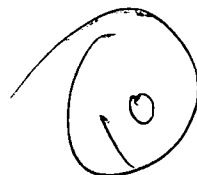


CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI



O.A. NO.2757/2004

New Delhi, this the 24th day of August, 2005

HON'BLE MR. KULDIP SINGH, VICE-CHAIRMAN (J)
HON'BLE MR. D.R. TIWARI, MEMBER (A)

Krishan, S/o Shri Tota Ram,
Senior Section Officer (Accounts),
Northern Railway, Kashmiri Gate,
Delhi
(By Advocate: None)

... Applicant

Versus

1. Union of India Through
The General Manager,
Northern Railway,
Baroda House, New Delhi

2. The Finance Advisor and Chief Accounts Officer/
Administration, Northern Railway,
Baroda House, New Delhi
(By Advocate: Shri A.P. Sahay)

... Respondents

ORDER (Oral)

BY HON'BLE MR. KULDIP SINGH, VC (J):

The applicant has filed this OA assailing the action of the Respondents in which they had held the selection for the post of AAO Group "B" service from Group "C" against 30% vacancies through Limited Departmental Competitive Examination (LDCE) in Accounts Department as per the terms of order dated 12.06.2001. The applicant has also assailed that Respondents had wrongly assessed the percentage post of AAO of Northern Railway and the validity and propriety of the orders issued vide Order dated 19.08.2004.

2. The facts, in brief, as alleged by the applicant are that he belongs to Scheduled Caste category and is entitled for promotion under the reserved quota. The applicant further submits that the Respondents had issued a Notification dated 06.03.1995 on the subject of promotion from Class III to Class II in Accounts Department as per Annexure A/4.

3. The applicant further submits that in the year 1995 out of the three vacancies in the reserved category, only one vacancy was filled up by a ST candidate and as per the ratio of 15% and 7% it should have been two posts for SC and one post for ST, whereas only 1 vacancy was filled up by the reserved candidate (ST) and two posts of SC remained unfilled. Similarly, Respondents had issued an order dated 30.07.1998 on the subject of promotion from Class III to Class II in the Accounts Department and again out of three vacancies in the reserved category only two vacancies were filled up by SC candidates and one vacancy of ST remained unfilled.

4. Again vide another selection order dated 21.06.2001 only one vacancy was filled up, whereas there were two vacancies under SC quota. It is further submitted that in pursuance of this Notification, an examination was held in May 2003. Thereafter the result was declared in which the name of the applicant was placed at serial No.2 in the list of candidates from the reserved category who have passed the examination with relaxed standards. The applicant was also directed to undergo the prescribed medical examination. It is only thereafter the viva voce was held and the applicant fared extremely well in the viva voce. It is submitted by the applicant that after the viva voce test only one candidate was placed in the panel declared on 13.8.2003 vide Annexure A/2, but the applicant was ignored without any rhyme and reason. The applicant feeling aggrieved, filed a representation and since no action was taken on the same, he filed OA No.1154/2004 wherein the Respondents were directed to pass a reasoned and speaking order. Thereafter the Respondents issued order dated 19.8.2004 (A-1) which is impugned by the applicant in this OA, stating that the order is illegal, arbitrary, malafide, unconstitutional and against the principles of natural justice. It is submitted that in the impugned order, the Respondents have tried to mis-lead the applicant as they have given the assessment period from 1.4.2001 to 31.3.2003



and they have also taken the plea that the first representation of the applicant was made on 18.11.2003, i.e., only after successful completion of the entire process of selection spread over a period of two years from the date of its notification dated 20.6.2001 to the date of declaration of the Panel i.e. 13.8.2003 and during this period of two years if there was any calculation mistake in assessment of vacancies, the applicant had ample opportunity and time to bring it to the notice of the Administration, ignoring the fact that the applicant was posted at Jammu from 1994 to 2002. It is further stated that the grievance of the applicant is that the Respondents issued a notification for empanelment of select list for promotion from Group 'C' to Group 'B' vide order dated 12.06.2001 for the assessment period of 01.04.2001 to 31.03.2003 deliberately and knowingly making the wrong assessment for the period from 1.4.2001 to 31.3.2003 of the vacancies for SC candidates. Thus, the Respondents had been ignoring the percentage of reserved vacancies and now they instead of filling up the 2 vacancies of SC candidates, filled up only 1 vacancy. In the OA under the column "Grounds", the applicant has submitted that the Respondents had not considered his case for being placed on the year-wise panel and have issued a single panel for the vacancies of three years, which is violative of the law laid down by the Hon'ble Supreme Court as bunching of vacancies is not permissible under the Rules. It is also submitted that the Respondents had tried to mis-lead the applicant as well as the Tribunal as they should have calculated the vacancies to the extent that there were 5 vacancies of SCs out of which 3 were filled and two vacancies were available with the Respondents. Hence the impugned order is liable to be quashed and the applicant is entitled to be placed on panel against the second vacancy.

