

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 288 of 2007

Allahabad, this the 29 7 day of September, 2010

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mr. D.C. Lakha Member (A)

Anwar Shah Khan, aged about 35 years, Son of Late Rahat Shah Khan, Resident of L-84, Q+R, Loco Shed, Moradabad.

Applicant

By Advocate: Mr. T.S. Pandey

Vs.

1. The Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Moradabad Division, Moradabad.
3. Senior Divisional Personnel Officer, Northern Railway, Moradabad Division, Moradabad.

Respondents

By Advocate: Mr. Prashant Mathur

O R D E R

By Hon'ble Mr. Justice S.C. Sharma, J.M.

Institute O.A. has been instituted for the following relief: -

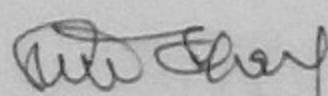
"a) issue a writ, order or direction in the nature of mandamus commanding the Respondents to modify the panel dated 10.11.2006 by interpolating the name of the applicant in the panel dated 10.11.2006 at the appropriate place with all consequential benefits of seniority etc. and post the applicant on the post of Guard Goods after completing other necessary formalities."

2. Pleadings of the parties may be summarized as follows: -

The applicant was working on the post of Senior Booking Clerk in the Moradabad Division in the pay scale of Rs. 4000-

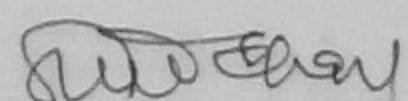
T.S. Pandey

6000/- for a long considerable period. No adverse remark was recorded in his character roll during the entire career of his service. The respondent No. 2 vide order dated 24.02.2006 issued a Notification for holding the selection for the post of Guard Goods in the pay scale of Rs.4500-7000 under 15% Limited Departmental quota fixed for promotion on the post of Guard Goods. Eligibilities have been indicated in the notification. In pursuance of the notification, the applicant submitted his application being covered by the eligibility criteria, as indicated in the notification. Application of the applicant was entertained as he was fulfilling all the requisite eligibility criteria. The respondent No. 2 again issued a notification dated 13.06.2006 indicating the vacancies of Guard Goods in the pay scale of Rs.4500-7000 to be '14' in number and also indicated the date of Written Test on 09.07.2006 along with list of eligible candidates. In the list, also finds place the name of Mr. Pankaj Kumar and after that name of the applicant was being shown. The applicant along with other candidates appeared in the Written Test, and result was declared of the successful candidates in the Written Test vide order dated 17.08.2006. Thereafter, all the selected candidates of the Written Test appeared in the viva voce, and instead of issuing the result of viva voce, selection chart was declared. In that selection chart, name of the applicant appeared at serial No. 3. Thereafter, a final panel was declared on 10.11.2006. But, in that panel, name of the applicant was missing. The vacancies were advertised for '14' posts but instead of filling all the '14' vacancies, only 10 candidates were selected and empanelled. Name of Mr. Indra Veer Singh was shown at

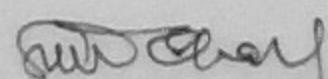


serial No. 6 in the panel and hence the applicant inquired about the validity of the panel from respondent No. 3 verbally and an evasive reply was given. Thereafter, an application was submitted on 16.11.2006 under the Right to Information Act and an illegal order dated 02.01.2007 was given and the information furnished by the respondents is in violation of the fundamental rights, and self contradictory under the provisions contained in Section 8 (1) (J) of the Right to Information Act, 2005. It has also been disclosed that Mr. Indra Veer Singh, whose name finds place in the panel at serial No. 6, had been awarded the punishment of 'Censor' entry on dated 24.04.2004, as indicated in the selection chart. It is stated that as no adverse entry was recorded in the entire service career of the applicant, and the entries of last five years from the date of Notification, ought to have been perused. It was incumbent upon the respondent No. 3 to include the name of the applicant in the panel dated 10.11.2006. It was also relevant to state that one Mohd. Sharif has also been shown in the panel at serial No. 4 but, Mohd. Sharif has been working as Junior Booking Clerk in the pay scale of Rs.3200-4900/-, and he was junior to the applicant and no Annual Confidential Report of the pay scale of Rs.3200-4900/- are maintained by the Respondents but his name finds place in the panel, which was violative of Article 14 of the Constitution of India. Hence, applicant is entitled to get his name interpolated in the panel.

