

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.1257 of 1996.

Allahabad this the 13th day of May 2003.

Hon'ble Maj Gen KK Srivastava, Member-A.
Hon'ble Mrs. Meera Chhibber, Member-J.

Nikey Lal

aged about 51 years,
son of late Sri Basant Lal (Ram)
R/o Quarter No.611 F Diesel Locomotive
Workshop, Varanasi.

.....Applicant.

(By Advocate : Sri V.K. Srivastava)

Versus.

1. Union of India
through Secretary
Ministry of Railway,
Rail Bhawan,
New Delhi.
2. General Manager (P)
Diesel Locomotive
Workshop, Varanasi.
3. General Manager,
Diesel Locomotive Workshop,
Varanasi.

.....Respondents.

(By Advocate : Sri Amit Sthalekar)

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(HON'BLE MRS MEERA CHHIBBER, MEMBER-J)

By this O.A., applicant has sought the following
relief(s).

- "(a) That by means of suitable order or direction
in the nature of certiorari quashing the panel
dated 25.03.1996, 24.04.1996 passed by respondent.
- (b) That by means of suitable order or direction in
the nature of mandamus commanding the respondents
not to give effect the panel dated 25.03.1996 and
24.04.1996.
- (c) That by means of suitable order or direction as



this Hon'ble Court (Tribunal) may deem fit and proper under the circumstances of the case".

2. It is submitted by the applicant that he was initially appointed as Mechanist on 15.10.1963 but later his category was changed to tracer on the basis of direct recruitment. Applicant was placed at Sl. No. 2 while Ram Chandra Ram was placed at Sl. No. 3 in panel dated 11.08.1970. In the seniority list of Tracers issued as on 30.09.1975, applicant was placed at Sl. No. 21 while Ram Chandra was at Sl. No. 22 (SC), Mata Saran was at Sl. No. 26 (SC), Sati Ram at Sl. No. 29 (SC) and Vishambhar Dayal at Sl. No. 37. Applicant was further promoted as Head Draftsman vide order dated 28.04.1989 in the scale of Rs. 1600-2660 (Annexure 1).

3. It is submitted by applicant that respondents issued a list of eligible candidates for selection to the post carrying pay scale of Rs. 2000-3200 on 5.04.95 wherein applicant's name was at Sl. No. 7. Accordingly to applicant persons at Sl. Nos. 19 to 24 were not eligible for this selection as they had not completed two years of service on regular basis as was required vide Railway Board's letter dated 19.02.1987. (List is annexed as Annexure 3). Being aggrieved, applicant gave representation but the same was rejected vide order dated 22.06.1995. He also represented against list dated 05.04.1995 (Annexure 4) but by ignoring all the grievances, respondents carried on selections arbitrarily and declared the result on 30.08.1995 in which ineligible persons were also included for the post of Dy. S.D.O in the grade of 2000-3200 (Annexure 5).

Applicant again gave representation on 1.09.1995 against the result dated 30.08.1995 also by stating therein

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that selection was based on cheating, copying and use of unfair means (Annexure 6). Thereafter the selection was quashed and order was issued on 02.11.1995 to hold fresh written examination (Annexure 7).

4. Respondents issued order dated 30.11.1995 to hold selection for the post of Dy.S.D.O and declared result for the test held on 25.01.1996. In the meantime he was promoted as Dy. S.D.O on ad hoc basis vide order dated 30.12.1995 (Annexures 8 & 9). He also appeared in test pursuant to order dated 30.11.1995. He was declared successful vide order dated 15.03.1996 (Annexure 11). It is submitted by applicant that in the panel dated 25.03.1996 again names of ineligible candidates were also included viz Shri Rajesh Kr. Shukla and Pradeep Kumar as they were not even regularised in the scale of Rs.1600-2660 as such had not completed 2 years of regular service, therefore, he submitted that the panel is ~~thus~~ liable to be quashed and set aside (panel dated 25.03.1996 annexed as Annexure 12). It is submitted by applicant that as per order dated 25.03.1996 only 8 persons have been selected including those two who were not even eligible but his representation has been rejected arbitrarily and by not a speaking order dated 24.04.1996 (Annexure 14), therefore, he had no other option but to file the present case. It is also submitted by him ^{that} ~~the~~ even selection committee was wrongly constituted as it had two S.C. members and ~~one general category officer therefore~~ only ~~1~~ candidate and they ~~have~~ arbitrarily selected S.C. candidates even when they are not eligible. Moreover, there was not sufficient time of 21 days before holding the viva voce test, so he again challenged the



