

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 03rd day of JUNE 2002

Original Application no. 1045 of 1996.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Mohan Ram, S/o Late Sri Marchho Ram,
R/o 555 F, D.L.W. Colony, Varanasi.

... Applicant

By Adv : Sri O.P. Gupta

Versus

1. General Manager (P), D.L.W., Varanasi.
2. Union of India, through Secretary, Ministry of Railways, Govt. of India, New Delhi.
3. V.K, Agarwal, 06102, OS GrII, Technical Training Centre, D.L.W. Varanasi.
4. G.S. Khatri, 06661, OS Gr II, Office of Material Control/ Mechanical D.L.W. Varanasi.
5. R.D. Ram, 04343, Head Clerk Office of Dy. Chief Mech. Engineer Planning/Mechanic/General BLW, Varanasi.
6. K.P. Singh, 00559, Head Clerk, Office of Dy Chief Engineer, Inspector of Works (West), DLW, Varanasi.
7. R.N. Singh, 01585, Head Clerk, Work Manager (Saiyantra), D.L.W. Varanasi.
8. Smt. Lakhe Chattarjee, 01049, Head Clerk, Dy Chief Engineer, Office DLW, Varanasi.
9. Rajendra Pandey, 02879, Head Clerk, Dy Chief Engineer Office, DLW, Varanasi.
10. Ractoo Mehato, 09070, Head Clerk, Hindi Cell, D.L.W. Varanasi.

... Respondents

By Adv : Sri Amit Sthalekar

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA, filed under section 19 of the A.T.,
Act, 1985, the applicant has prayed for cancelling the

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result dated 9.9.1996 pertaining to the post of Office Supdt. (in short OS) Gr. II and also direction to respondents to consider the matter for selection with full fairness and without any bias.

2. The facts, in short, giving rise to this OA are that the applicant is an Scheduled Caste (in short SC) employee working as Head Clerk in the pay scale of Rs. 1400-2300 in Civil Engineering Office under Dy. Chief Engineer, D.L.W. Varanasi. By letter dated 26.4.1996, notification for selection as OS Gr. II for ~~and~~ ^{eight} post was issued. 24 eligible candidates including the applicant were called to appear in the said selection. The applicant qualified the written test and was called for viva-voce, by letter dated 3.7.1996. The applicant appeared for interview on the scheduled date and final result was declared on 9.9.1996. The applicant was not selected. Aggrieved by this, the applicant represented on 10.9.1996, but with no result. Hence this OA, which has been contested by the respondents by filing counter affidavit.

3. Sri O.P. Gupta, learned counsel for the applicant submitted that the applicant being a SC candidate, is entitled for all benefits which are provided to SC community in respect of departmental selection for promotion. The applicant is senior most amongst the candidate who qualified the written examination and were called for viva-voce. The applicant has not been ~~empanelled~~ by the respondents as the applicant has not secured ~~60%~~ in viva-voce.

4. Learned counsel for the applicant further submitted that there are two types of posts in the respondents establishment. One under safety category and another under non-safety category. The rule of 60% in viva-voce is ~~also~~ ⁱⁿ applicable for

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all candidates, whether they belongs to general or reserved category posts in safety category. As regards the non safety category ~~was concerned~~, the candidates in reserved category have to secure only 50% in viva-voce as per Railway Board Circular dated 13.7.1970. Therefore, the plea taken by the respondents that the applicant has not been empanelled because he has not secured 60% in viva-voce is unfounded. The applicant deserves consideration for his selection as OS Gr. II in the pay scale of Rs. 1600-2660 on the basis of marks he has obtained in viva-voce and 50% should be the basis for his selection. As regards written test, it has been admitted by the respondents that the applicant has already secured 60% marks because of which he was called for viva-voce.

5. Sri A. Sthalekar, learned counsel for the respondents ~~not~~ has submitted that the applicant has been empanelled because he has not secured 60% in the viva-voce test which is must, even in case of reserved candidates. In the counter affidavit, the respondents have pleaded, in para 7, that the viva-voce test was held on 12.8.1996 and all the 12 candidates including the applicant appeared. The applicant did not secure 60% marks for professional ability test i.e. 30% marks out of 50 marks consisting of written (35 marks) and viva-voce (15 marks) and also did not secure 60% in aggregate, the applicant could not qualify the selection and, therefore, in the notification dated 9.9.1995, the applicant's name did not appear.

