

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

Original Application No.52 of 2003.

ALLAHABAD THIS THE 18th DAY OF NOVEMBER 2004.

Hon'ble Mr. A.K. Bhatnagar, Member-J.  
Hon'ble Mr. D.R. Tiwari, Member-A.

Tarak Nath Das,  
S/o Suresh Chandra Das,  
C/o Shri Banke Mahajan,  
R/o 28/B, Chakniratul, Chauphata-ka,  
Allahabad.

.....Applicant.

(By Advocate: Sri Ashish Srivastava)

Versus.

1. Union of India through  
Secretary, Railway Rail  
Bhawan, New Delhi.
2. General Manager,  
Western Railway, Church Gate,  
Mumbai
3. General Manager,  
Railway Electrification,  
Allahabad.
4. Chief Work-Shop Manager,  
Western Railway,  
Wagon Repair Shop,  
Kota (Rajasthan)
5. Manej Kumar Meena (ST)  
Typist under CWM/W Railway-  
WRS/Kota Janction-2,  
Kota (Rajasthan).

.....Respondents.

(By Advocate : Sri P Mathur/  
Sri A Sthalekar)

O\_R\_D\_E\_R\_

(By Hon'ble Mr. D.R. Tiwari, A.M)

By this O.A. filed under section 19 of Administrative  
Tribunals Act 1985, the applicant has prayed for following  
relief(s) :-

*[Signature]*

"i) This Court may be pleased to set aside the orders dated 22.2.2001, 28.2.2001 & 3.12.2002 (Annexure A-1, A-2 & A-3 to the original application with compilation No.1).

ii) The respondent No.4 may please be directed to promote the petitioner on the post of Chief Typist w.e.f. the date of selection and pay other consequential benefits.

(iii) Any other relief, which this Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the petitioner".

2. Filtering out the details, the factual matrix necessary to decide the controversy is that the applicant was working as CA/Confidential Assistant/Senior Steno in the pay scale of Rs.5000-8000 in the Railways. A notification dated 9/10/04/2000 was issued for selection of Chief Typist in the pay scale of Rs.5000-8000 in the office of respondent No.4 (Annexure A-4). The notification provided that the selection was to be held for one posts and criteria was seniority on the post of Head Typist in the pay scale of Rs.4500-7000. The said notification contained the name of the applicant at Sl. No. 1 of the above mentioned letter. One Sri Manoj Kumar Meena and Mohan Kumar were at Sl. No.2 and 3 respectively. The procedure for selection was oral and the candidates could answer either in Hindi or in English.

3. It is undisputed that the applicant is the senior most eligible candidate and for his excellent performance he has been awarded many time (Annexure A-5).

4. The result of the selection was declared on 22.02.2001 and the applicant was not selected. The candidate who was at Sl. No.2 and is respondent No.5 in this O.A. was selected against the post of Chief Typist. Aggrieved by the order dated 22.02.2001 and consequent letter dated 28.02.2001, the applicant submitted a detailed representation on 04.04.2001 to respondent No.4 through proper channel (Annexure A-6). He raised various issues in the selection process and the respondent No.4 rejected the representation arbitrarily (Annexure A-7). The applicant approached this Tribunal vide

*Dhain*

O.A. No.664/01 and the Tribunal disposed of the O.A. by its order dated 10.09.2002 (Annexure A-8). The operative portion of the order of the Tribunal is as under:-

"In view of the aforesaid, the O.A. is disposed of with direction to the competent authority to decide the representation of the applicant dated 04.04.01 by detailed reasoned and speaking order within a period of three months".

The applicant, after receiving the order of the Tribunal served the same on the respondents in time and the respondent No.4 vide order dated 03.12.2002 rejected the representation.