Constitution of Committee (Annexures 15,16) yet respondents issued the order dated 26.08.1996 arbitrarily (Annexure 17).

5. Respondents have contested the case and have explained that for forming panel of 11 candidates for the post of Dy. Superintendent (design.) against unreserved posts, a notification was issued on 05.04.1995 and 24 persons including applicant ~~was~~ eligible to appear in selection, therefore, they were called. In the selection marks were given as under:

"(II) That following factors are taken into account for conducting selection as per extent rules:-

(A) Professional ability	Marks allotted	Max. marks	Qualifying marks
(I) Written test	35	50	30.
(II) Through Viva voce	15		
(B) Through Viva voce personality, address academic and tech. qualification.	20		
(C) Record of service	15	50	No qualifying marks fixed.
(D) Seniority	15		
		100	60.

N.B:- Marks secured in professional ability against (A) plus marks against (B), (C) and (D) in aggregate should be 60% (i.e. 60 out of 100) is required for being empanelled.

Candidates securing 60% marks in the written test i.e., 21 marks out of 35 are called to appear in viva voce test. Further those who do not secure 60% in the written test they are notionally allotted marks of seniority. Senior most candidate is allotted 15 marks and junior most 5 marks and candidates between senior most and junior most are allotted seniority marks on proportionate basis. If by adding the notional marks allotted for seniority in marks obtained in the written test, candidates secure minimum 30 marks such candidates are also called for viva voce test. The notional marks of seniority is added only for the purpose of making eligible to candidates for being called in the viva voce test in cases where they do not secure 60% marks in the written test. Candidates securing 60% marks in professional ability consisting of written and viva voce test i.e. 30 marks out of 50 marks and

9
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60% marks in aggregate consisting of written and viva voce test including record of service and seniority i.e. 60 marks out of 1000 marks are placed on the panel in order of their seniority position. In other words shortfall of the marks secured in the written test has to be made good from 15 marks allotted for adjudging professional ability through viva voce test.

(III) That in connection with the above selection, written test was held on 25.07.95 in which applicant also appeared. The result of the written test was declared on 30.08.95 (Annexure V to the application and nine candidates were declared qualified but the applicant did not qualify in the written test.

(IV) That later on it was revealed that certain irregularities took place while conducting the written test on 25.07.95. The competent Authority cancelled the result of the written test declared on 30.05.95 vide notification dated 02.11.1995 (Annexure 'A' VII to the application).

(V) That the written test was again held on 15.02.1996 in which applicant also appeared and was declared qualified in the written test alongwith the others vide letter dated 15.03.1996 (Annexure XI to the application).

(VI) That Viva voce test in connection with the above selection was held on 22.03.1996 in which applicant appeared but could not qualify.

(VII) That as a result of written test held on 15.02.1996 and viva voce test held on 22.03.1996, eight candidates qualified in the selection vide notification dated 25.03.1996 (Annexure 'A' VII to the application) Supplementary Viva Voce test of a candidate Sri R.C. Srivastava who did not appear in Viva Voce test held on 22.03.1996 was held on 15.05.1996 and in modification of result declared on 25.03.1996 a list of nine candidates who qualified and were empanelled for promotion on the post of Dy. Supdt. Design was notified on 17.05.1996 (Annexure CA-1 to this Counter reply).

