

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

original Application No.635 of 2003.

Allahabad this the 14th day of October 2004.

Hon'ble Mrs. Meera Chhibber, Member-J.
Hon'ble Mr. S.C. Chauhan, Member-A.

Mrs. Leela Eileen Srivastava
aged about 40 years
w/o Sh. Sanjay Kumar Srivastava,
Trained Graduate Teacher, Diesel Locomotives,
works (DLW) Inter Collage, Varanasi R/o N-38-
B-5-P-1-A, Kakarmatta, Varanasi.

.....Applicant.

(By Advocate : Sri Sudama Ram)

Versus.

1. Union of India through General Manager,
Diesel Locomotives Works, Varanasi.
2. Chief personnel officer, Diesel Locomotives
works, Varanasi.
3. Executive Director (Reservation Policy)
through Secretary (RP), Railway Board,
Rail Bhavan, New Delhi.
4. Senior personnel officer (H.Q.) Diesel
Locomotives Works, Varanasi.
5. Shri D.P. Gupta, Trained Graduate Teacher
presently posted as PGT ad-hoc, D.L.W. Inter
College, Varanasi.
6. Mrs. Chhabbi Yadav, working as Trained Graduate
Teacher, D.L.W. Inter College, Varanasi.
7. Mrs. Reena Ghatak, Trained Graduate Teacher,
DLW Inter College, Varanasi.
8. Mrs. Indra Bhatia, Post Graduate Teacher,
D.L.W. Inter College, Varanasi.
9. Shri Bibhuti Narain, working as Post Graduate
Teacher D.L.W. Inter College, Varanasi.

.....Respondents.

(By Advocate : Sri D.C. Saxena)

Saxena

O R D E R

BY S.C. CHAUBE, MEMBER(A)

The applicant has sought quashing of the panel of PGT in the grade of Rs.6500-10500/- (RSRP) vide notices dated 9.9.2002 (Annexure-1) and 16.5.2003 (annexure-3), besides a direction to the official respondents to hold the selection afresh. She has also sought quashing of the adhoc promotion of Sri D.P. Gupta issued vide order dated 22.11.2002 (Annexure-2) against the vacancy of Scheduled Tribe roster point with further direction to the official respondents to promote the applicant on adhoc basis as P.G.T. (Economics).

2. The facts, as per the applicant, are that she was appointed as a teacher in the grade of Rs.1200-2040/- in the Diesel Locomotive Works Inter College, Varanasi (in short D.L.W. College) against S.T. quota. She was holder of Master's Degree in Economics from Allahabad University alongwith degree of B.Ed. She was further promoted as T.G.T. in the pay-scale of Rs.5500-9000/- on 2.7.1999 after selection. Vide notice dated 16.8.2002 (Annexure-4) the ~~requirement~~ ^{best fit} of PGT in Economics, reserved for ST was circulated in D.L.W. Inter College, Varanasi. According to the applicant, she was the only candidate to be considered for promotion to the post of P.G.T. (Economics) Grade Rs.6500-10500/-. Even though she appeared in the said selection, but was not placed in the panel with ulterior motive and malafide intention. Further, ^{case} her/his was not put up before the General Manager before declaring the panel dated 9.9.2002 as per the instructions of the Railway Board. Further, the aforesaid selection was held without complying with the mandatory provisions for imparting pre-selection coaching to SC/ST candidates as per the instructions of Railway Board. As the applicant was only S.T. candidate, she should have been promoted on ad hoc basis against the said post for a period of six months and

as per the provisions contained in Rule 10.2 of Chapter X adhoc promotion of the "Brochure on reservation for SC/ST in Railway Service" treating as the best amongst the failed SC/ST employees and her case should have been reviewed after six months by the competent authority for inclusion or otherwise in the final panel. In terms of the Railway Board's policy contained in Rule 10.2 of the aforesaid Brochure on reservation for SC/ST, ^{one} who failed in the first selection, but subsequently found suitable after six months training and after review of the General Manager, should not be subjected to further selection test. However, respondent nos. 1 to 4 failed to comply with the above said provisions with a view to giving un-due favour to a general candidate, Sri D.P. Gupta, TGT of the same college. Accordingly, Shri Gupta was promoted on the said post on adhoc basis against the vacancy of Scheduled Tribe roster point of PGT (Economics) in the Grade of Rs.6500-10500/-. The applicant has also pointed out that vide Railway Board's letter dated 11.5.1998 reserved post cannot be de-reserved in non-essential promotional category and also no adhoc promotion without deservation of post by Railway Board is permissible to a General candidate against S.T. point, when the S.T. candidate is available. Thus, the adhoc promotion of Sri D.P. Gupta (Respondent no.5) has been done without approval of the Railway Board.

