

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD.

Allahabad this the 16th day of February 1996.

Original Application No. 1321 of 1988.

Hon'ble Mr. T.L. Verma, JM  
Hon'ble Mr. D.S. Bawaja, AM

Viswmath Prashad S/o Late  
Sri Misri Lal R/o 91/3C Lala  
Ki Saraiya, Allahabad.  
Address for notices Mr. O.P. Gupta,  
258/''B New Basti Sohbatiya Bagh  
Allahabad.

..... Applicant.

C/A Sri O.P. Gupta

Versus

1. Senior Divisional Personnel Officer Northern Railway Allahabad.
2. Additional Divisional Manager Northern Railway Allahabad.
3. Union of India through General Manager Northern Railway Baroda House New Delhi.

..... Respondents.

C/R Sri A.K. Gaur

O R D E R

Hon'ble Mr. D.S. Bawaja, AM

The application has been filed under Section 19 of the Administrative Tribunal Act 1935, seeking relief of quashing the reversion order dated 17/18.3.1988 from the post of Assistant Superintendent and declaring the applicant successful in the selection and panel notified on 22.2.88.

2. The applicant was working as a Assistant Superintendent

Contd.....2....

on adhoc basis on the grade Rs. 1600-2660 from 25.9.1986 in the office of Divisional Railway Manager Northern Railway Allahabad. For filling up of the vacancies on regular basis, selection was notified. Written test was held on 20.12.87 and 27.12.87. The result of the written test was declared on 13.1.88 on which 20 candidates declared as passed (Annexure A-1) out of 57 appeared for the examination. The Name of the applicant in this list is at S.No. 1. Interview was held on 1.2.1988 and the applicant's name was not on the panel. The applicant had averred referring the promotion orders dated 17/18.3.88 at Annexure A-2 (the impugned order) that candidates out of written test result list at S.Nos. 2 to 11, who are junior to him have been regularly promoted and S.Nos. 12 to 18 who could not be empanelled have been promoted on adhoc basis in the grade 1600-2660 with immediate effect. The candidates including the applicant who were working on adhoc basis in the grade 1600-2660 since last one and half year were reverted as Head Clerk in the grade 1400-2300.

3. During the pendency of the O.A., further development took place and the respondents promoted the applicant vide order dated 30.7.92 on trial basis for a period of 6 months, on the basis of best amongst the failures against SC/ST vacancies. His name has been included in the panel declared on 25.2.88 at serial No. 25 below Sh. Satbeer Srivastava on successful completion of the working during the trial period of 6 months. Based on this seniority, he has been further promoted to the next grade 2000-3200 vide order dated 1.8.94. Therefore the relief now sought for is with respect to promotion as Assistant Superintendent from date of as per the order dated 17/18.3.88 (Annexure A-2).

4. The main grounds advanced in support of his prayer are:

(i) Selection is based on the following criteria.

(a) Professional ability	35 Marks
(b) Oral Test	15 "
(c) Personality, Address, leadership etc.	20 "
(d) Seniority	15 "
(e) Record or service	15 "

The record of the applicant was unblemished and therefore he should get 15 marks for the same. Even if the applicant gets only 10 marks out of 35 marks of oral test and personality test, he will secure minimum 25 marks (50%) for passing in viva-voce. Therefore the applicant should have been declared passed in the viva-voce and placed on the panel being scheduled caste candidate for which qualifying marks are laid down 50%.

(ii) Candidates S.Nos. 12 & 18 of the written test who could not be empanelled were promoted on adhoc basis vide impugned order dated 17/18.3.88 when he being the senior most was reverted. Seniority cannot be ignored even for adhoc promotions. Being a scheduled caste candidate, the applicant would have been allowed to continue based on the best amongst the failed candidates.

5. The respondents in the counter affidavit/sketchy have averred that the names declared in the written test result are not in order of seniority and therefore the claims of the applicant is not tenable. Further 5% marks in case of scheduled caste candidates are to be secured in the written as well as in the viva voce test separately, and not combined. The applicant did not qualify in the viva voce test and therefore he did not find place in the panel. All those who were working on adhoc basis including the applicant were reverted with the availability of the selected incumbents and all the employees in the order dated 17/18.3.88 have been promoted.

out of the panel. The respondents have also cited the support of the case law "Madan Lal Vs. State of J & K" (1995) 25 ATC 603 averring that the judicial court cannot be the appellate court over the recommendations of the selection committee.

6. Heard the learned counsel for the applicants and the respondents. We have also carefully considered the pleadings and the relief upon documents.

7. In the application the applicant has averred that the selection was done for 9 <sup>1/2</sup> vacancies. The respondents have however stated that the selection was held for 25 vacancies. In the rejoinder this has been again refuted. However during the hearing, the learned counsel for the applicant conceded that the selection was for 25 vacancies and the panel had been declared accordingly.

8. The main thrust of the arguments of the applicant is that the applicant was the senior most in the eligibility list as well as secured top position in the result of the written test. The respondents have refuted this contention stating that the result of the written test is not declared in the order of merit. Through a Misc. application the applicant has submitted a seniority list issued on 20.10.87 in which the name of the applicant is at s.no. 11. On perusal of this seniority list and the result of the written test at A-I, it is revealed that <sup>the serial</sup> several order in the written test list is the same as that of the seniority list dated 20.10.87 taking into consideration those who have passed. Therefore the list of the written test result is as per the seniority and not the merit order as claimed by the applicant. Therefore this plea is not tenable.