(VIII) That after being empanelled vide notification dated 25.03.1996 and modified result on 17.05.1996, all the candidates have been promoted on the post of Dy. Supdt./Design vide GM (P)'s Office Order No. 345 dated 14.04.1996, 477 dated 22.05.1996 and 289 dated 28.03.1997 (copy enclosed as Annexure CA 2, CA 3 & CA 4 to this counter reply.

(IX) That subsequently another selection was held for six posts of Dy.S.S/Design. The applicant appeared in the selection alongwith others and as a written test held on 04.12.1996 and 15.01.1997 and viva voce test held on 01.02.1997, six candidates including



the applicant were empanelled for promotion to the post of Dy. S.S./Design, Grade Rs.2000-3200(RPS) vide notification dated 28.02.1997 (Copy enclosed as Annexure CA 5 to this counter reply) and has been promoted on the post of Dy.S.S/Design alongwith others vide office order No.289 dated 28.03.1997 (Annexure CA 4 to this counter reply).

(X) That it would thus be seen that the applicant appeared in the selection for the post of Dy.S.S/Design Grade Rs.2000-3200 (RPS) notified on 05.04.1995 (Annexure 'A' III to the application) in which he did not qualify. The applicant also appeared in the subsequent selection for the post of Dy.S.S/Design Grade Rs.2000-3200(RPS) notified on 09.11.1996 alongwith the others in which he qualified and has also been promoted as such vide GM (P)'s office order No.289 dated 28.03.1997 (Annexure CA-4). As such now the applicant has no case and his present application is liable to be dismissed".

6. They have further explained that the Railway Board vide their letter No.E(NG)I/85/PM 1/12 (RRC) dated 19.02.1987 made out rules for two years service in the immediate lower grade for all promotions within Group 'C' category but have not made out any rules that employees having less than two years service in the immediate lower grade can not be allowed to appear in the selection. Since currency of panel prepared as result of selection is two years from the date of notification of such panel and conducting of selection is also a time consuming process, as such candidates less than two years service, if they are coming in the zone of consideration are eligible to appear in the selection and after having being selected, on completion of two years service in immediate lower grade, such candidates are promoted. They have thus submitted that applicant having appeared in subsequent selections cannot be allowed to now turn back and challenge earlier selection, therefore, the O.A. may be dismissed.

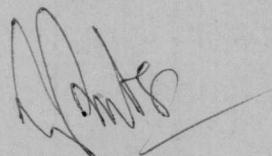
82

7. We have heard ~~both~~ the counsel and perused the pleadings as well. It is seen that vide notification dated 25.03.1996 ~~8~~ persons were declared to have been found successful for being promoted as Dy. Shop Supdt and though applicant is seeking quashing of the said panel but none of the selected candidates have been impleaded as respondents and the law is well settled that no adverse orders can be passed against any person behind his back, therefore, the O.A. is bad for non-inclusion of necessary parties and is liable to be dismissed on this ground alone. Even otherwise it is seen that applicant could not be empanelled as he did not qualify in the viva voce test. Though applicant has submitted that he was arbitrarily not declared passed but he has neither alleged any malafides against the members of selection committee nor impleaded any member by name, therefore, there is no force in the contention raised by applicant. Simply because the member happened to be S.C., it does not mean that they would not pass the applicant. It is not as if there are no general candidates in the panel. There are other general candidates selected in the panel so the contention of applicant is not sustainable in law. Even otherwise it is seen that applicant appeared in subsequent selection, therefore, he had ~~acquiesced~~ to the situation and cannot now turn around to challenge the earlier selection where he was declared to be unsuccessful. Applicant's counsel's main grievance was that ineligible persons were allowed to take the exam as they had not completed two years of regular service in the lower grade but it is not as if they cannot even

take the exam. This condition has to be fulfilled at the time of actual promotion as explained by the respondents, therefore, there is no force even in this contention. Accordingly, we find no merit in the O.A. The same is accordingly dismissed with no order as to costs.



Member-J



Member-A.

Manish/-