

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 7th day of February 2007

Original Application No. 541 of 2000

Hon'ble Mr. Justice Khem Karan, Vice Chairman

Hon'ble Mr. P.K. Chatterji, Member (A)

Mahi Lal, S/o Dhani Ram, working as Sr. Section Engineer (P.Way), Northern Railway, Hapur, Distt: Ghaziabad.

. . . Applicant

By Adv: Sri T.S. Pandey

V E R S U S

1. The Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Moradabad.

. . . . Respondents

By Adv: Sri A.V. Srivastava

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member (A)

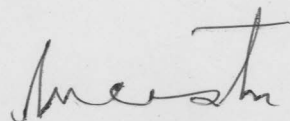
The dispute in this OA is regarding selection of the applicant in the post of Assistant Engineer (Group 'B'). The applicant is aggrieved that his name was not included in the panel for Assistant Engineer's dated 05.02.199⁶₉ comprising 31 persons, although the applicant had passed written examination medical and viva voce test. The applicant was an employee in Group 'C' category in the Railways. He had applied for selection to the post of Assistant Engineer Group 'B' against 70%

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quota in the Civil Engineering Department for the selection years 1998-2000. In all 34 Assistant Engineers were to be selected. He passed the written examination held on 21.11.1998 and his name appeared in the list of successful candidates at Sl. No. 39. As per rules the selection comprises a written test and Viva voce. The candidates who qualified in the written test have to pass the prescribed standard of medical examination.

2. It has been stated in the OA that after being successful in the written test he was cleared in the medical examination and thereafter, he was called for viva voce test held on 18/20.01.1999. The applicant has also stated that he did quite well in the viva voce test. But when respondent No. 1 announced the provisional panel of 31 persons the name of the applicant did not figure in the list, although some officials junior to the applicant were included in the list. Out of the 34 posts declared as vacant 31 posts were filled up.

3. It has further been alleged by the applicant that after the selection he was again directed to appear for medical examination on 08.03.1999 at New Delhi, Central Hospital. He appeared at the medical examination but was declared unfit, quite strangely. The applicant has alleged that it showed that the respondents were looking for a plea to exclude him

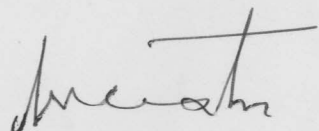


from the panel of selected candidates and that he was denied promotion illegally on extraneous consideration. While the first medical examination cleared him, it would appear rather unreasonable that he would be declared unfit in the next. All these, it is alleged were manipulated by the respondents.

4. It has been further stated by the applicant that being a SC candidate, he was entitled for protection in promotion to the amended provision to Article 335 of the Constitution of India as amended by 85th Amendment Act 2000. The respondents did not gave him any relaxation in qualifying marks to which he was entitled being SC candidate. The applicant is of the view that if he was accorded this benefit as provided by the amendment of Article 335 he would have been selected.

5. Not only that the applicant has further claimed that while working in Group 'C' category he was all along promoted from different lower grade to his present grade on merit without the benefit of reservation. Therefore, the applicant was entitled for promotion against the general post in pursuance of the Railway Board Circular dated 07.08.2002.

6. During arguments the learned counsel for the applicant drew our attention to Circular No. 97-



E(SCT)-1/49/14 dated 12.12.2000, particularly to the following provisions:

"However, in pursuance of the latest provision in the Constitution of India under Article 335 (Eighty Second Amendment) Act, 2000, the above orders have become inoperative from 3.10.2000. These orders shall take effect in respect of selections made on or after 3.10.2000. The selections finalized prior to 3.10.2000 shall not be disturbed."

By citing this, the learned counsel wanted to point out that the withdrawal of the relaxed norms for SC/ST candidates in selection to safety category post, would be applicable only after the 03.10.2000. What ever selection is made before that would not come under the new provision. Therefore, the applicant is eligible for getting the benefit of relaxed qualified norms being an SC candidate.

7. The applicant has sought for a direction of the Tribunal to call for the whole selection proceedings papers and, thereafter, direct the respondents to include the name of the applicant in the panel dated 05.02.1999. He has also sought direction of the Tribunal to decide the appeal of the applicant sent to the respondents on 05.04.1999.

8. The respondents have denied the allegations of the applicant by making the following observations:

- a. The letter of the Railway Board dated 15.11.1983 No. B2-E (SCT)/41/6 contains the

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relevant direction in the matter. It lays down that Group 'B' post in Civil Engineering, Mechanical Engineer, Signal and Telecommunication Engineering and Transportation and Traffic category would come under the preview of Safety category and the erstwhile scheme for promotion of the best amongst the failed will not apply while filling the reserved category. The Rule also clarifies that in respect of other than safety category posts, the qualifying marks would be set as 3/5 of the qualifying marks prescribed for general category candidates. The respondents have stated that it was out of a misconception that the applicant was claiming the benefit of his relaxed norm of 3/5 of the marks for OC candidates, overlooking the provision that this should not apply to safety category post.