3. The respondents contested the case, and filed Counter Reply of the O.A. and denied the allegation of the applicant



contained in the O.A. It has also been alleged that the selection against 15% Limited Departmental Quota has already been operated upon as the employees who were within the zone of consideration and were eligible otherwise, had been placed in the panel for the post of Guard Goods in accordance with the instructions. The claim of the applicant is devoid of any merit. It has also been alleged that vide Notification dated 24.02.2006 and further Notification dated 13.06.2006, the applications were invited against 15% Limited Departmental Quota for the post of Guard Goods to fill up 14 posts out of which 7 were unreserved, 3 for SC and 4 for ST. 42 eligible candidates applied and they were called to appear in the Written Test held on 16.07.2006, and out of 42 candidates, only 15 candidates could secure the prescribed marks vis-à-vis 60% in the Written Test, were declared eligible for further assessment for empanelment by the Selection Board and finally 10 candidates were declared to fill up the post in order of merits. Photostat copy of result of the Written Test of the examination dated 17.08.2006 and final panel dated 10.11.2006 are enclosed with the Counter Reply. In view of the instructions duly circulated by the printed circular No. 12677, since the procedure was modified hence no viva voce was conducted, and as such, inter se seniority was to be taken into account, and accordingly on that basis panel was prepared. It is stated that allegations made by the applicant are wrong and baseless. Mere perusal of the chart, filed by the respondents as annexure CR-3, would reveal that not only the punishment but inter se seniority of the staff has to be considered while forming the panel. Mohd. Sharif was working as Booking Clerk and since he was within the



zone of consideration and was eligible otherwise, as such, was permitted to appear in the Written Examination. He was found qualified in the Written Test declared on 17.08.2006. The presumption of the applicant is hypothetical and is not sustainable. The applicant utterly failed to state any cogent ground for filing the O.A. The panel had already come into effect and the persons, who are empanelled, had already been sent for training. The claim of the applicant for interpolation of his name in the panel is also bad for non-joinder of necessary parties as the seniority of the individual persons will be affected. It is stated that the O.A. is liable to be dismissed.

4. We have heard Mr. T.S. Pandey, Advocate for the applicant and Mr. Prashant Mathur, Advocate for the respondents and perused the entire facts of the case.

5. At the outset, learned counsel for the respondents Mr. Prashant Mathur raised a preliminary objection regarding maintainability of the O.A. It has been argued by the respondents' counsel that the O.A. is bad for non-joinder of necessary parties. The persons who are going to be affected by the relief claimed by the applicant, had not been arrayed as party. In case the relief claimed is granted, and the name of the applicant is ordered to be interpolated in the panel of selected persons, then the seniority of persons shall be affected and they will be put to prejudice. Under these circumstances, it was incumbent on the applicant to implead all such affected persons as party to this O.A., and as the applicant has not impleaded

Mr. Chan

them as party in the O.A. hence the O.A. is bad for non-joinder of necessary parties. Learned counsel for the respondents cited a Judgment of the Hon'ble Apex Court reported in (1984) *Supreme Court Cases (L&S)* page 704 *Prabodh Verma and others vs. State of Uttar Pradesh and others*. It has been held by the Hon'ble Apex Court that "A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties." In the present O.A., the panel of selected candidates has been challenged and prayer has been made to interpolate the name of the applicant in the panel. Under these circumstances, it is but natural that the persons whose names have found place in the panel will certainly be affected. Their seniority shall also be affected. This objection of the respondents was from earlier in the Counter Reply. It was incumbent upon the applicant to implead the affected persons, as respondents in the O.A. But no such effort was made by the applicant to implead the affected persons as party to the O.A. Learned counsel for the respondents also cited a Judgment of the Hon'ble Apex Court reported in (2009) 1 *Supreme Court Cases (L&S)* page 231 *Suresh vs. Yeotmal District Central Cooperative Bank Limited and another*. It has been held in this Judgment that "the appellant was appointed as Clerk on 14.12.1974 and was confirmed on 21.04.1994. Respondent 2 was appointed as

