

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 983 /1986 1986
~~TXKN6.~~

DATE OF DECISION 08.01.1993

Shri Lekhraj Petitioner

Shri Malik B.D. Thareja Advocate for the Petitioner(s)

Versus

G. Manager, N. Railway & Ors. Respondents

Shri Shyam Morjani Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *JS*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *JS*

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

P.C. Jain
(P.C. JAIN)
MEMBER (A)

(17)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

D.A. NO.983/86

Date of Decision : 08.01.1993

Shri Lekhraj

...Applicant

Vs.

General Manager, Northern Railway
& Others

...Respondents

CORAM

Hon'ble Shri P.C. Jain, Member (A).

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri Malik B.D. Thareja

For the Respondents

...Shri Shyam Moorjani

JUDGMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant, who has since retired on 31.10.1987 has been working as Shedman Grade A, Loco Shed, Delhi. The applicant has assailed his non selection to the post of Assistant Loco Foreman/Power Controller and assailed the order dt.23.1.1986 by which the applicant was not called for viva-voce test and the panel declared vide Memo dt.27.2.1986 where the name of the applicant was not included.

2. The applicant has prayed for the following reliefs :-

- a) The withholding the applicant's name from appearing in the viva voce test held in the Office of Divisional Rly. Manager, Delhi on 3/4.2.1986 be declared by this Hon'ble Tribunal to be void.
- b) Because the administration is biassed hence the applicant be declared as entitled to his promotion for the post of

Assistant Loco Foreman and his name be included in the panel framed on 27.2.1986 in accordance with his seniority and without any further test.

- c) That the Rly. administration be directed to promote the applicant with retrospective effect from the date on which a person junior to him was wrongly promoted.
- d) That the applicant be allowed the benefit of next below Rule for the period during which a person junior to the applicant has appreciated in adhoc arrangement and which period falls earlier to the date of applicant's regular promotion.
- e) All consequential reliefs which the applicant would have earned by having officiated and also if promoted earlier.
- f) Cost of this application be paid to the applicant by the defendant.
- g) Any other relief deemed fit by this Hon'ble Tribunal in the light of the circumstances of the case.

3. The case of the applicant is that he failed in the eye-sight test prescribed for Driver Grade 'C' in the year 1962 and consequently he was absorbed as Shedman Grade 'A' w.e.f. 17.4.1963 in the grade of Rs.205-280/225-700 and he was confirmed in his appointment on 17.2.1971. The next channel of promotion from Shedman Grade 'A' is to the post of Assistant Loco Foreman/Power

...3...

Controller. The case of the applicant is that he has been the senior/most Shedman Grade 'A' in Delhi Division, yet he was not given any temporary promotion on ad-hoc basis, though some juniors to him have been allowed to officiate. He has also stated that Shri Deewan Chand, Shedman Grade 'A' is working as FO(R) since 1980, Shri Mohan Singh, Shedman Grade 'B', Delhi working as Assistant Loco Foreman, Shri Daya Ram (SC) Shedman Grade 'A' ALF, Ram Prakash, Shedman Grade 'A', Shri Amar Singh, Shedman Grade 'B', Shri Raj Kumar, Diesel Shedman Grade 'B' and Shri B.R. Kalia, Shedman, ALF since 1984. It is stated by the applicant that all of them are junior to him. His grievance is also that in the selection for permanent promotions as Assistant Loco Foreman/Power Controller, he has been ignored for selection in the year 1971, 1974, 1975 and 1980. It is further stated that in the selection for the post of Assistant Foreman/Power Controller, the applicant appeared in the selection in the year 1985 and after he was declared successful in the written examination by the Memo dt.24.10.1985, he was called for interview on 3/4th December, 1985, but due to certain administrative reasons, the viva-voce test was postponed. The viva-voce test was again arranged on 23.1.1986, but the applicant was not called for interview and his name was omitted from the list circulated by the Letter No.751-E-331/Part II/P7. The applicant made representation on 30.1.1986, but to no effect. The result of the

said selection was declared by the Memo dt.27.2.1986 and the name of the applicant did not obviously appear in the list of selected candidates' panel. The applicant made representations, but to no effect and hence the present application has been filed.

4. The respondents contested the application and in their reply stated that the post of ALF/PRC is a selection post and is filled up from the categories of Drivers/Chargman and Shedman on the basis of their inter-se-seniority subject to passing of their written test and viva-voce. The drivers are granted the benefit of runing allowance for determining their scale of working for determining their position in the combined seniority. As a result of this benefit, drivers ranked senior to Shedman pay scale of Rs.425-700. The applicant ranked too junior in the seniority and, therefore, could not secure minimum qualifying marks for being called in the viva-voce test for the post of LAF/PRC Grade 500-750/-. The applicant of course was absorbed as Shedman of 17.4.1963 on being decategorised medically for the post of Driver. The applicant could not seek promotion in the channel of promotion for the post of Driver for which he became disentitled. The names of persons mentioned in the application are senior to the

applicant
 And the applicant has no right to claim preference over them.

Thus the applicant has no case.

