

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 05th DAY OF APRIL 2011)

HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

Original Application No. 664 OF 2006

(U/S 19, Administrative Tribunal Act, 1985)

R. C. Meena Station Manager, S/o O. P. Dayal Meena, R/o D 96 Railway Colony, Near Agra Cant.

.....Applicant

VE R S U S

1. Union of India through Chairman Railway Board, Rail Bhawan, New Delhi.
2. Chief Commercial Rly. Manager, North Central Railway, Allahabad.
3. Chief Personnel Officer, North Central Railway, Allahabad.
4. The G. M., N.C.R., Allahabad

.....Respondents

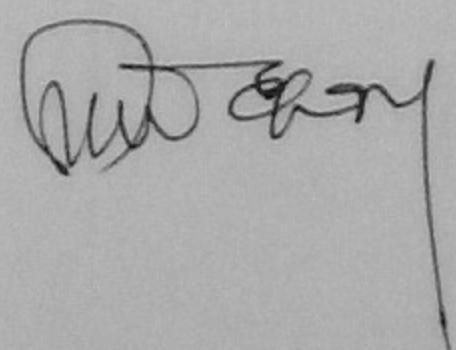
Present for the Applicant: Sri Sanjay Kr. Singh

Present for the Respondents: Sri A. Tripathi

O R D E R

(DELIVERED BY HON'BLE MR. JUSTICE S. C. SHARMA MEMBER (J))

Under challenge in this O.A. is the order dated 21st April, 2006 passed by the respondents. Further prayer has also been made in order to give direction to the respondents to permit the applicant to appear in the Written Examination which is scheduled to be held on 01st July, 2006 and declare the result. Brief facts of the case are as follows:-



2. The applicant was appointed on 26th June, 1987 as Traffic Apprentice and, thereafter, promoted on dated 01st March, 2003 in the grade of ₹2,000-3,200/6,500-10,500/. Later on applicant was also promoted in the scale of ₹7,450-11,500/- vide order dated 01st ^{November, 1999} ^{record} and the services of the applicant is bright and blotless. That before creation of Jhansi division and Agra Mandal ~~and when~~ both divisions were unified, ^{the} applicant was placed at serial No.01 in the seniority list and after separation of Jhansi and Agra division the seniority list was published on 17th August, 2005, in the new seniority list a few juniors to the applicant were placed above to the applicant in the seniority list dated 17th August, 2005(Annexure No.3). A representation was made to the respondents in order to rectify the mistake. But in the meantime the respondents vide letter dated 21st April, 2006 chalked out 11 vacancies for selection for Group 'B' from Group 'C' and the seniority list of the 45 persons was annexed with the above mentioned letter, but the name of the applicant was not mentioned in the list, one vacancy was declared for 'Scheduled Tribe' but in practical no name of 'Scheduled Tribe' was mentioned. The applicant's name was not mentioned in the seniority list then the applicant made representation to the respondents on 22nd May, 2006. The Written Examination for the vacancy was scheduled on 01st July, 2006. That the promotion is a legal right of the applicant and the act of the respondents for not calling the applicant in the Written Examination

Atul Chauhan

is violation of reservation policy. That the respondents acted illegally hence the O.A..

3. Respondents contested the case and filed Counter Reply and in the Counter Reply it has been also been alleged that the Gazetted cadre of new zonal Railway was fixed and closed and, thereafter, assessment of Group 'B' vacancies for various departments including Operating department was done and Group 'B' selection were initiated to fill up the vacancies of Group 'B' as per rules. That the Railway employee got the promotion as per extent rules and the Railway employees is supposed to perform his duties with sincerity and utmost devotion. The seniority list was issued on dated 17th September, 2005 including *inter-se-seniority* of Operating department of entire N.C.R. Zone updated on 17th August, 2005 and this list was provisional. That the seniority list was provisional, ^{and} ² representations were invited and representations were considered and disposed of and mistake, if any, was rectified. The representation of the applicant was also considered and decided. That the name of the applicant was not included in the notification dated 21st April, 2006 as he was not coming under the zone of consideration as per rules. However, this list has been superseded by notification issued on dated 18th July, 2006 with sufficient number of S.T. candidates senior to the applicant were available in the eligibility notification dated 18th July, 2006 and representation was replied by the respondents that the promotion can not be claimed as

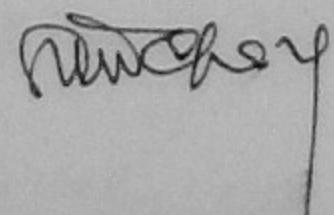
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a matter of right but its consideration can be claimed as matter of right, it is subject to the eligibility consideration. And the applicant was not found in the field of eligibility for consideration in Group 'B' Section in the Operating department of N.C.R.. That the O.A. liable to be dismissed.

