

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 5th day of AUGUST 2005.

Original application No. 1221 of 2001.

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

Triveni Prasad Singh, S/o Sri Ram Singh,
Posted as Assistant Mechanical Engineer (Design)
D.L.W. Varanasi.
R/o 486-A, D.L.W. Colony,
Diesel Locomotive Works,
VARANASI.

.....Applicants

By Adv: Sri V. Bahadur

V E R S U S

1. Union of India through Ministry of Railway,
Railway Board,
NEW DELHI.
2. The Diesel Locomotive Works, Varanasi,
Through its General Manager.
3. The General Manager (P), D.L.W.
Varanasi.
4. The Dy. Chief Personnel Officer, D.L.W.,
VARANASI.

.....Respondents

By Adv: Sri A. Sthalekar

O R D E R

By K.B.S. Rajan, Member (J)

The question involved in this case is - when there are two modes of recruitments, how to go in for reservation for SC/ST within the two modes? In the instant case the two modes of recruitments are (a) Promotion on the basis of seniority subject to rejection of unfit and (b) Promotion through Limited

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Departmental Competitive Examination (LDCE for short).

2. The brief facts:

- a. The applicant who entered the Railway service as apprentice mechanic in the scale of Rs. 425-700, after completion of the training joined as Chargeman w.e.f. August 1981 and later on was promoted as Chargeman Grade 'A' in the pay scale of Rs. 550-750. Again, he was posted as instructor 'B' in August 1985, whereafter, he got a further height as instructor 'A' followed by promotion to the post of Assistant Chief Instructor in the pay scale of Rs. 2000-3200. The next higher promotion is to the post of Chief Works Instructor (CWI) in the scale of pay of Rs. 7450-11500. And the applicant was promoted to this post in 1998.
- b. Above the aforesaid post, is Assistant Mechanical Engineer, a group 'B' post which is filled up by way of promotion on the basis of seniority to the extent of 70% and by way of LDCE to the extent of 30%.
- c. The respondents had, on various years, called for necessary applications for promotion through LDCE and where promotion has to take place on the basis of seniority cum fitness action was accordingly taken.

G While doing so, the respondents had catered

for reservation in the ratio as per the extant rules. The following table would illustrate the same:-

Year	Mode	Gen	SC	ST	Total
1996	LDCE	2	-	1	3
1996	Promotion	5	1	-	6
1998	Promotion	7	1	-	8
1998	LDCE	1	1	1	3
2000	Promotion	6	2	-	8
2001	LDCE	2	-	1	3

d. The applicant, who was to participate in the 1998 LDCE mode of promotion, found that for a total of three posts who have been reserved and only one is for general category. And surprisingly in the 70% promotion mode, out of 8 vacancies, only one was under reserved quota.

e. The applicant has infact appeared in the LDCE held in February 1999 and having been successful in the written exam he was called for viva-voce in February 1990.

f. Though the applicant was No. 1 in the written examination, the respondents had promoted the second meritorious candidate by order dated 5.3.1999.

g. In August 1999 the applicant was given adhoc promotion to the said post of Assistant Mechanical Engineer.

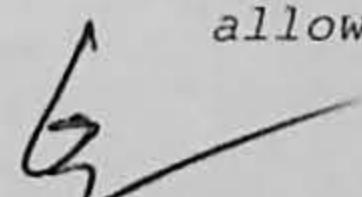


h. As the applicant felt that the ratio accorded for reservation under the 30% quota was not in accordance with the Rules and the same far exceeded the maximum percentage of reservation and at the same time as the reservation percentage under the 70% quota was far below the requisite percentage, and as by virtue of the above illegalities, his promotion chances had been hit, he had filed this O.A. The applicant has prayed for the following reliefs:-

- i. For issue for a direction to the respondents to consider the case of the applicant for promotion as Assistant Mechanical Engineer.
- ii. For a direction to the respondents to convert the adhoc promotion into regular promotion.
- iii. For a direction to the respondents to dispose of the representation filed by the applicant.
- iv. For a direction to the respondents to de-reservation.

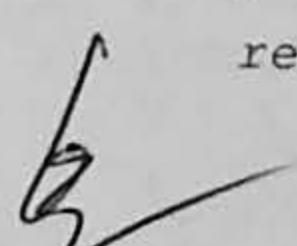
3. The respondents have contested the OA. Their version in regard to reservation in the two modes of promotion is as under:-

"(iii) For selection against 70% quota zone of consideration is formed in accordance with sliding scale in the order of seniority where as against 30% quota all eligible candidates are being allowed to appear in the LDCE.

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It is stated that as per the 40 point rooster in force, as notified by the Railway Board's letter No. 89-E (SCT) 1/49/5PT dated 16-6-92, there were two schedule tribe (ST) points generated in the roster (one in 70% mode roster and one in 30% mode roster). As the total cadre strength was only of 18 not more than 1 post ($18 \times 7.5\% = 1.35 = 1$) for ST can be reserved at any given point of time. Therefore, in accordance with the extent instructions that the reservation generated on roaster system should be limited to the extent possible under percentage system (i.e. 7.5% of cadre of ST) it was decided that only one post shall be reserved for ST rather than two posts. But now the question arise at that time as to which mode this one ST reserved posts should be allocated to whether to 70% or to 30% mode.