- b. The respondents have further stated that the norm for viva voce and service record were as follows:

	<u>Maximum marks</u>
Viva voce	25
Service records	25
Total marks	= 50
The candidate should secure minimum 25 marks including a minimum of 15 marks on service records.	

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It has been stated by the respondents that the marks secured by the applicant where as follows:

1. Written	90
2. Service Records	14
3. Viva voce	10
Total =	114

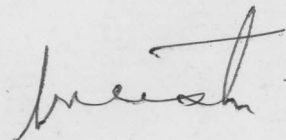
With this marks it was not possible for the applicant to find place among the selected candidates.

- c. Regarding the allegation of manipulating a second medical examination the respondents have stated that after the tests were held there was a compliant that the applicant was actually not medically fit due to impaired visual capacity and for that reasons he was directed for second medical examination. In the second medical examination he was actually found unfit. Therefore, it would appear that the applicant himself obtained the medical certificate by dubious means. The respondents have however, clarified that this had nothing to do with not selecting the applicant for the post of Assistant Engineers, the reason of which was actually his failure due to poor marks. There was no nexus between his non selection and being not found suitable in the medical examination.
- d. The learned counsel for the respondents countered the points made by the applicants that relaxation of qualifying marks for SC/ST was applicable for safety category post as well. He stated that the rules

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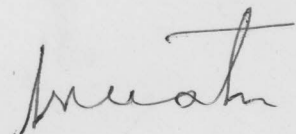
inforce at the time of selection should govern the process of selection and no rule which might have been framed subsequently. The learned counsel again and again emphasized on the letter of the Railway Board dated 15.11.1983 and stated that the selection was made within the ambit of these rules and there should not be any controversy regarding that. The above mentioned circular made it abundantly clear that Assistant Engineer in Civil Engineering Department was a Safety category post for which scheme of promoting best amongst the failed SC/ST candidates stood withdrawn. No other relaxation in the qualifying marks was provided.

- e. The learned counsel for the respondents rebutted the point made by the learned counsel for the applicant that after amendment of Article 335 the manner of selection would change from a certain date i.e. 03.10.2000. In citing the relevant circular of the Railway Board, learned counsel for the applicant had stated that selections finalized prior to 03.10.2000 should not be disturbed. The learned counsel for the respondents wondered as to how this was going to help the applicant. By this amendment an enabling provision is brought about whereby the Governments would be empowered to fix relaxed norms in selection of SC/ST candidates notwithstanding the provision of Article 335. Any provisions which would be made by the Government under this enabling provision would have prospective effect, and, therefore, it was not clear as to how it would be helpful to the applicant.



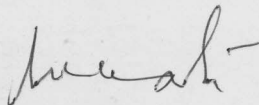
9. We have gone through the pleadings and the records of the case. We have heard arguments of both counsels. As decided by the Tribunal earlier the relevant records were summoned and on 04.01.2007 these records were produced before us. We have perused the records relating to the selection from which it is observed that the applicant secured 90 marks in written examination, 10 in viva voce and 14 under the head '**record of service**'. Thus he had a total of 114 marks. Learned counsel for the respondents further explained that the applicant had four 'Good' grading in the CR of last five years and one 'Average'. The rules prescribed that three marks be given for Good and two marks for Average grading. Therefore, his total was fourteen which was one short of the requirement. The learned counsel for the applicant, however, could not question the award of marks as it was done correctly as per the prescribed procedure.

10. He, however, questioned how the applicant who had secured 90 marks in the written test could get only 10 marks in viva voce. We have perused the records relating to award of marks. But we do not think that the Tribunal should go into the merit of the candidates individually to assess whether marks were given properly. We are not inclined to do this as it would amount to encroaching upon the executive authority. We have, however, satisfied ourselves

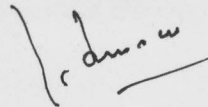


that the marks were awarded by the competent committee constituted by the appropriate authority.

11. We have also pondered over the arguments of the learned counsel for the applicant that after amendment of Article 335 selections made prior to 03.10.2000 should not be touched. The arguments of the learned counsel for the respondents to this point have been stated in the preceding paragraphs. We are of the view that there is force in the argument of the respondents regarding this point, and we would not like to comment any further. To put it in a nutshell we find that the selection was made according to the rules inforce at the time of selection and, therefore, there is no infirmity in the same. For these reasons we are unable to allow this OA which is dismissed with no order as to costs.



Member (A)



Vice-Chairman

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