

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No. 983 of 2004

....., this the 5th day of Sept 2006

C O R A M :

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. A.K. SINGH, ADMINISTRATIVE MEMBER**

Chandra Mohan Arya,
S/o. Shri Ram Dhani,
Working as T.T.E.,
N.E. Railway, Varanasi Division,
Headquarter, Gorakhpur (East),
Gorakhpur.

... Applicant.

(By Advocate Shri Sudama Ram)

versus

1. Union of India through General Manager,
North Eastern Railway,
Headquarters Office,
Gorakhpur.
2. Divisional Railway Manager,
North Eastern Railway, Varanasi.
3. Sr. Divisional Personnel Officer,
North Eastern Railway, Varanasi.
4. Shri Shiv Shanker Prasad,
T.T.E, N.E. Railway, Varanasi Division,
Headquarter, Gorakhpur (East),
Gorakhpur.
5. Shri Jagtara Sang,
T.T.E, N.E. Railway, Varanasi Division,
Headquarter, Gorakhpur (East),
Gorakhpur.

... Respondents.

(By Advocate Mr. K.P. Singh)

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ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

Brief Facts of the case as culled out from the written arguments, which
in ~~turn~~^{fact} is based on the O.A are as under:-

2. The applicant was appointed as Ticket Collector (Rs 950 - 1500) on 11-06-1991 and in October, 1993, he was promoted as TTE (Rs. 1200 - 2040/4000 - 6000). Subsequently, the respondents issued a seniority list of TTE on 21-09-1999 in which the name of the applicant appeared in serial No. 72, while that of respondent No. 4 at Sl. No. 132. Name of 5th respondent did not appear in the said list. Next promotional post is **Conductor/Hd T.C/Sr. TTE (Rs 1400 - 2300/5000-8000) which is a non selection post** and for selection of 25 posts (17 General plus 8 reserved) of the aforesaid post of Conductor etc, the respondents invited options vide notification dated 03-05-2000 in which applicant's name figured in at serial No. 33 and the names of respondents No. 4 and 5, respectively at Serial No. 38 and 48. The applicant qualified in the written test alongwith other candidates and was called for viva voce in which list his name figured in serial No. 4, while that of private respondents at serial No. 6 and 12 respectively. It is a matter of record that there has been no remark or rider to indicate whether the applicant's qualifying in the same was with general or relaxed standard. Final selection list dated 19-07-2000 contained only 6 names (1 general and 5



reserved) and the name of the applicant figured in at serial No. 6, whereas it ought to have been, as per seniority at serial No. 4. For, such panel shall be in the order of seniority in accordance with the provisions of Rule 214 of the IREM. Even if the posts are treated as selection post, then also, in accordance with Rule 219(j) iii, the panel shall be in the order of seniority only. The applicant represented on 28th March, 2004 but there was no response. No seniority list was prepared in the grade of Conductor/Hd TC/TTE since 1999. The post next to the above post is TTI/CIT (grade Rs 5,500 - 9000) and in the restructuring that took place w.e.f. 01-11-2003 the respondents had included the names of respondents No. 4 and 5, whereas the name of the applicant was conspicuously missing. The applicant had represented against the same on 12-08-2004. In reply to his earlier representation of 28-03-2004, the respondents had by the impugned order dated 13-07-2004 stated that the final panel of the applicant was drawn and arranged by the selection committee on the basis of marks obtained in the selection. The applicant has challenged the said order through this OA and since his name did not figure in for appearing in the further selection for the post of C.T.T.I/C.I.T in the grade of Rs 6,500 - 10,500/- by way of interim relief respondents were directed to permit the applicant to appear for the same scheduled on 04-09-2004 and it was ordered that the result of the applicant would be subject to outcome of this OA. The applicant has appeared for the selection and according to him, he had also qualified in the said selection, though, on account of the order of this Tribunal, his result was

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not declared. In the next selection for the said post of CTTI/CIT vide notice dated 21-04-2006, the name of the applicant was not reflected in the list of eligible candidates.

3. Respondents have contested the OA. According to them, the post of Head TC/TTE 'S' is a selection post and the panel is arranged based on the marks obtained. It has also been stated therein that the applicant could get through under the relaxed standard only and as such, his name appears at the end of the list, as the names of the candidates were to be arranged on the basis of inter se seniority in each category i.e. (a) those who passed with general standard; (b) those who passed with relaxed norms and (c) those who are declared selected under the policy 'Best amongst the failed.'

4. The applicant had filed his rejoinder in which he had questioned the authority of the deponent to the reply to file counter on behalf of the Union of India. He had also denied as incorrect the contention of the respondents regarding the status of the post of Head T.T.E as selection post and further contended that in any event the panel of selected candidates has to be arranged on the basis of seniority only.