5. Aggrieved by this, the applicant has filed the instant O.A. and the order has been assailed on various grounds mentioned in para 5 and its sub paragraphs. The main grounds are that the notification dated 9/10-04-2000, <sup>in as per</sup> the selection was to be held for one unreserved posts and criteria was seniority on the post of Head Typist and the applicant was at Sl. No.1 in the panel prepared by the respondents. Non-selection of the applicant for the post is illegal and contrary to the provision mentioned in the said notification. It has also been contended that the respondents have failed and overlooked the contention raised in the representation dated 04.04.2001 and have rejected arbitrarily. It has been pleaded that since the post was for general candidate, no candidate of reserved category should have been made eligible for selection. It has been further argued that all three Members of Selection Committee belonged to reserved category thus vitiating the process of selection. The selection made is against the provisions in para No.219 (G) of Railway Establishment Manual which provides that selection should be made primarily on the basis of over all merit, as such the entire selection made is illegal and the O.A. may be allowed.

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6. The respondents, on the other hand, has contested the O.A. and has filed a detailed counter affidavit. They have argued that one unreserved post of Chief Typist in the pay scale of Rs.5000-8000, was notified and the Selection Committee duly constituted by the Headquarter office Church Gate, Mumbai on 04.01.2001 recommended that Sri Manoj Kumar Meena be kept on the provisional panel. They have submitted that the applicant was not eligible for promotion as he failed in the selection and the mere fact that his name was shown in the office order dated 09/10-4-2000, which only shows his eligibility to sit in the selection. It cannot be said that the applicant was eligible for promotion. They have stated that the applicant's representation dated 04.04.2001 has already been replied vide office order dated 09.06.2001. The D.P.C. considered C.Rs, Service Records and Performance in the interview and thereafter respondent No.5 was selected for promotion to the post of Chief Typist whereas the applicant has failed. The question regarding the validity of the Selection Committee cannot be questioned because the Rules provide that atleast one Member of the Selection Committee must belong to the SC/ST community. The mere fact that more than one member of the Selection Committee belongs to SC & ST does not vitiate the selection.

7. We have carefully considered the rival contention of the parties and perused the pleadings.

8. During the course of argument, the learned counsel for the applicant forcefully argued that the selection of the reserved category candidate is illegal as the post was unreserved. He has also stated that the Selection Committee consisting of all the Members of SC & ST has vitiated the selection process. It has been argued that the applicant being at Sl. No.1 of the eligible candidate and was better in all respect then the respondent No.5

*Dhain*

who has been selected. The learned counsel for the respondents, on the other hand, has submitted that the selection of the reserved category candidate against the post which is reserved is not illegal and the Selection Committee consisting of the reserved category Members does not at all vitiate the selection procedure. He has also produced the original records to the Court.

9. The only question which survives for decision is the validity of the selection of the respondent No.5 on the post of Chief Typist in the scale of Rs.5000-8000. The contention of the applicant regarding his non-selection to the post of Chief Typist only because he was at Sl. No.1 of the Select List cannot be accepted, It is for the simple reason that the post was to be filled by the selection and seniority, though a factor for his eligibility cannot alone be a deciding factor and it does not ensure his selection. His contention in this regard is thus negatived.

10. We have gone through the original records. The marks obtained of the three candidates may be reproduced as under :-

Sl.No.	Name Designation	Whether SC/ST	Office where working	Profession ability 50 marks	Personality address leadership & academic Tech. qualification 20 marks	Record of service 15 marks
1.	Tarak Nath Das Cf. Typist Adhoc (RE. Alld) H. Typist.	--	CCRE-Alld on deputation	26	10	12
2.	Manoj Kumar Meena Adhoc Cf Typist.	ST	CWM-Kota	35	12	15
3.	Mohan Kumar Head Typist	---	CWM Kota	25	08	11

Seniority of 15 marks.	Total	Remarks i.e. Outstanding Passed/Failed
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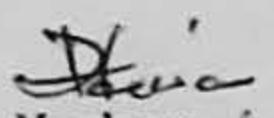
15	63	Failed
15	74	Passed
11	55	Failed

*Dhawan*

From the above, it is clear that the applicant No.1 failed and the selection process cannot be faulted and the result declared is valid and just.

11. In the result, the O.A. is devoid of merits and is accordingly dismissed. We do not find any justification in interfering with the impugned orders, which are legal, just and valid.

No order as to costs.

  
Member-A

  
Member-J.

Manish/-