5. The respondents have contested the OA. They have taken a preliminary objection that the impugned order is as per the directions given by the Tribunal directing the Respondents to dispose of the representation of the applicant. They



have further submitted that the impugned order does describe the vacancy position as it existed at the relevant time before the examination and the fact that under the 30% quota there is only 1 vacancy available for SC category candidates and the same stands filled up on merit by a SC candidate more meritorious than the applicant. It is further submitted that the applicant is making his own calculation without taking into account the factual record of the case as is being brought to his notice vide the impugned order and the very basis of his calculations are wrong and the calculations arrived at by him are also not as per the records and rosters maintained by the department. This aspect of the matter has already been explained to the applicant. Thus, it is submitted by the Respondents that the OA has no cause of action and is liable to be dismissed.

6. We have heard the learned counsel for the respondents. Since no one appeared on behalf of the applicant, we proceed to decide the OA under Rule 15 of CAT (Procedure) Rules, 1987.

7. The only question involved in this case is whether the Respondents have properly calculated the vacancies available for reserved category candidates to be filled against 30% quota of the total vacancies through L.D.C.E. or not. It is the second round of litigation. Earlier the Tribunal had directed the Respondents to consider the representation of the applicant and pass an appropriate speaking order. So in pursuance of the directions of the Tribunal, the Respondents had passed a speaking order dated 19th August, 2004 (Annexure A/1), which is being impugned by the applicant in this OA. In the impugned order the respondents have stated that a Notification for empanelment of select list for promotion from Group "C" to Group "B" was issued vide Letter dated 12.6.2001 for the assessment period of 01.04.2001 to 31.03.2003. It is stated that as on 1.4.2001 the total strength of AAOs working was 60 and not 62 as contended by the applicant. It is further stated that the calculation of vacancies was based on the guidelines

issued vide Board's letters dated 20.12.1995 and 1.1.1996 according to which the total sanctioned strength of Jrs. Scale is 60 out of which number of IRAS Officers (Group 'A') was 7, number of Group 'B' Officers was 53 and the number of vacancies assessed during 01.04.2001 - 02.03.2003 was 25. Out of this 25 vacancies 18 were against 70% and only 7 vacancies were available against 30% quota and as per the Roster Register the roster point for filling up the 7 vacancies was to be operated from point 17 to point 23 of Cycle 2. Thus, as per the Roster there was only one vacancy for SC candidate, which was also required to be filled in out of backlog. It is also submitted that the number of SC and ST candidates actually working were 2 and 1 respectively and in terms of Board's letter dated 20.12.1995/01.01.1996 in case the number of posts arrived at by applying percentage of 15% for SC and 7.5% for ST is less than or equal to the actual number of reserved community candidates no quota may be fixed for SCs or STs. Since there was a backlog of 1 SC candidate, a vacancy of one SC candidate was assessed at the time of issuance of the Notification. Hence the quota had been rightly calculated and the claim of the applicant is not proper.

8. Learned counsel appearing on behalf of the Respondents also submitted that the applicant had made a representation after result of the selection has been declared, as such the OA is not maintainable and in support of his contention, the learned counsel has referred to the Judgement of Civil Writ Jurisdiction case No.10276 of 1997 decided by the Hon'ble High Court of Patna in the case of **Prem Kumar Jha and Others vs. The State of Bihar and Others**. The case law of the petitioners was as under:

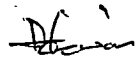
"3. In the writ petition the case of the petitioners is that in the advertisement the notified vacancies were 54 but it was not the correct number because it was described as proposed vacancies and not as actual vacancies. According to submissions advanced at the time of hearing, the number of vacancies was alleged to be much more on account of alleged error in calculation and subsequent retirement etc. Petitioners have claimed that on proper calculation of the vacancies they would


also be entitled for appointment on the basis of their placement in the select list below the 54 persons already appointed."

The Hon'ble Court while dismissing the Petition also observed as under:

"13. The petitioners has accepted the advertisement and submitted to the selection process and hence, they cannot now be permitted to challenge the vacancies mentioned in the advertisement. No further enquiry of fact regarding vacancies is required to be made and hence, the prayer made in IA No.1296 of 1999 is rejected."

9. The judgement as cited by the learned counsel for the respondents is on the same facts as in this case also the applicant is harping on the wrong calculation of the vacancies worked out by the Respondents, but we find that since the applicant has also accepted the Notification issued for filling up the vacancies and has participated in the selection process, he cannot be allowed to challenge the vacancies mentioned in the Notification. Even otherwise, we find that the impugned order dated 19.08.2004, which has been passed on the representation of the applicant; the Respondents had very clearly and categorically explained the position. We are also of the considered opinion that the calculation of vacancy is well explained in the impugned order dated 19.08.2004. The applicant could not substantiate his calculation and claim for more number of vacancies against SC quota. Thus, we find no merit in the OA and the same is liable to be dismissed. Accordingly, the OA is dismissed with no order as to costs.


(D.R. Tiwari)
Member (A)


(Kuldip Singh)
Vice-Chairman (J)

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