5. The private respondent No. 5 has also filed the counter, which by and large is on the same lines as the counter filed by the official respondents and as such, the same is not dealt with separately in this order.

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6. The question for consideration is whether the post of Head TTE etc., is a non selection post or selection post. Vide Rule 127(3) Note 1, it is clearly indicated, "*The post of conductor in grade of Rs 1400 - 2300 even though classified as non-selection, should be filled by persons duly selected either for posting as Head Ticket Collector or Sr. TTE (E (NG)I-84/PM3-15 dt. 31-01-86)*". This clinches the issue relating to the fact whether the post in question is falling under selection or non-selection category. It is held as non selection post. Holding of the test is not to be construed that the post is a selection post.

7. Next question is what should be the method of preparation of panel, when for a non selection post departmental examination or trade test has been prescribed as a condition precedent to the promotion? Whether it should be on the basis of merit (i.e. those who have come in the general standard first and ^{then} ~~and~~ those who have come out successful in the relaxed standard). In *Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684*, at page 696 the Apex Court has held:

Railway Board's letter dated 13-8-1959 is of a general nature. It says that "as a general rule the seniormost candidate should be promoted to a higher non-selection post, subject to his suitability.



8. Again, where the selection is based on some examination, in respect of clerical post,^{or} the rules relating to relative seniority, the Apex Court in the case of Ganga Ram v. Union of India, (1970) 1 SCC 377, reproduced the following rule.

"17. Subject to what is stated in paras 18 and 19 below, where the passing of a departmental examination or trade test has been prescribed as a condition precedent to the promotion to a particular non-selection post, the relative seniority of the railway servants passing the examination/test in their due turn and on the same date or different dates which are treated as one continuous examination, as the case may be, shall be determined with reference to their substantive or basic seniority."

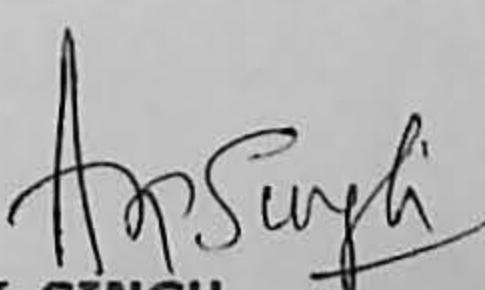
9. Posting of SC/ST candidates on promotions in non selection posts should also be done as per the reserved points on the roster, subject, however, to the condition that seniority of the SC/ST candidates in comparison to other candidates will continue to be governed by the panel position in the case of categories where training is not provided and in accordance with merit position in the examination where training is provided, vide R.B. No. 82 E(SCT) 42/7 dated 31-01-1982 (N.R. S.N. 8182). Thus, in the panel for selection to the grade of Hd. T.T.E. (1400 - 2300) the arrangement should have been on the basis of seniority subject to rejection of unfit. It is for this reason, that in non selection post, even the consideration zone is almost restricted to the total no. of vacancies. There is no provision to shuffle the panel on the basis of the marks obtained. Of

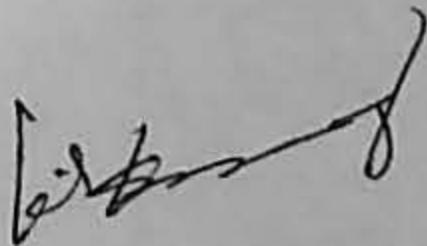
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course, In the case of selection post (e.g. In the case of Chief TTI/CIT carrying pay scale of Rs 6,500 - 10,500, which is a selection post,) the panel shall be based on the merit position and In the case of SC/ST, the order shall be (a) those who had secured marks as for general standard, (b) followed by those who have secured the marks under the relaxed standard and then (c) by those who have been Inducted under the 'Best amongst the failed' class.

10. In view of the above, the OA succeeds. Order dated 13-07-2004 is quashed and set aside. It is declared that the panel position of the select list issued vide Notice dated 19-07-2000 (Annexure -1) shall be in the order of seniority as per rules and thus, the applicant's position shall be at serial No. 4 instead of serial No. 6. The consequence of the revision of seniority position would be that in the selection process for further promotion the applicant shall be given the seniority as per the above and accordingly, if the applicant who had already appeared in the selection for the post of C.T.I. (Rs 6,500 - 10,500) had been found successful he shall be accorded that post in the order of merit (as this post is a selection post) and his seniority shall be accordingly fixed in the grade of Chief TTI/CIT on the basis of merit. Consequential benefits in addition to the above, if any, shall also accrue. This drill shall be completed within a period of four months from the date of communication of this order.

11. No costs.


A.K. SINGH
ADMINISTRATIVE MEMBER


K.B.S. RAJAN
JUDICIAL MEMBER