

30

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1227/88

NEW DELHI THE 25th DAY OF FEBRUARY, 1994.

HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
HON'BLE MR.B.N.DHOUNDIYAL, MEMBER(A)

Shri Lallu Singh
S/o Late Sh.Bhola Singh
R/o 8, Ranjit Place, Kali Bari
Marg, New Delhi-110 001 ... Applicant
APPLICANT IN PERSON.

Vs.

- 1.Union of India
through
General Manager
Northern Railway
Baroda House
New Delhi.
- 2.Financial Advisor & Chief
Accounts Officer(T)
Northern Railway
Baroda House
New Delhi.
- 3.Financial Advisor &
Chief Accounts Officer(WST)
Northern Railway
Baroda House,
New Delhi.
- 4.Chief Personnel officer,
Northern Railway,
Baroda House,
New Delhi.
- 5.Sh.A.P.Chaudhary
Statistics & Analysis
Officer,
Northern Railway
Baroda House,
New Delhi. ... Respondents

BY ADVOCATE SHRI K.K.PATEL.

ORDER

Justice S.K.Dhaon:

The controversy in this application pertains to promotion to the post of Assistant Statistical Officer from the post of Superintendent Statistical. The applicant is a Superintendent in the Statistical Branch of the Northern Railway. He came to this Tribunal with this original application and claimed the relief:

"The applicant is entitled for suitable relief".

Sd/-

The subject of the OA was described as "Communication of adverse remarks period ending 31.3.87 after a period of one year i.e. on 28.3.88. This is not in order and against the CR rules". This controversy, originally, was confined to the adverse remarks for the period ending 31.3.1987.

2. On 25.8.1988, this Tribunal permitted the applicant to amend the OA. Consequently on 14.10.1988, an amended OA was filed. In the amended OA, the following reliefs were prayed for:

- (1) the respondents may be directed that the assessment for selection for promotion to the post of Assistant Statistical Officer may be made in accordance with the rules i.e. on the basis of the total marks obtained in the examination, viva-voce and record of service on concessional standard prescribed for the Scheduled Caste candidates.
- (2) while making such assessment and allocation of marks for service records etc. the adverse entries made in the A.C.R. of the year 1984-85 which have not been communicated and for the year 1986-87 which have been challenged in an appeal may not be taken into account.
- (3) the respondents may be directed to expunge the unfounded adverse entry made in the A.C.R for the 1986-87.

49

3. It appears to be an admitted position that the post of Assistant Statistical Officer was to be filled up on the basis of an examination. This particular post was reserved for a Scheduled Caste candidate. The examination was held on 15.1.1986. Two Scheduled Caste candidates appeared and two general candidates appeared. On 23.5.1988 this Tribunal, in OA No.668/87 preferred by the applicant, passed an order directing the respondents therein to declare the result of the examination held on 15.1.1986 and to fill up the vacancy of Assistant Statistical Officer on the basis of the said result in accordance with the Rules of the Department. The respondents were directed to declare the result within a period of two months. A clarification was also made that the post of Assistant Statistical Officer shall not be filled in on an ad hoc basis in the meanwhile. On 29.6.1988, upon an application filed on behalf of the respondents, the Tribunal reiterated the directions given on 23.5.1988. It observed that admittedly there is only one vacancy which is reserved for Scheduled Caste candidates. Since two Scheduled Caste candidates appeared in the written test, the number of Scheduled Caste candidates is more than the number of reserved vacancies. Hence no prejudice is likely to be caused either to the Scheduled Caste candidates or to the general category candidates if the result of the written test held way back in 1986 is now pronounced. Indeed, it is long overdue. Counsel for the respondents

has not been able to bring any rules or office instructions to the contrary to substantiate his point that only Scheduled Caste candidates are eligible for appearing in the written test or for the viva-voce/^{test} for a Scheduled Caste reserved vacancy.

4. On 31.10.1988 this Tribunal, in this OA passed an order that any appointment made to the post of Assistant Statistical Officer shall be subject to the result of the main application. On 25.8.1989, the result of the examination was declared. It was shown that the applicant did not pass in the written paper. We may state here that the examination comprised written test as well as viva-voce test.