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Agricultural Development Officer on 26.02.1979 as a direct recruit. He was brought on the select list for the purpose of promotion to the post of Manager in 1994. The appellant's name did not figure in this list. A seniority list was published on 1-4-1995 wherein the name of the applicant figured at Sl. No. 4 whereas the name of Respondent 2 figured at Sl. No. 1. Respondent 2 was promoted as Senior Manager some time around 3-10-1998. The appellant questioned Respondent 2's seniority as well as his entitlement to promotion.

The legal issue involved was whether the appellant could question the seniority list without impleading persons shown senior to him in the seniority list. The High Court held that dispute raised by the appellant was *inter alia* barred by the non-joinder of necessary parties.

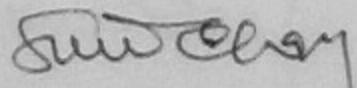
The respondent 1, being a cooperative society, has its own rules and bye-laws. The service rules framed by this society stand approved by the Registrar. The appellant's position in the seniority list published in 1995 was at Sl. No. 4. Those candidates whose names appeared at Sl. Nos. 2 and 3 were not impleaded as parties. In their absence, the dispute could not have been effectively adjudicated. The dispute raised by the appellant before Cooperative Appellate Court was therefore not maintainable."

In this Judgment also the Hon'ble Apex Court held that seniority of the persons, who is not party, cannot be disturbed without impleading him as the respondents.

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6. It has been alleged by the applicant that Mr. Indra Veer Singh whose name found place in the panel at serial No. 6 and Mohd. Sharif whose name found place in the panel at serial No. 4, were not entitled to be empanelled. Regarding Mr. Indra Veer Singh, it has been alleged that Censor entry was recorded in his character roll vide Order dated 24.04.2004 and it has been indicated in the selection chart itself. It has been alleged regarding Mohd. Sharif that he was Junior Booking Clerk in the pay scale of Rs.3200-4900. Under these circumstances, he was admittedly junior to the applicant and no 'Confidential Report' of the employees in the pay scale of Rs.3200-4900 were maintained hence the name of Mohd. Sharif has wrongly been included in the panel. Under these circumstances, inclusion of name of these two persons have specifically been challenged by the applicant but they have not been impleaded as party to this O.A. and it cannot be said that the O.A. is maintainable in spite of the fact that two affected persons are not impleaded as party to the O.A. No effective relief can be granted to the applicant without impleading necessary party to the O.A. Under these circumstances, we ~~are~~  agree with the contention of learned counsel for the respondents that the case is bad for non-joinder of necessary parties.

7. It is an admitted fact that on dated 24.02.2006 a Notification was issued by respondent No. 2 for holding the selection for the post of Guard Goods in the pay scale of Rs.4500-7000/- under 15% Limited Departmental Quota fixed for promotion on the post of Guard Goods. Certain eligibility criteria were laid down in the Notification. The respondents in the



Counter Reply alleged that otherwise eligible persons had been placed on the panel for the post of Guard Goods in accordance with the instructions on the subject. 14 posts of Guard Goods were to be filled vide their Notification dated 24.02.2006. Out of 14 posts, '7' were earmarked as unreserved whereas '3' for SC and '4' for ST candidates were reserved in the pay scale of Rs.4500-7000/-.⁹ In total, 42 eligible candidates ~~were~~ applied, and they were called to appear in the Written Test, which was to be held on 16.07.2006. Out of 42 eligible candidates appeared in the Written Test, only 15 candidates secured prescribed marks vis-à-vis 60% in the Written Test. They were declared for further assessment for empanelment by the Selection Board and finally 10 candidates were declared to fill up the post in order of merits.

