

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.543 of 1998

ALLAHABAD THIS THE 29 DAY OF SEPTEMBER. 2005.

Hon'ble Mr. D.R. Tiwari, Member-A
Hon'ble Mr.K. B.S. Rajan, Member-J.

1. Suresh Singh Rathore, aged about 41 years, S/o Sri S.R. Singh Rathore, J.E.I (HTXR), Carriage & Wagon Depot, N.R., Varanasi.
2. Harshvardhan, S/o Sri Virsen Arya, B-626 Rajajipuram, Lucknow.

.....Applicants.

(By Advocate : Sri Vikas Budhwar)

Versus.

1. Railway Board, through its Chairman, New Delhi.
2. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
3. The D.R.M., N.R., Lucknow division, Hazratganj, Lucknow.
4. The Divisional Personnel Officer, N.R., Lucknow.
5. The Sr. Divisional Mechanical Engineer (C & W), N.R., Lucknow.
6. The Sr. Divisional Mechanical Engineer (Diesel), N.R., Lucknow.
7. Sri R.K. Mehrotra posted as Chief Inspector Supervisor Training Centre, N.R., Lucknow.
8. Sri Y.K. Mehndi Ratta, Section Engineer, C&W, N.R., Lko.
9. Sri Anil Malhotra, Section Engineer, C&W, N.R., Lko.
10. Sri Ram Kishore, Section Engineer, C&W, N.R., Lko.
11. Sri Bhagwan Das, Section Engineer, C&W, N.R., Lko.
12. Sri R.N. Barwa, Section Engineer, C&W, N.R., Lko.

.....Respondents.

(By Advocate : Sri G.P. Agarwal)



ORDER

BY K.B.S. RAJAN, MEMBER -J

The applicant has assailed the selection panel in pursuance of written test conducted in June, 1997 and vice voce held in July, 1997. The result of which were declared in August, 1997 for appointment to officiate as CFO.

2. Brief facts of the case are as under:-

(a) At the material point of time, the applicant was functioning as Head Ticket Examiner in the scale of Rs. 1600-2660/-. The next promotional post available to him was Carriage Foreman for which the eligibility condition was 2 years of continuous service and qualifying in the examination conducted.

(b) Under the existing rules, certain guidelines were prescribed. One of them being qualifying marks in professional ability which had been specified as 30 out of 50. Other aspects to be taken into account were personal address, leadership and academic qualification - 30 marks, record of service and seniority -15 marks each and in respect of these aspects, there has been prescribed no minimum marks. Those who had qualified in viva voce were all enlisted in a panel for promotion to the post of CFO in the scale of Rs 2,000 - 3,200/-. In all, out of 14 candidates, who were successful in the



written test, 08 were finally declared selected after viva voce. The name of the applicant, however, did not figure in the select list.

- (c) By a notification dated 20.2.1996, certain candidates including ST candidates were called for to appear in the written examination scheduled in March, 1996. The applicant was one such candidate and he was successful in the written examination. Four individuals who had participated in the exam but failed challenged the selection through O.A. 265/96.
- (d) In the 1997 selection, 17 persons were called for written test and the applicant was placed at sl. No. 5; 13 candidates qualified in the written test, one of whom of the applicant, but even in this selection, the applicant was not selected vide order dated 22.8.1997.
- (e) In the 1997 panel, 3 out of the 4 applicants of O.A. no. 205 of 1996 were found suitable and selected. One Sri Mhendi Dutta, who was undergoing a punishment, was not posted.
- (f) The applicant has attributed malafide over his non-selection and has prayed for quashing of the selection of candidates for the post of CFO. The result in respect of which declared on 22.8.1997 (yet another prayer for quashing of earlier panel dated 16.5.1996 was, however, deleted and in its place additional prayer

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was made for a direction to the respondents to consider the applicant for due seniority and promotion from the date his juniors have been promoted.

3. The respondents have contested the claim of the applicant. They have contended that the selection was in accordance with the rules and that in the *viva voce*, the applicant could not succeed. It is also contended that the result of the written examination displayed vide order dated 8.4.1996 was not in the order of merit. The selection in 1997 was also in accordance with rules and candidates invited were eligible to appear for the test. The selection of two candidates namely Bhagwan Das and Barua was from the reserved category in respect of which, the applicant can have no grievance.

4. Rejoinder to the Counter has also been filed by the applicant mainly reiterating the stand and the contentions as contained in the O.A.

5. Arguments were heard and documents perused and we had called the original documents as well.

6. The applicant- S.S. Rathore had secured 18.2 marks out of 35 (Personality & record of service) and 12 out of 15 for seniority. Over all, the applicant had secured 57.7%, while there were nine candidates

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who had secured marks more than that secured by the applicant in 1996 selection. Hence, he was not selected in 1996 selection. Similarly, in so far as the 1997 selection was concerned, the applicant had secured 60.5%, while those who are selected secured more than 61% and above. As such, the applicant could not be selected. For the purpose of comparison of the persons who had secured a little more marks than the applicant, the following table is given.

Name	Written	Viva	Pers.	Sen.	ACR	Total
S.S.Rathore	22	6	9	13	10.5	60.5
Ram Kishore	26	8	10	06	11	61

7. A perusal of the above shows that the applicant had been given due marks of seniority (13) and record of service were comparable so is the case regarding personality. However, other persons had secured more marks written as well as in viva voce. Thus, the selection and the grading appears to be scientific, methodical and no malafide can be attributed. As such, the selection cannot be faulted with.

8. Applicant no.2 has been impleaded subsequently and in so far as his case is concerned, after the written examination, he was absent in the viva voce test, and consequently, he was not selected.

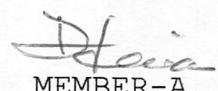
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8. It is a normal tendency that a person who is senior would expect his promotion earlier than his junior. This holds good when promotion is based on seniority subject to rejection of unfit. However, where the selection is based on competitive test or merit tempered with seniority, a mere seniority position alone cannot entitle a person to have his promotion earlier than his juniors. In the instant case, notwithstanding the fact that 13 out of 15 marks were allotted to the applicant in respect of seniority, while the other person was only 6 out of 15, the applicant could not secure more marks than the others in the exam. Hence, the applicant has been rightly omitted from the select list.

9. In view of the above, we are of the ~~firmed~~ ^w view that the selection to the post of CFO does not suffer any illegality, hence the O.A. is dismissed. Costs easy.



MEMBER-J



MEMBER-A

GIRISH/-