

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1915/1988

Date of decision: 37.12.90

Shri Jagdish Singh

...Applicant

Versus

Union of India & Others

...Respondents

Coram:

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the applicant

Shri M.C. Juneja, Counsel

For the respondents

Shri P.H. Ramchandani,
Senior counsel along with
Shri A.K. Behra, counsel.

(Judgement of the Bench delivered by Hon'ble

Mr. I.K. Rasgotra, Member (A))

Shri Jagdish Singh, Motor Transport Driver Grade I, INS India, New Delhi has filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the denial of opportunity to appearing in the qualifying departmental test for promotion to the post of Motor Transport Supervisor (MT Supervisor) grade Rs.330-480 (pre-revised scale) while allowing the junior persons to appear in the test even when they were not within the zone of consideration. The post of MT Supervisor is to be filled in accordance with the schedule annexed to SRO 304 published in the Gazette of India on 10.10.1987. The minimum qualifications for the post is matriculation or equivalent with five years' experience in driving different types of vehicles. The method of recruitment is by promotion, failing which by transfer and failing both by direct recruitment. The feeder grade for the post is that of motor transport driver Grade I with three years' service in the grade.

The candidates are required to pass in a qualifying departmental test to become eligible for consideration for promotion by the Departmental Promotion Committee (DPC). The case of the applicant is that for filling up one vacancy in the grade of MT Supervisor which was due to occur w.e.f. 1.10.1988, the zone of consideration should have been restricted to first five candidates in the seniority list of the feeder grade of MT Driver Grade as prescribed by the Department of Personnel vide OM No.22011/3/76-Estt.D dated 24.12.1980 and that they alone should have been called for appearing in the qualifying departmental test.

The departmental test was held on 24.5.1988 and was followed by an interview on the same date. The applicant submits that as per the seniority list of the feeder grade of 24.5.1988 (Annexure-A-5) candidates at srl. No.1,2,4 and 9 were due to retire before the date of occurrence of vacancy viz. 1.10.1988. They would thus naturally be excluded from the field of consideration. Thus only the following persons were left as contenders for the post of MT Supervisor:

Srl. No.3, Shri Sohan Lal,
Srl. No.5, Shri Jagdish Singh,
srl. No.6, Shri S.R. Singh,
srl. No.7, Shri Gudan Singh and;
srl. No.8, Shri Amar Singh

According to the applicant all of them had rendered three years' qualifying service in the feeder grade and thus were all eligible for the departmental test. Instead of following the above procedure, the respondent No.3 gave a departmental test only to, Srl. No. 6 and 11 Shri S.R. Singh and Shri Ashok Kumar respectively who were allegedly called for the test

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verbally. He also submits that no letter was issued including the eligible candidates for the test. Thus all eligible candidates with exclusion of two were denied the opportunity to appearing in the departmental test to seek promotion to the higher grade post. Finally Shri Ashok Kumar, Srl. No.11 was selected for the post. The entire process of selection is therefore alleged, to be biased, illegal and unconstitutional.

By way of relief the applicant has prayed that the Tribunal may set aside the qualifying departmental test held by the respondents on 24.5.1988 for promotion to the post of MT Supervisor and consequent appointment of Shri Ashok Kumar, respondent No.4. It is further prayed that a fresh departmental test may be ordered to be held.

2. In their written statement the respondents have submitted that the notice about the conduct of the trade test i.e. the qualifying departmental test was displayed by them in English as well as in Hindi on May 3, 1988 for the information of all concerned vide Annexure R-1). Since the qualifying test was postponed from 23rd May to 24th May, 1988 another notice was displayed on the Notice Board on 16.5.1988 (Annexure R-II).. They have also stated that besides two candidates who appeared in the qualifying departmental test other three eligible candidates were also called for the test by Commodore R.S. Sirohi, the then Motor Transport Officer. These candidates however decided in their own wisdom not to appear in the trade test. They have submitted that the question of restricting the choice in accordance with the DOP instructions would be applicable only to the candidates who become eligible after passing the departmental qualifying test as per the conditions laid down in the

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SRO 304/87. According to them the first step to fill up the vacancies, the holding of the departmental test and process is completed by convening the DPC to consider these who qualify in the departmental test and are otherwise eligible in accordance with the other conditions laid down in the Recruitment Rules.

There is no restriction on the number of the candidates appearing in the qualifying test as long as they are otherwise eligible for the post. The fact of having held the departmental test on 24.5.1988 followed by oral interview has not been disputed by the respondents.

3. We have heard the learned counsel of the applicant, Shri M.C. Juneja and Shri P.H. Ramchandani, learned Senior Counsel along with Shri A.K. Behra, counsel respectively for the respondents.

We are of the view that the selection test was held in accordance with the provisions made in the SRO-304/87. The copies of the notice displayed on the notice board placed at Annexure R-1 and R2 of the written statement clearly indicate that there was no attempt on the part of the respondents to exclude any of the eligible candidates from appearing in the selection test for consideration to the post of MT Supervisor. In fact it has been averred by the respondents that besides the two candidates who appeared in the selection test, the remaining three eligible candidates were also advised by the Motor Transport Officer to appear in the test. They, however, chose to stay away in their own wisdom. Despite the denial by the applicant in the rejoinder and assuming that the Motor Transport Officer

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at that time had not individually advised the other eligible candidates to appear in the departmental test. We consider the display of the notice regarding the qualifying departmental test on the notice board as adequate evidence that there was no covert attempt to exclude the applicant from appearing in the test. Having failed to avail of the opportunity, the applicant is now seeking the redressal of an imaginative grievance through the Tribunal. We are also not persuaded to believe that the two persons who appeared in the selection test were specially invited to the exclusion of the other eligible candidates as no material has been placed before us to substantiate the allegation.

According to the rule "Motor Transport Driver Grade I with 3 years' service in the grade" has to pass a "qualifying departmental test to become eligible for consideration for promotion." The qualifying test precedes the consideration for promotion. The DPC will thus come into existence for considering those who have qualified in the departmental test. Consequently the zone of consideration as prescribed by Department of Personnel vide OM dated 24.12.1980 shall also be applicable only to those candidates who qualify for the post in the departmental test. It is not the function of the DPC to conduct the qualifying test. The DPC will only consider in accordance with the procedure as decided upon by it. We are also of the view that it was for the eligible candidates to take note of the notice displayed on the notice board and to appear in the qualifying test - a prerequisite for being considered by the DPC.

In view of the above, we do not see any merit in the application which is accordingly dismissed.

There will be no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA) 31/12/90

MEMBER(A)

Ad
(AMITAV BANERJI) 31.12.90

CHAIRMAN

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