6. The respondents have also submitted that the representation of the applicant dated 10.9.1996 addressed to General Manager (P), D.L.W., Varanasi, was considered by the competent authority and he was replied vide letter dated 20.9.1996 (Ann R3 to CA) that the applicant could not secure requisite

in place

marks as such his name could not find in the panel.

7. Learned counsel for the respondents also submitted that there were 8 posts to be filled up as OS Gr. II (7 for general and 1 for ST). Since there was no post reserved for SC, the most meritorious 7 candidates including 1 SC towards posts for general category candidate and 1 ST were empanelled.

8. We have heard learned counsel for the parties, considered their arguments carefully and perused records.

9. The short controversy involved in this OA is whether the applicant, for being considered to be empanelled, was required to secure 60% in viva-voce or not. We have ~~perused~~ ⁱⁿ referred the rule position on the subject. The same is given on page 295 of Railway Establishment Rules and Labour Laws 1999, by B.S. Maine, which is reproduced below :-

".....In regard to the categories where safety aspect is not involved the minimum limit of 60% has been reduced to 50% in case of Scheduled Castes and Scheduled Tribes candidates. (R.B. No. E(SCT) 68 GM 15/10 of 13.7.1970) (N.R. S.N. 5070). Safety categories in train operation/electrical department are given in R.B. No. E(NG) I-75 PMI/44 of 19.9.1979 (N.R. S.N. 7342)."

Another relevant para in the same book is also reproduced below :-

"Minimum Marks : The minimum qualifying marks in the written test for S.C. and S.T. candidates should be 10 out of 35 against 21 out of 35 marks for unreserved candidates. (R.B. letter No. E(NG) I-72 PMI/158 of 11.4.74) (N.R., S.N. 6124)."

10. The perusal of above leaves no doubt in our mind that ~~xxx~~ for non safety post a reserved candidate has to secure 50% marks and not 60% marks. Therefore, we do not find force in the submission of learned counsel for the respondents that since

the applicant did not secure 60% marks in the viva-voce, he was not considered for empanelment.

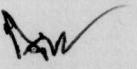
11. As regards the submission of learned counsel for the respondents that 7 posts were for general candidates and no post was reserved for SC candidates, the most meritorious candidates were selected and the applicant did not come up to mark, while we find force in the submission of learned counsel for the respondents we would like to observe that the respondents could not have arrived at the correct conclusion whether the applicant did make a grade or not even after securing the required 50% marks against 7 posts meant for general candidates. As per pleadings and the averment made in para 7 of the counter affidavit it appears that the case of the applicant was not at all considered because he did not secure 60% marks in viva-voce.

12. In the facts and circumstances and our aforesaid discussions, we are of the opinion that in the interest of justice the case of the applicant is remanded back to authorities ^{whether} to re-examine, ~~if~~ the applicant has secured 50% marks has made the grade to be empanelled or not. The case is accordingly remanded to respondents with direction to re-examine the empanelment of the applicant. If the respondents find that the applicant is eligible for empanelment even on securing the qualifying 50% marks in viva-voce as per order of the Railway Board, the name of the applicant shall be put on the panel dated 9.9.1996. However, since all the posts have already been filled in, we would not like to disturb the promotions already done but in order to protect the interest of applicant, we direct that the applicant will be promoted

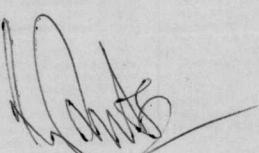
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on notional basis till the post is available against which the applicant could be adjusted. Such notional promotion will be considered in favour of the applicant from 9.9.1996 and he will be entitled for seniority and promotion as per his placement in the panel of 9.9.1996. The applicant will, however, not be entitled for any arrears. In case, the applicant, even on re-consideration, is found not making the grade, the applicant will be suitably informed by a detailed, reasoned and speaking order.

13. There shall be no order as to costs.



Member (J)



Member (A)

/pc/