. J. Roy

20/7/94

(C. J. ROY)
Member(J)

LCP