3. Vide her representations dated 19.11.2002 and 28.11.2002 addressed to the General Manager, D.L.W., Varanasi, the applicant has submitted that she has been conducting the classes of Economics w.e.f. 1.10.2002, but she has been ignored for adhoc promotion against a roster point of ST.

4. Yet, another notification dated 14.3.2003 was issued to hold selection for PGT in the pay-scale of Rs.6500-10500 for Economics against ST quota, besides two other posts of Biology and English. Applicant was called to appear in the selection held on 13.5.2003. Meanwhile, no response was received

Shah

by the applicant on her representation dated 19.11.2002.

5. According to the applicant, the selection committee was not duly constituted, ^{co-} opting a member from Educational field, who are experts educationist on the subject as per para 112(1) of IREM Vol. 1 1989 read with para 178. Due to non-inclusion of educational field expert, the selection became a farce and members of the selection committee asked the question not relating to the teaching subject of Economics. This shows of arbitrariness in the process of selection. Even though the applicant ^{was} the only candidate for ST quota, she was again declared un-successful. Thus, the action of the selection committee, according to the applicant, did not appear to be fair and impartial and further no pre-selection coaching was imparted to SC/ST candidates before holding the above mentioned selection.

6. According to the applicant, the award of marks was not done against the allotted heads by the selection committee. The applicant was also deprived of her adhoc promotion against the ST quota, on which post Sri D.P. Gupta has been continuing beyond 4 months without approval of Railway Board. Again the applicant had represented on 14.5.2003 against the arbitrariness of the respondents, but no action was taken and the applicant was declared unsuccessful due to malafide action of the respondents, and also her case was not put up before the General Manager or the Railway Board as per rules. Hence the entire action of the respondents is arbitrary, unfair and bad in law. Later the respondents, according to the applicant, decided and rejected the representation of the applicant for the S.T. against which general candidate namely Sri. D.P. Gupta was given adhoc promotion and without taking permission from the Railway Board. Further, according to the applicant, during pendency of the present O.A., the General Manager, DLW, Varanasi vide his letter dated 31.3.2004 has issued

instructions to hold the selection for only one post of P-GT (Economics) in the cadre reserving it arbitrarily to SC instead of ST as in the previous selection. In the above impugned notice, the applicant has not been called to appear in the selection, whereas the said post falls to the ST candidate as per roster point. Thus, the action of the respondents, according to the applicant, has no jurisdiction to change the reserved point in an arbitrary manner.

7. The respondent nos. 1 to 4, on the other hand, have submitted that the post of PGT in the grade of Rs.6500-10500/- in different disciplines are filled by promotion from amongst TGT having the requisite qualification. According to them, post earmarked for reservation for one/ST was assigned to the post of Economics because one ST TGT was available. ~~Excluding Economics post~~. They have further clarified that the allocation to the Economics was not due to the fact that there was some separate roster available for Economics subject but because only ST candidate available happened to be in Economics subject. As regards constitution of selection committee as laid down in Chapter II Section B of the Establishment Manual Vol. I 1989 Edition, the same was to be conducted by a duly constituted committee of three Junior Administrative Grade Officers as per the instructions of the Railway Board. The applicant could not find place on the panel as she failed to secure requisite marks for empanelment to the post of P.G.T. (Economics). The respondents have further stated that the applicant could not secure even 20% marks (i.e. the minimum) for adhoc promotion as best amongst failures as per Railway Board's letter dated 8.5.1999 (Annexure CA-1). In the earlier selection also, the applicant could not secure 20% marks in the head for selection (i.e. minimum required for adhoc promotion as "best amongst failures."). Thus, applicant's claim, according to the respondents, for adhoc promotion to the post of PGT (Economics) is not tenable.

