

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.398/1990

New Delhi, this 22nd day of Nov. 1994

Shri C.J. Roy, Member (J)
Shri S.R. Adige, Member (A)

A.P. Sharma
s/o Shri Sham Sunder Lal
Gajroula P.O.
Moradabad Dt. (U.P.)

.. Applicant

(By Shri J.K. Bali, Advocate)

Versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi

2. Divisional Railway Manager
Northern Railway
Moradabad (U.P.)

.. Respondents

(By Shri Rajesh, Advocate)

ORDER

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

The applicant is aggrieved by the order dated 5.7.1989 (Annexure A-1) rejecting his claim for promotion to the grade of Section Controller and minutes of the Implementation Committee Meeting dated 8.3.89 (Annexure A-2) relating to the decision for rejecting the applicant's claim. The facts leading to this application, as averred by the applicant, are that the applicant who joined the service as Assistant Station Master (ASM) on 29.6.63, applied for the post of Section Controller, vide his application dated 20.3.73 (Annexure A-5) in response to circular dated 9.3.73 inviting applications for selection to the said post under the quota of 10% of the vacancies earmarked for Graduates below 33 years of age working as non-ministerial staff. However,

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no selection was held. The applicants claims to have sent another application, though a copy of which is annexed to the DA, in response to^a/similar vacancy circular dated 14.1.75 (Annexure A-6) and he presumed that no selection had taken place. When he found in 1978 that two persons junior to him had been selected for the promotional post, he made a representation on 10.10.78 (Annexure A-7). In response to one more circular dated 9.6.83 (Annexure A-9), by which the upper age limit for graduates is stated to have been raised to 40 years, the applicant made an application on 12.6.83, a copy of which is not annexed to, but no selection was held due to restructuring. He made a representation on 1.2.84 but his request was not acceded to vide letter dated 16.5.84 (Annexure A-10). The applicant made an appeal on 7.6.84 (Annexure A-11). Vide Railway Board's letter dated 24.10.85 (Annexure A-13), the applicant was allowed to appear before the Selection Board, subject to his producing an acceptable documentary evidence to the effect that he had applied for the same in 1973, but since he failed to do so, he was informed by letter dated 13.4.87 (Annexure A-15) that he was ineligible to appear in the Selection. This matter was taken up by the Uttariya Railway Mazdoor Union and its minutes were considered by the Implementation Committee on 8.3.89 (Annexure A-2) which concluded that the "applicant obtained the signature of the retired person ante-dating the date of submission of his application etc." and ultimately the applicant was issued with the impugned rejection letter dated 5.7.89. Hence this application with a prayer to direct the respondents "to place the applicant on a panel of 10% graduate quota in the category of Section Controller and give him the benefit of proforma fixation of pay and seniority with reference to those who were selected on the basis of the selection held in 1975".

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2. The respondents have filed their reply. They contend that by the circular dated 9.3.73 "applications were invited from the eligible categories of staff who were below 40 years of age against the 75% promotee quota for the post of Section Controller and not from the non-ministerial staff of the Transportation Department who were graduate and were less than 33 years of age". However no selection was held on the basis of the applications received on account of anomalies arising out of III Pay Commission recommendations. In so far as the vacancy circular of 14.1.75 is concerned, the respondents state that the applicant was not called for the selection as there were enough senior persons to be called to the extent of four times of vacancies and he was not found eligible. They say that the selection against 10% graduate quota was finalised in January, 1976 and the persons cited by the applicant in OA were accordingly promoted in 1976. However, when the applicant applied on 8.10.75 in response to circular dated 23.9.75, but he could not be considered for the competitive test as he had crossed the age of 33 years on 10.8.74. They further say that the applicant in his appeal dated 10.10.78, had nowhere claimed that he had submitted an application against 10% graduate quota posts in the year 1973.

3. THE respondents vide circular dated 9.6.83 (Annexure A-9) invited applications from such of the staff who had become over-age during 1972 to 1975 clearly stating that the selected persons in this selection will rank junior to the persons selected earlier. However, the Railway Board vide letter dated 29.7.83 sanctioned mass-up grading resulting in promotion of the applicant from 1.8.82 and payment of arrears made from 1.8.83 keeping his inter-seniority intact. Since the applicant had already been given benefit, the proposed selection against 10% graduate quota posts was dropped.