5. On 10.9.85, the Railway Board issued a letter. In the said letter, it is inter-alia recited that no minimum marks to be obtained by a SC/ST candidates have been laid down for considering them for promotion on ad hoc basis. The matter has been reviewed by the Board and it has been decided that under the scheme only those SC/ST candidates should be considered for ad hoc promotion who secure a minimum of 20% of total marks in the written test, viva-voce and record of service etc. All other instructions subsequently issued in various letters about the above scheme will still be applicable.

6. It is the respondents' case and this has been categorically stated at the Bar by the learned counsel appearing for them that in view of the fact that the applicant failed to qualify in the written test, he was not subjected to a viva-voce test. However,

his record of service was examined and he was not found fit to be given the post of Assistant Statistical Officer.

7. On 8.5.1989, a letter was issued by the Deputy Director, Estt.(SCT), Railway Board to the General Managers of All Indian Railways etc.. In para 1 of the letter, it is stated that it has come to the notice of the Board that SC/ST candidates who secure no marks at all, are also called for interview as the 20% limit is being applied on the aggregate. In para 2, it is stated that the above limit of 20% was not intended to apply only on the aggregate since 15 marks out of 100 are allocated for seniority, which does not depend upon performance. The intention of

§

the Board was that a candidate before he is picked up for promotion on ad hoc basis should secure at least 20% marks separately in the written, in the viva voce and in the record of service etc. and also in aggregate. It is, therefore clarified that with immediate effect the 20% limit in marks to be obtained for ad hoc promotions based on "best amongst failed candidates" should be applied separately under each heading & aggregate as indicated above. Consequently SC/ST candidates securing less than 20% marks in written test need not be called for viva-voce test and would not thus be eligible for being considered for promotion on ad hoc basis under the "best amongst the failed candidates". This communication of the Railway Board dated 8.5.1989 struck at the very root of the applicant's case that he being best amongst the failed candidates should have been appointment as an Assistant Statistical Officer.

3. On 8.3.1990, the Dy.C.P.O.(G) to the Northern Railway Headquarters issued a communication stating therein that the Executive Director, Estt.(R), Railway Board in his D.O. No.89-E(SCT)II/3/258 dated 27.2.1990 has directed the Northern Railway that since a considerable time has already passed since the written test was held and since both OC & SC have appeared for the same, the old selection can be cancelled and a fresh selection is held from amongst the eligible SC candidates and finalised expeditiously. The Dy.C.P.O.(G) directed the APO(G) to obtain a list of SC/ST candidates eligible for

promotion as Assistant Statistical Officer and get fixed the date for the written test immediately. It is evident that the Railway Board, upon relevant considerations, cancelled the examination held on 15.1.86.

9. This application, therefore, became infructuous upon the cancellation of the examination held on 15.1.86. Since the applicant failed in the examination in view of the aforesaid communication of the Railway Board dated 8.5.1989, no prejudice was caused to him by the cancellation of the examination.

10. We are informed at the Bar that in 1993, an examination was held but the applicant did not appear in the said examination. The examination has been completed and the selection process is on. It is also stated that on 29.7.1993, the post in question had been dereserved.

11. The learned counsel for the respondents also informs us that the representation made by the applicant against the character roll made for the years 1986-87 has been disposed of. The applicant asserts that he has not been provided with a copy of the order disposing of the said representation. The respondents shall, therefore, furnish to the applicant, a copy of the order without any inordinate delay.

12. The applicant is on the verge of his retirement. He has been litigating for the post of Assistant Statistical Officer since the year 1988. We have no doubt that the authority concerned shall consider the applicant's case for promotion sympathetically without any ill will or rancour.

Sd/

13. We are unable to grant any relief to the applicant. The application is, therefore, dismissed but without any order as to costs.

B.N. Dhoundiyal
(B.N.DHOUNDIYAL)
MEMBER(A)
SNS

S.K. Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)