4. We have heard Mr. Sanjay Kr. Singh, Advocate for the applicant and Mr. Avinash Tripathi, Advocate for the respondents and perused the entire facts of the case. It has been argued by the learned counsel for the respondents that having into consideration the relief claimed by the applicant in the O.A. this O.A. is rendered infructuous. The relief was claimed by the applicant is for quashing the order dated 21st April, 2006 issued by the respondents, that this was the notification issued by the respondents in order to fill up the vacancy of Gazetted Post in Group 'B', and that the applicant participated in the selection hence this relief has been granted to the applicant. And the second relief was claimed by the applicant in order to give direction to the respondents to permit the applicant to appear in the Written Examination scheduled to be held on 01st July, 2006 and vide order dated 29th June, 2006 passed in the O.A. on 2nd Interim prayer applicant was permitted to appear in the selection process and the respondents' Advocate argued that as per direction of the Tribunal respondents permitted the applicant to appear in the selection process and this relief also stands granted and third relief is regarding any other suitable order which this Tribunal deems fit.

Mr. Chay

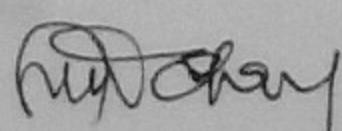
5. Learned counsel for the respondents argued that a list was also issued along-with notification of the eligible candidates for appearing in the selection process of Gazette Post on Group 'B' from Group 'C'. That the name of the applicant was not included in the list annexed with the notification, as the applicant was not under the zone of consideration. Only above reliefs have been claimed by the applicant in the O.A. and we are not required to consider the matter of seniority of the applicant, because this matter is not in controversy in the present O.A. for granting above reliefs. In all circumstances without commenting on the merits regarding seniority the Tribunal permitted the applicant to appear in the selection process. It has also been considered by the Tribunal that incase the applicant found eligible for the same then result may not be declared till the leave of the Court. Both the learned counsel for the parties stated that the result of all the candidates was declared except the applicant because there is an order of this Tribunal not to declare the result of the applicant. Under these circumstances it will be just and appropriate that the respondents be directed to declare the result of the applicant and incase the applicant was selected then he may file separate O.A. in order to show his entitlement according to seniority list circulated with the notification. Merely, on the strength of the order of the Tribunal the applicant can not be held entitled for selection in the Group 'B' post from Group 'C'. But because in that circumstances we required to consider the seniority list of that cadre and in this O.A. the seniority is not in dispute. But when there is specific case of the



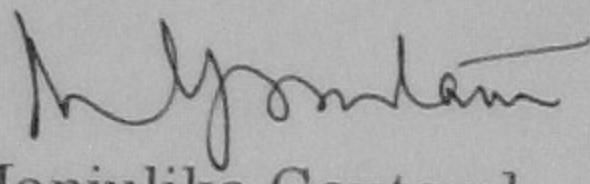
respondents that the applicant is not within the zone of consideration for Group 'B' post then merely on the ground of this fact that the applicant was permitted to participate in the Written Examination it cannot be inferred that the applicant was found eligible and the seniority list has been corrected and this is a matter of separate O.A.. Hence in all circumstance it will be just and appropriate to provide that in case applicant is selected in the selection then he will have to file the separate O.A. because it is the specific case of the respondents that the applicant was not under the zone of consideration and no right and title will accrued to the applicant merely on the basis that he was permitted to appear in the examination and order dated 29th June, 2006 passed as a matter of preventive measure and it required to be adjudicated. And in the order dated 29th June, 2006 the matter of seniority was not considered. The applicant was permitted to appear in the selection on his own risk and responsibility. But merely on this ground applicant will not be deemed eligible, if he is not otherwise eligible.

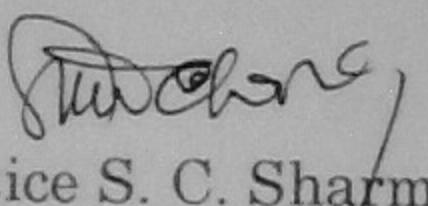
6. For the reasons mentioned above we are of the opinion that as both the reliefs claimed by the applicant stands granted and relief No.1 has been waived because the applicant participated in the selection, hence the O.A. is rendered infructuous and the O.A. liable to be dismissed.

7. O.A. is dismissed as rendered infructuous and respondents are directed to declare the result of the applicant of the of the selection



process held in pursuance of the letter dated 21st April, 2006 and incase the applicant is found eligible or qualified in the examination then the applicant is at liberty to file separate O.A.. No order as to costs.


[Manjulika Gautam]
Member-A
/Dev/


[Justice S. C. Sharma]
Member-J