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4. In response to letter dated 24.12.85, nine persons had staked their claim for getting the benefit of promotion, of which four were within the age limit of 33 years as on 1.1.75 but failed in the competitive test. The documentary evidence submitted by the rest ^{of} five persons including the applicant was probed into thoroughly and it was found that they had tried to mislead the administration to get undue benefit ~~of~~ out of it but none could produce an acceptable evidence that they had applied in 1973. An inquiry into this was also ordered and it was found that the applicant had tried to establish his claim by producing ante-dated certificate from the retired staff. Therefore the claim of the applicant was rightly rejected by the impugned order dated 5.7.89.

5. We have heard the counsel for the parties and perused the records.

6. The case of the applicant is that he had a right to be considered for the post of Section Controller, for which the selection was finalised, by virtue of the respondents' letter dated 9.3.73 (Annexure A-4) and 24.10.85 (Annexure A-13), but the same has been denied to him. His contention is that he had already passed P-16 Promotion course, a requisite qualification for the next higher grade. It is also his case that his request has been turned down without any proper enquiry.

7. The case of the respondents is that when the Railway Board's letter dated 24.10.85 had clearly laid down that the applicant had to produce an acceptable documentary evidence that he had applied for the selection 1973, he resorted to a fabrication and submitted a fake document to substantiate his claim, which was proved in an enquiry, and therefore he can not derive any benefit of this letter.

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It is also the case of the respondents that the applicant was selected to the next higher grade against the restructured post of ASM on the basis of scrutiny of service record etc. without undergoing the process of written test and viva-voce but his qualifying P-16 promotional course does not entitle him to any benefit of seniority or promotion in the cadre of Section Controller as his case for proforma fixation of pay and seniority with effect from 1976 has not stood the test of scrutiny and his claim has been found to be fabricated and without any ground. It is further the case of the respondents that the impugned order was issued after conducting a complete enquiry by the Senior Welfare Inspector, when the applicant was allowed to submit his statement and claim in the manner he liked.

8. We find from the vacancy circular dated 9.3.73 that the eligibility condition for promotion to Section Controller Grade Rs.470-750(RS) are as follows:

- (i) Guards Grade C Rs.290-480 (RS) and ASMs gr. Rs.330-560 will be considered only if the required number of staff in higher grades are not available.
- (ii) 10% posts of Section Controller will be reserved for Class III (Non-ministerial staff) of the Transportation staff who are graduates having less than 33 years of age, on the basis of competitive examination and after qualifying P-15 promotion course.

However, we find from the photocopy of the application dated 20.3.73 (Annexure A-5), which was found not to be an authenticated one by the respondents during the course of enquiry, the applicant's grade is mentioned as "Rs.130-240/-" and educational qualification column is left blank.

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9. Similarly, we also find that the respondents vide their letter dated 16.5.84 have intimated the applicant with reference to his application dated 1.2.84 as follows:

"You did not make any representation at that time regarding your name not being included in the above selection held in 1975 from which it is, presumed that you were at that time satisfied with the selection made by the administration. After such a long interval of time there is no justification for such representation. The benefit of Gr.&s.455-700 has already been given to you under cadre restructuring, seniority. Under the extant Rules, the benefit of 10% graduate quota with retrospective effect not admissible so your request in this reference is not acceded to".

10. Railway Board's letter dated 24.12.85 regarding 'Selection for the post of Operating Staff in grade Rs.455-700(RS) under 10% Graduate quota' reads as follows:

"Those employees who had submitted applications in response to this office letter dated 9.3.73 falling under 10% Graduate quota but had not applied in response to this office circular letter dated 27.12.74/1.1.75 because they had crossed the prescribed age limit can now apply for these posts, but to be eligible for this test, they will have to submit for the satisfaction of the Railway Administration documentary evidence to establish that they had applied in 1973 for the posts under 10% graduate quota in response to this office circular dated 9.3.73. If the claim of any such claimant is found to be false, disciplinary action will be taken"

Even the letter dated 13.4.87 (Annexure A-15) to the applicant is very clear as it says that "since you have not been able to produce acceptable documentary evidence to the effect that you had applied for selection to the post of Section Controller against 10% graduate quota in the year 1973, you are ineligible to appear in the selection....".

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11. To a pointed question from the Bench, the learned counsel for the applicant replied that the applicant had not at all appeared in the examination though a chance was given to him. Besides, he also could not explain to our satisfaction as to the authenticity of the original letter which is shown across the table.

12. Since the applicant has not appeared in the examination but claimed that he had submitted his application, which was proved in the enquiry to be not authentic, we are not satisfied that the applicant has made out a case for our indulgence of interfering. In the circumstances, the OA is dismissed with no order as to costs.

S.R. Adige
(S.R. Adige)
Member (A)

C.J. Roy
(C.J. Roy)
Member (J)
2-27-11-94

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