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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 8TH DAY OF AUGUST, 2001

Original Application No.1018 of 1993

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Mahendra Ram, S/o Shri Khangar Ram
posted as Senior T.N.C, Control
Office, Chopan Eastern Railway,
District Sonbhadra, R/o Hill Colony
Qr.No.203-B, Chopan, district
Sonbhadra.

... Applicant

(By Adv: Shri O.P.Gupta)

Versus

1. Union of India through General Manager
Eastern Railway, Calcutta(1)
17, Netaji Subhash Road, Calcutta
2. Divisional Railway Manager
Eastern Railway, Dhanbad.
3. Senior Divisional Personnel Officer
Eastern Railway, Dhanbad.

... Respondents

(By Adv: Shri A.V.Srivastava)

O R D E R(Oral)
JUSTICE R.R.K.TRIVEDI, V.C.

By this application u/s 19 of A.T.Act 1985 the applicant has prayed to quash the select list dated 16.2.1993 issued by respondent no.3 containing panel of selected Goods Guards in the pay scale of Rs1200-2040. It has also been prayed that respondent no.3 may be directed to prepare a fresh select list according to merit. By amendment applicant also prayed that selection completed on 16.2.1993 ignoring candidature of the applicant may also be quashed. It has also been prayed that the respondents may also be directed to hold a supplementary test for filling up vacancies of SC candidates in which applicant may also be allowed to participate. The case of

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of the applicant that in 1993 selection, though applicant was reserve category candidate of SC, This ~~para~~^{fact} was not mentioned in the papers and the merit of the applicant was thus not judged alongwith the SC candidates. Some undisputed facts are that by notification dated 11.5.1992 applications were invited for selection to the post of Goods Guard from various categories of the employees. One of them was Trains Clerk. The applicant belonged to this group. The post allocated for reserve category of SC in this ~~group~~^{selection} were 4. The selection was completed and the result was declared on 16.2.1993. However, only 3 SC candidates were selected. The applicant's claim is that as he was not ~~considered~~^{mentioned in paper} as a SC candidate, he has suffered disadvantage and the respondents may be directed to prepare a fresh select list.

In order to appreciate as to whether the applicant was mentioned as a SC category candidate or not, we have before us the list dated 30.9.1992 which is of the candidates who were required to appear in the written test scheduled to be held on 17.10.1992. The list has been filed as (Annexure 5 to the OA). In this list applicant's name is mentioned at Sl.no.6 but he has not been mentioned as SC candidate. Contrary to it, Mahendra (sl.no.4), Surya Dev — Ram(sl.no.5), Suresh — Ram(sl.no.28), S.K.Paswan(sl.no.35) and S.S.Ray (sl.no.42) have been mentioned as SC candidates. In para 4 of the supplementary counter affidavit filed by Shri Sushant Jha, Senior Divisional personnel Officer Eastern railway Dhanbad, explanation has been given in the following manner.

"That the contents of para 2 of the affidavit are denied as stated. In reply to the

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same it is submitted that the true fact is that as per reserved post induction of 4 SC suitability were to be done subject to the passing of the written suitability test from TNC group. In this suitability test total 5 SC candidates from TNC group including the applicant appeared out of them only 3 candidates could pass and remaining 2 candidates belonging to SC community including the applicant were declared unsuitable. As such remaining one reserved post of SC could not be filled up at that time which was subsequently filled in case suitability test from the SC community on the basis of the option submitted amongst the SC community. It is also pointed out that the applicant did not submit his option for subsequent test which was completed on 16.2.1995....."