It is further, not out of place to note that in LDCE all those candidates who could not get chance to appear in the selection against in LDCE for such promotion to Gr. 'B' posts. The SC/ST candidates who could not get chance in selection against 70% quota get a chance in 30% LDCE and therefore, keeping in view the large interest of the reserved community, it was decided by the competent authority to fill up the reserved post of ST through 30% LDCE mode so that the ST candidate may get chance for such promotion to Gr. B post. Accordingly, notifications dated 3.1.98 & 20.3.98 were published without any prejudice to the reserved community. The reservation was as under:-



	UNRESERVED	SC	ST	Total
70%	7	1	0	8
30%	1	1	1	3
	8	2	1	11"

4. At the time of arguments the counsel for the applicants referred to Rule 201.1 of IREM and also brought to our notice the Railway Board's letter dated 21.8.1997 with particular reference to para a 4(b) thereof. For the purpose of easy reference both the Rule as well as the aforesaid para 4(b) are extracted below:-

"201.1 All the vacancies in Group -B are to be filled in by promotion on the basis of selection of eligible Group -C employees and also on the basis of LDCE, where ever the Scheme is in-forced, selection is held to be filled in 75% of the vacancies and LDCE is to be filled in the remaining 25% of the vacancies."

"Para 4 (b) of letter No. 95-E(SC1) 1/49/5 (2)
dated 21/8/97.

4(b) Cadre, for the purpose of roster, shall mean particular grade and shall comprise the number of the posts to be filled by a particular mode of recruitment in terms of the codal/manual provisions or Railway Board's instructions issued from time to time. Thus, in a cadre of, say, 200 posts where the recruitment rules prescribed of ratio of 50:50 for direct recruitment and promotion, 2 roster one for direct recruitment and another for promotion (where reservation in promotion applies) each comprising 100 points shall be drawn up on the lines of the respective model rosters. The cadre also means the sanctioned temporary posts, work changed posts, supernumerary posts, shadow posts etc. in the grade."

5. The counsel for the applicant has relied upon the following two judgments of the Apex Court:

- a. AIR 1996 SC 1838 - SBI SC/ST Employees welfare Association and others Vs SBI & Ors.
- b. AIR 2000 SC 2808 - Audra Kumar Sain Vs. U.O.I. & Ors

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6. The counsel for the respondents stated that the precise purpose of earmarking two reserved posts out of a total of three posts under LDCE was that in case sufficient number of reserved candidates be not available under the normal 70% promotion quota, in view of limited zone of consideration, it could be possible for SC/ST participating in the LDCE examination in respect of which there is no restriction of zone of consideration. According to the respondents, by the above way, for 11 posts there would be reservation for two SCs and one ST.

7. We have carefully considered the entire case. Admittedly, when two modes of promotions are specified reservation should be only proportionate in respect of each mode. Under no stretch of logic there could be just one reserved post for a total of 8 posts (under 70% promotion quota) and two out of a total of three posts under 30% LDCE quota. Perhaps the other way round would have been fully justified. It is settled law that under no circumstances there can be reservation in excess of 50%. Under these circumstances earmarking for SC/ST two posts of Assistant Mechanical Engineer out of a total of three posts under LDCE quota is thoroughly illegal and unjust.

8. In view of the above the OA succeeds. It is declared that the applicant is entitled to be considered for promotion against the second vacancy

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of the year 1998 under LDCE mode as a general candidate. The respondents, therefore, are directed to reschedule the selection for the year 1998 and if the applicant is considered fit for promotion, he shall be accorded due promotion to the post of Assistant Mechanical Engineer from the date the first candidate under the unreserved quota was promoted (or from the date of availability of vacancy whichever is later). Should this action result in dislodging the other selected candidate under the reserved category, he/she shall not be reverted but attempt should be made to accommodate such a promoted candidate against 30% quota vacancies meant for SC/ST in the subsequent year panel and his/her seniority should also be properly adjusted. For this purpose if creation of a supernumerary post of Assistant Mechanical Engineer becomes inevitable, the respondents shall also take suitable action for the same. In so far as the applicant is concerned if he is promoted, the same shall be notional w.e.f. the date the other general candidate was promoted (or from the date vacancy arose whichever is later) and actual w.e.f. the date of filing of this OA i.e. October 2001. Arrears of pay and allowances in this regard shall be worked out and paid to the applicant. The seniority of the applicant shall also be fixed in the said post just below the other general candidate in the said post. Obviously as the above exercise is time consuming, a reasonable time of eight months from the date of

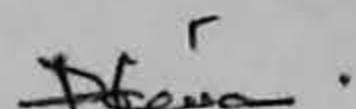
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communication of the order is granted to complete the entire task.

9. Under the above circumstances we make no order as to costs.



Member (J)



Member (A)

/pc/