

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 878/90
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DATE OF DECISION 22.3.91

<u>Shri K.D.T. Tripathi</u>	Petitioner
<u>Shri S.K. Sawhney</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India and Another</u>	Respondent
<u>Shri B.K. Aggarwal</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.C. Jain, Administrative Member

The Hon'ble Mr. J.P. Sharma, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether the Lordships wish to see the copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

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

The applicant, Claim Tracer, P.O.C. Section, Northern Railway filed the application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order passed by Chief Claims Officer, Northern Railway dated 6.4.90 (Annexure-A 1) by which the applicant was not empanelled as Assistant Claim Inspector by the Selection Committee, though he alleged to have passed the selection test. The

applicant has prayed for a direction to the respondents to reconsider the applicant for being placed on the panel of Assistant Claim Inspector declared by letter dated 19.3.90 (Annexure-A 4) after ignoring the un-communicated confidential reports.

2. The applicant joined the Railways as Goods Clerk in August, 1981 and was promoted as Claim Tracer on 31.12.1984. The next promotion post for the applicant was Assistant Claim Inspector which is a selection post comprising of written test as well as viva-voce. The respondents conducted a selection for 17 posts of Assistant Claim Inspector vide letter dated 10th November, 1989 (Annexure-A 2), but these posts were later on increased to 22 posts vide letter dated 19.3.90 (Annexure-A 4). Earlier 6 posts were reserved for SC/ST employees, but subsequently proportionate number of posts were reserved. The applicant passed the written test by the letter dated 3.1.90 (Annexure-A3). The applicant appeared in the viva-voce test, but his name was not found in the panel and 3 employees junior to the applicant were selected in preference to him. According to the applicant, a senior person can be ignored only if he fails to get 60% aggregate marks in the selection. The applicant made a representation on which the applicant was told by the impugned letter dated 6.4.90 (Annexure-A 1) that the applicant

was not found fit for the selection in view of the past performance of the applicant as his last two years' confidential reports have been average. The grievance of the applicant is that his selection cannot be denied on account of uncommunicated adverse remarks.

3. The respondents contested the application and the reply stated that earlier 17 vacancies were notified, but in the meantime, other vacancies were available, so the number of vacancies were raised to 22 including that of SCs/STs. The number of eligible candidates remained only 39 and no candidate was adversely effected by raising the vacancies from 17 to 22 and in fact the applicant has been a gainer because in the seniority list, he appeared at Sl.No.21. It is further stated by the respondents that the applicant could not secure 60% marks in the aggregate, so he could not be placed in the panel. According to the respondents, the selection was based on seniority-cum-suitability and if the juniors are more competent than the seniors, the seniors are left behind and junior candidates get selected depending upon their service record and professional ability. It is further stated that average remarks are not adverse remarks and hence it was not necessary

that the average remarks should have been communicated to the applicant. In selection, a person having his report as average gets less marks than those who are outstanding, very good or good. In view of this, the respondents prayed that the application be dismissed.

4. We have heard the learned counsel for both the parties and with the consent of the parties, the matter has been taken to be disposed of even at the admission stage. By the order dated 19.11.90, the respondents' counsel was asked to produce before the Tribunal instructions of the Railway Board that even if the number of eligible candidates in proportion to the prescribed ratio for the zone of consideration are not available, can all the vacancies be filled out of the candidates eligible for consideration. The learned counsel for the respondents placed before the court necessary instructions contained in the letter dated 1.2.91 regarding (a) criteria of eligibility for purposes of considering the candidates within the zone of consideration (b) criteria of selection with reference to the minimum marks required to be obtained before a candidate can be put in the selected candidates for the promotional post and the marks assigned for the written test,

viva-voce test and assessment of service records and (c) instructions of the Railway Board that even if the number of eligible candidates to the prescribed ratio of the zone of consideration are not available, can all the vacancies be filled out of the candidates eligible for consideration. In the said letter which is on record, the eligibility criteria has been laid down in the Railway Board's letter dated 19.2.1987 No.E(NG) I-85-PMI-13 (RRC). There is no dispute between the parties regarding this fact. Regarding criteria of selection, the matter was clarified by the Board in the circular dated 5.12.84 No. E(NG) I-83-PMI-65(PNM/NFIR), New Delhi. This fact is not disputed also by the parties and it goes to show that SC/ST candidates will be required to get 30 out of 50 marks whereas the general candidates will have to obtain 60% marks to be empanelled. The SC/ST candidates have to obtain 60% of 85 marks in the aggregate, i.e. 51 marks.