If the list dated 30.9.1992(Annexure 5) is considered in the light of the averments made in para 4 of the supplementary CA it is clear that the applicant was not considered as SC candidate. The respondents' clear case is that only 5 candidates belonging to SC category were considered out of them 3 were selected for appointment. However, if the ~~total~~ number of SC candidates in 30.9.1992 list is calculated, the total number comes out 6 and not 5. Five persons ~~have~~ already been mentioned as SC candidates as against their names 'word' 'SC' ~~have~~ ^{was} mentioned in bracket, which is not found against the name of the applicant. Thus from the documents on record and the pleadings of the parties it is established beyond doubt that applicant's claim was not considered as SC reserve category candidate. We directed respondents to produce

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the record regarding selection held in pursuance of the notification dated 11.5.1992 but the reply given was that the record has been weeded out as per rules. In this case notice was issued on 23.9.1993 and the respondents had put in appearance in this Tribunal through Shri A.V.Srivastava advocate, who filed his vakalatnama on 15.11.1993. Thus the respondents had become fully aware that selection held in pursuance of the notification dated 11.5.1992 is subjudice and the select list dated 16.2.1993 is under challenge and the record pertaining to selection should be preserved. We failed to understand under what circumstances the respondents were in hurry to destroy the record. In absence of record it is difficult to ascertain who was responsible for excluding the name of the applicant from SC category candidates and what disadvantage he actually suffered on account of this lapse.

The another aspect which requires our consideration is why the applicant could not be considered in the supplementary selection held to fill up the remaining one post. This selection was completed on 16.2.1995. Applicant's grievance is that he has been ignored by respondents in order to benefit others. We required respondents to produce the record of selection held on 16.2.1995 so that we may ascertain whether the applicant did not apply for appointment or he was ignored otherwise by the respondents. But we are sorry to observe that this record has not been produced before us.

Learned counsel for the respondents placed before us letter dated 6.7.2001 written by D.R.M. Dhanbad in which he refused to send the record pertaining to 16.2.1995 selection stating that it was not relevant as applicant did not participate and it is not necessary to send this

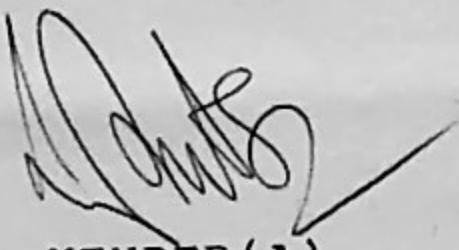
record. For remaining records of 1993 he said, that has been weeded out. By another ^{order} dated 31.7.2001 we directed the respondents to produce the record of 16.2.1995 selection as its perusal is necessary but that record has not been placed before us today and it is claimed that it has also been weeded out. Thus, the stand taken is inconsistent to the reason stated in the letter dated 6.7.2001. In our view for the best reasons known to the respondents their effort has been to avoid the perusal of the record by the Tribunal.

Shri O.P.Gupta learned counsel for the applicant has submitted that after the selection held in pursuance of the notification dated 11.5.1992 applicant could not appear as he has attained the higher salary grade above the grade of Goods Guard. But he is not in a position to tell the exact date from which date he attained this position. However, we are convinced that applicant suffered on account of ~~lapses~~ on the part of the respondents by not considering him as a SC category candidate and he is entitled for relief.

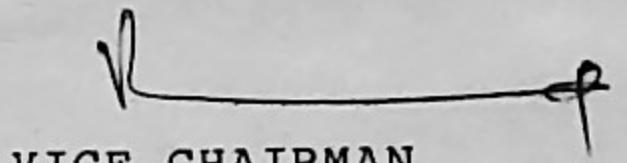
The another important question for determination is what relief can be granted to the applicant in the facts and circumstances of the case. The applicant himself has claimed in amended relief that respondents may ^{be directed} hold supplementary test of the applicant and judge his suitability. In our opinion, he is entitled for this relief and if he comes out successful in the suitability test he shall be entitled for the benefit from the date other SC candidates were appointed as Goods Guard in 1993. The applicant shall be accommodated as Goods Guard with all consequential benefits.

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The OA is accordingly allowed. The Respondents No.2 & 3 are directed to arrange a special suitability test for the applicant, for his selection as Goods Guard. If he is found suitable for the post he shall be given a notional posting from the date the SC candidates of the list dated 16.2.1993 were given appointment. He shall also be entitled for all the consequential benefits which in normal course he would have received like other candidates including arrears till the salary of the applicant was below Goods Guard. This order shall be complied with within six months. However, there will be no order as to costs.



MEMBER (A)



VICE CHAIRMAN

Dated: 08.8.2001

Uv/