9. The applicant has also argued that being the senior most,

he would have also secured 50 % qualifying marks in the viva-  
voce also giving the break up of the marks allocated for the  
various components of the viva-voce test. The respondents  
have not denied the basis of the selection and allocation  
of the marks as brought out by the applicant. However it has  
been averred that the candidate has to qualify in the viva-  
voce separately securing 60 % marks for general and 50 %  
for scheduled caste/scheduled tribes candidates. The appli-  
cant has not secured the required marks in the viva-voce.

The applicant had prayed for the record of selection  
proceedings to be produced for perusal of the Bench. It was  
ordered to the respondents to produce the record for perusal.  
However the learned counsel for the respondents during the  
hearing pleaded that the records are not available as being  
old.

The applicant has based his claim for passing the viva-  
voce test on the presumption that he would have secured cer-  
tain marks for the record of service, oral test, personality  
and leadership etc. No documentary evidence has been produced  
in support of his contention for assuming securing 15 marks  
for the record of service. The selection was done by a comm-  
ittee as laid down in para 218 of Indian Railway Establish-  
ment Manual. It is within the competency of the selection  
committee to assess the candidates' ability and allocate marks  
for the various components. The judicial inference can be  
directed only if any malafides or prejudices is proved.

The respondents have drawn our attention to the judge-  
ment of Hon'ble Supreme Court "Madan Lal & Oths. Vs. State of  
J & K and oths. (1995) 29 ATC 603 wherein it has been held  
that assessment on merits as made by the expert committee  
cannot be brought in challenge. The relevant para 10 is ex-  
tracted below:

"Therefore, the result of the interview  
test on merits cannot be successfully

challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the interview committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee."

The applicant has not made out any case of malafides or arbitrariness on the part of the selection committee. We are therefore unable to accept the contention of the applicant that he should have been declared successful in the viva-  
<sup>test</sup>  
voce also and placed on the panel.

10. As regards submission of the applicant that those who did not qualify in the selection at s. no. 1 to 7 of item 2 of the impugned order dated 17/18.3.88 have been promoted on adhoc basis and seniors including the applicant have been reverted. We have carefully examined this order. The order mentions that the incumbents have been promoted to officiate as Assistant Superintendent. No mention on "adhoc basis" have been made. The selection was for 25 vacancies and not 9 as originally averred by the applicant based on this perhaps this inference has been drawn by the applicant. The promotion of these 7 employees was on regular basis out of the panel as is confirmed if reference is made to panel list dated 25.3.93 linked by the applicant, wherein the names of the 7 employees are featuring in the select list. Therefore

this plea of the applicant has also no force.

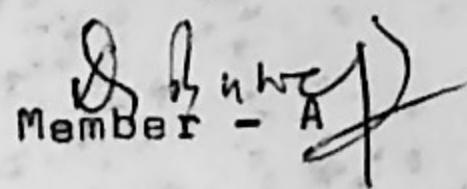
11. Besides the above referred issues, the significant development has taken place during the pendency of the O.A. as is evident from the documents placed on record vide Misc. application 874/1995 dated 30.3.95. As per order dated 30.7.92, the promotion of the applicant has been ordered on a trial basis for 6 months. On successful completion of this trial promotion, his name has been interpreted in the panel at s.no. 25 issued vide letter dated 25.3.93. The counter was filed by the respondents on 12.6.89 and rejoinder to the same filed on 7.8.89. This action by the respondents has been taken subsequently. While allowing the documents to be taken on record, the respondents were allowed time to study. There has been however no reaction and no supplementary counter has been filed. No submission was also made during the hearing also on these aspects.

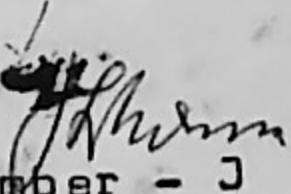
Rules for trial promotion have not been linked by the applicant or the respondents. It is understood that trial promotion is considered to fill up the short fall of scheduled caste/scheduled tribes reservation if enough candidates do not qualify in respect of non safety categories. The promotion is given on trial basis for a period of 6 months on the basis of the best amongst the failures.

Since no averments have been made by the respondents on this aspect, we are unable to know exactly the basis on which the belated action in 1992 has been taken for trial promotion and interpolation of the <sup>name</sup> same in the panel. Contrary to the stand taken in the counter submitted originally. Break up of the reservation for scheduled caste/scheduled tribes out of 25 vacancies to fill up short fall has not been furnished by the parties. However the action taken by the respondents in 1992 ordering trial promotion of the applicant will certainly lead to infer that enough scheduled candidates did not

qualify in the selection to clear the short fall and the best among the failures were required to be considered for trial promotion and provisionally placed on the panel. Action in 1992 confirms that the applicant was the best among the failures and was due to be considered for promotion at the appropriate place. In the absence of any averments from the respondents on this issue, we cannot help but to infer that the applicant was eligible for placement in the panel on trial basis as per the laid down rules even if the other grounds as discussed earlier are not tenable. The applicant has therefore been denied of his promotion. The original order dated 17/18.3.88 covers promotion to fill up 16 vacancies only. This shows that the balance vacancies arose subsequently against which the applicant deserves to be considered as per his turn.

12. Considering the above facts, the application is allowed with the directions that applicant will be <sup>deemed</sup> ~~deemed~~ to be placed on the trial promotion as due as per the panel notified on 25.2.88 as per the extant rules when the vacancy arose to be filled up by scheduled caste candidate. He will be allowed proforma promotion from the date with no payment of the arrears as higher responsibility had not been shouldered. This may be complied with within 3 months from the date of receipt of the judgement. No order as to costs.

  
Member - A

  
Member - J