Ansark

8. The respondents have further relied upon the Railway Board's letter dated 03.05.02 (Annexure CA-2) which inter alia stipulates that if fit suitable reserved candidate is not available, then the post need not be de reserved, but the same should be filled up from others on ad hoc basis. Since the applicant had appeared in the selection, but failed twice and was not found fit even for promotion on ad hoc basis, therefore, Sri D.P. Gupta, a Senior most amongst T.G.T was promoted on ad hoc basis.

9. According to the respondents, the provisions for imparting pre-selection coaching to S.C/S.T candidate, is only for selection for safety posts. The post of PGT is a non-safety post. Therefore, pre-selection coaching was not required to be imparted as per Railway Board's letter dated 28.8.1971 (Annexure CA-4)

10. As regards the validity or otherwise of the constitution of the Selection committee, the respondents have stated that the selection was conducted strictly as per the procedure laid down in Chapter II of Section B of I.R.E.M. Vol. I 1989 edition by a duly constituted selection committee of J.A. Grade Officers including one from reserved community. As regards non-observance of para 112(1) of IREM regarding inclusion of Educational Expert is concerned, respondents have clarified that this para is applicable for direct recruitment and not in promotion by selection.

11. We have perused the pleadings and heard the counsel for the parties.

12. In support of his contention, the counsel for the applicant has cited the decision of Bombay Bench of the Tribunal in the case of Miss Arifa Begum Abdul Karim Shaikh & ors. vs. Union of India & Others reported in 1991(1) ATJ 115 and also the decision of Allahabad Bench of the Tribunal in the case of Gulam Mustafa & Ors. vs.

union of India & ors. reported in 2003(2) ATJ 58. Both the decisions cited by the learned counsel for the applicant, in our opinion, do not render help to him. On the other hand, the counsel for the respondents has cited the decisions of Hon'ble Supreme Court in the case of Dr. G. Sarana vs. University of Lucknow & Ors. reported in 1976 SCC (L&S) 474, and Suneeta Aggarwal vs. State of Haryana & Ors. reported in 2000 SCC (L&S) 313) and Om Prakash Shukla vs. A.K. Shukla & Ors. reported in AIR 1986 SC 1043.

13. There is a lot of force in the contention of the respondents that the selection for the post of PGT was conducted as per the procedure and rules. Neither any illegality nor irregularity in conducting the selection could be observed as the claim is perfectly valid and does not suffer from any legal infirmity. They have further stated that the applicant could not even secure 20% marks in each head of selection, as such she could not be promoted on ad-hoc basis.

14. As regards non inclusion of educationist Member in the selection Board, a perusal of rule 112 (i) of IREM makes it amply clear that the inclusion of an outsider educationist at the time of initial recruitment to Group 'C' posts. We are therefore, inclined to accept the contention of the respondents that this rule is not applicable to the case of selection by promotion.

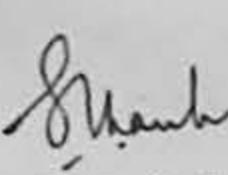
15. We have perused the files relating to award of marks by the selection committee to the applicant for the selections held on 6.9.2002 and 13.5.2003 for the post of PGT (Economics). The applicant has failed during both the selections. Further, the selection committee on both the occasions reached the decision by concensus.

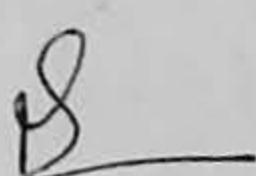
Shukla

16. It is further observed that the applicant having submitted to the jurisdiction of the committee could not be permitted to turn around and denounce the Constitution of the Committee (Dr. G. Sarana (supra)). Hon'ble Supreme Court held in Sunita Agarwal's case (supra) that the appellant did not challenge the order of Vice Chancellor declining to accord approval to her selection and on the contrary, she applied afresh for the said post in response to re-advertisement of the post without any kind of protest. Not only, did she apply for the post, but she also appeared before the Selection Committee constituted consequent upon readvertisement of the post and that too, without any kind of protest. The apex Court further held that the appellant having appeared before the Selection Committee without any protest and having taken a chance, the court held that the appellant is estopped by her conduct from challenging the earlier order of the Vice-Chancellor.

17. Thus, it is amply clear that the case of the applicant is bereft of merit and is, therefore, liable to be dismissed.

18. For the aforesaid reasons and the case law cited above, the O.A. is dismissed. We make no order as to costs.


MEMBER (A)


MEMBER (J)

GIRISH/-