5. We have heard the learned counsel for the parties at length and have gone through the record of the case. The applicant has not at any time earlier to filing of this application on 25.8.1986 assailed his non consideration for promotion on ad-hoc basis to the post of Assistant loco Foreman. The averments made in the application in that regard, therefore, are superfluous for deciding the real grievance of the applicant for non inclusion in the panel of ALF/Power Controller by the impugned order dt.23.2.1986. During the course of the arguments, the respondents have also filed the result of the selection in which the applicant appeared. The main thrust of the learned counsel for the applicant is that by the circular of the Railway Board No.E(NG)L-83 PMT-65 (PNM-NF.IR) New Delhi dt.5.12.1984 on the subject of selection posts and as per the circular, it is argued that the determination of eligibility for interview has to be judged not only on the basis of seniority, but that if a person is eligible to be called for interview on the basis of marks in the written test alone, he will continue to be so eligible even if by reason of his being junior, he does not secure a minimum of 60% of some of the marks for

le

52

written test and those for seniority. In this circular of the Railway Board, reference is also made to the letter dt.29.10.1966 and 12.12.1973 of the Railway Board where it is stated that where both written and oral tests are held for assessing the professional ability of the staff in a selection for promotion to a selection post, the marks for the written test should not be less than 35 out of 50 and a candidate must secure minimum of 60% marks in the written test for the purpose of being called for the viva-voce test. Further a candidate must secure not less than 60% marks in the professional ability and not less than 60% in the aggregate to be eligible to be empanelled. In the circular, the eligibility of a candidate in a selection to be called for viva-voce test has been reviewed by the Ministry pursuant to demand made in the PNM meeting. On the basis of the decision taken, it was decided that 60% of the total of the marks prescribed for written examination and for seniority should also be the basis for calling candidates for viva-voce test inspite of 60% of the marks of the written examination only as at present. This would enable the consideration of some of senior candidates, who under the existing rules may not be eligible to be called for interview. PS.8644 dt.4.1.1985 also circulated the above Railway Board's circular dt.4/5.12.1984

6

...7..

to the same effect. It is a fact that the applicant was earlier made eligible for viva-voce test, but a perusal of the departmental file pertaining to the selection for the post of ATER/PRG/ALF of the selection held in 1985 goes to show that earlier the ranking of the seniority of the applicant was at Sl.No.13 in the combined seniority and as such, he was placed in the list of eligible candidates called for interview. Subsequently it appears that the ranking of the applicant in this combined seniority has gone an enormous change and his ranking from Serial No.13 came down to Serial No.73. In the said seniority list, none of the Shedmen Grade 'A' has been shown senior to the applicant in awarding the marks to seniority. Shri Manohar Lal, Shedman Grade 'A' Ghaziabad and other Shedmen have been all shown below him. In the present application there is no challenge to the seniority of the applicant having not been properly fixed in the combined seniority. The respondents in their reply have clearly stated that the combined seniority has been fixed taking into account the running allowance of the drivers, as a result of which the drivers have been ranked senior to Shedman pay scale Rs.425-700. In the rejoinder, the applicant has only stated that it is not correct that the applicant ranked junior in respect of inter-se-seniority, but this contention of the applicant has not been substantiated by any document or

See

24

any other fact on record. In the result of the written examination declared on 24.10.1985 along with the applicant, Shri Ved Prakash, Shedman Grade 'A' and other Shedmen S/Shri Kartar Singh, S.N.Berry, M.L. Chopra have also been declared successful and called for interview. In the interview letter, issued subsequently on 23.1.1986, of course, the name of the applicant was omitted, but there was omission of other names of Shedmen also. The applicant has filed the seniority list of Shedmen Grade 'A' in which of course the name of the applicant is at Serial No.1. In the representation dt.30.1.1986, the applicant represented that the seniority of Shedmen Grade 'A' is to be fixed above the Driver Grade 'C' for the purpose of selection for the post of ALF. The stand of the respondents, however, is different. The respondents have taken the stand that the seniority of the drivers is to be fixed in the combined seniority taking into account the running allowance which they get in addition to their pay.

6. The grievance of the applicant also appears to be that being Driver Grade 'C', he was given the alternative post of Shedmen Grade 'A' after being declared unfit and he has been working on that post for the last 18 years and has not been given

be

...9...

25

any promotion. But the facts as evident from the pleadings of the parties as well as by the arguments advanced by the respective counsel, the applicant could not make a mark in the election of 1985 and the marks obtained by the applicant in the written examination being less than 60% and further when the seniority marks are added, still they remain less than 60%. So the applicant has been ignored for being called for interview.

7. In view of the above circumstances, it is evident that the applicant could not obtain the minimum qualifying per centage of marks for being called for interview and so his name was rightly omitted from the list of interview circulated by the Memo dt.23.1.1986 and was not empanelled by the order dt.27.2.1986.

8. In the above conspectus of facts and circumstances, the impugned orders do not call for any interference and the application is devoid of merit and is dismissed leaving the parties to bear their own costs.

J.P. Sharma
(J.P. SHARMA) 8.1.93
MEMBER (J)

P.C. Jain
(P.C. JAIN) 8.1.93
MEMBER (A)