5. Regarding eligible candidates in proportion to the prescribed ratio of the zone of consideration, there are no instructions of the Railway Board. However, the practice followed is where the number of eligible candidates in proportion to the prescribed ration in the zone of consideration are not available, i.e., to fill the total number of vacancies out of the qualified candidates, if the requisite number is available. The example has also been cited that if there

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are 20 vacancies, the number of candidates required to be called for the written test would be 60. If however, the eligible candidates in immediate lower grade are only 40, out of the 35 candidates qualified in the written test, the 20 vacant posts can be filled out of the 35 candidates as per their merit position. The learned counsel for the applicant also filed the letter No.E(NG) I/89/PM-2/6 dated 31.1.1990 regarding promotion in non-gazetted cadre selection suitability test observations of correct procedure. This deals with various heads. Para 11 & 12 deal with the assigning marks for seniority and for record of service. In allotting seniority marks, once the basis of allotment of marks has been laid down, all the Members sitting in the Board shall allot the same number of marks. The marks between the seniormost and the juniormost person shall be proportionately divided and corrected upto the first decimal. For the record of service, 3 marks should be allotted for good and fit for promotion, 4 marks for very-good and 5 marks for outstanding per year for the last 3 years.

6. We have heard the learned counsel for both the parties at length and gone through the record of the case. The first contention of the learned counsel for the applicant

is that the vacancies once declared, could not be increased as in the present case from 17 to 22. The main emphasis of the learned counsel is on the fact that in a subsequent selection when he would have been considered with the juniors, then he would have got higher marks in seniority ranking than the juniors. However, this is a far-fetched idea. The employer has even a right to increase the number of vacancies before selection and in order to fill up the vacant posts and if the process of selection is being undertaken, then the same can be made for other vacancies also. The applicant cannot have any grievance on that account because he ranked in order of seniority at Sl. No. 22 and by increasing the number of vacancies to 22, he stood better chances of selection than the selection only for 17 posts. This contention of the learned counsel, therefore, has no weight. Otherwise also the respondents have every right to increase the number of vacancies any time, if they fall within that particular range of selection and none of the candidates on date is ignored. In this case, there were 39 eligible candidates and on date, none else was eligible, so no prejudice has been ^{caused} ~~cast~~ either to the applicant or to any other person in the lower grade.

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7. Regarding the non communication of entries to the applicant, the respondents have clearly stated that the applicant earned for the last two consecutive years average remarks and for that the assessment done by the Selection Committee was according to the rules. The candidates called for interview who had outstanding, very-good and good remarks of the previous years, entirely, had a march over the applicant by getting better marks. The applicant's counsel has filed the circular of the Railway Board dated 31.1.1990 which goes to show that the range of marks for adverse entries is different for different remarks. In the process of selection, it is not only the seniority, but also the suitability which is to be adjudged. The applicant has not alleged any malafide in the application against any member of the Selection Board, though in the representation dated 20.3.1990 (Annexure-A 5), there are certain allegations regarding the process of selection and award of marks in the interview by the Selection Board, but that will not help the applicant when no specific plea of malafide has been taken.

8. It is not disputed that minimum 60% marks are required for a person to be empanelled. The applicant has cleared

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the written test, but for being empanelled, he has to obtain a minimum of 60% marks. The written test consists of only 35 marks. The viva-voce consists of 15 marks and the rest 50 marks are divided in the manner that 20 are allocated to personality address and leadership, academic and technical qualifications, 15 marks to record of service and 15 marks to seniority. Thus, merely passing in the written test would not make any right as there are still 65 marks in which a candidate has to get sufficient marks in order to get an aggregate percentage of 60 marks. The applicant could not show that his performance and work in previous years was not ~~just~~ ^{judged} properly. The respondents on the other hand, in para 43 of their reply clearly stated that the applicant was given a censure entry in 1989 and is still facing a charge-sheet for forging the signature of a Member of Parliament. In the rejoinder, the applicant has denied this fact as incorrect only saying that the respondents have not given any details about the alleged punishments. For any minor punishment $1\frac{1}{2}$ marks are to be deducted to the disadvantage of the candidate. Thus, the respondents have in their reply stated ^{and rightly so,} that the

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record of the applicant was not such as to warrant his selection by the Selection Board for empanelment and so he was not empanelled on the basis of his service records.

9. In view of the above facts, we find that the application is devoid of merit and is dismissed leaving the parties to bear their own costs.

J. P. Sharma

(J.P. SHARMA) 22-3-91

MEMBER (J)

(P.C. Jain)

(P.C. JAIN) 22/3/91

MEMBER (A)