8. It has also been alleged by the applicant that after conducting the Written Test, all the candidates who secured requisite marks in the Written Test, ought to have been called for viva voce. But the selection panel was declared without conducting viva voce. It is stated that the respondents committed illegality in not calling the eligible qualified candidates in the Written Examination for viva voce, and outright the respondents prepared a final panel. With regard to this contention of the applicant, the respondents stated that as per instruction of the Railway Board duly circulated by the printed serial No. 12677, final panel was prepared without conducting the viva voce of the eligible candidates of the Written Examination. Inter se seniority was taken into account and on that basis final panel was prepared. Learned counsel for the applicant in that

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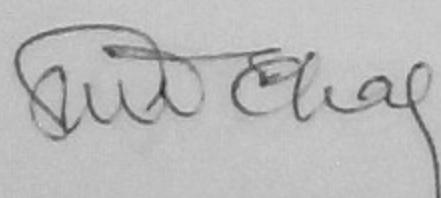
connection argued that this fact was not mentioned in the Notification dated 24.02.2006 requiring the applicant from the eligible candidates to appear in the Limited Departmental 15% Quota for the post of Guard Goods. Under these circumstances, with the help of Circular letter No.12677, the respondents could have not bye-passed the Viva Voce. We have perused the Notification dated 24.02.2006, annexure A-2 of the O.A., in order to draw the inference that in what manner the respondents were required to prepare final selection panel, and whether it was provided in the Notification that after conducting the Written Examination, there will be a viva voce test or the selection panel will be prepared by-passing the viva voce. It has been argued by learned counsel for the applicant ^{that} as after Written Examination of the qualified candidates, no viva voce test was conducted and outright a final selection chart was prepared hence, the selection is not in accordance with law. The respondents' counsel argued that it was not at all required for the respondents to conduct a viva voce test of the qualified candidates of the Written Examination. As per circular letter of the Railway Board, they were entitled to prepare the final selection panel, and after considering the character roll entries and other antecedents of the eligible candidates, a final panel was prepared. Thus, the panel is perfectly in accordance with law. Learned counsel for the applicant has not produced any such provision of the Railway, which provides that after conducting the Written Examination for preparing final selection panel, the respondents are duty bound to call the qualified candidates of Written Examination to face the viva voce. Whereas the circular letter of the Railway Board

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provides that after Written Examination, after perusing the character roll entries, the respondents are authorized and entitled to prepare the final selection panel. It has not been provided in this circular letter that a viva voce is to be conducted after the Written Examination. Under these circumstances, when it is not essential according to Rules to conduct the viva voce prior to preparing the final selection panel, then the respondents are well within their rights to prepare final selection panel dated 10.11.2006.

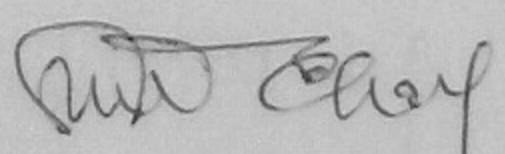
9. Learned counsel for the applicant challenged the validity of the Notification dated 24.02.2006 on the ground that even the employees who were working in Class 'D' were permitted to appear in the selection process along with the applicant, who was working as Senior Booking Clerk

We have perused the annexure-1, notification of the respondents issued for conducting the Limited Departmental Examination in order to fill up 14 posts of Guard Goods in the pay scale of Rs.4500-7000/-. It is a fact that employees working in different capacities with different nomenclatures in the pay scale of Rs.4000-6000/Rs.3050-4590, Rs.4000-6000/Rs.3200-4900 and Rs.4000-6000/Rs.3050-4590 were permitted to participate in the examination process. It is also a fact that the applicant at the relevant time, was working in the scale of Rs.4000-6000, and was posted as Senior Booking Clerk. Learned counsel for the applicant also argued that there are several employees whose name found place in the final selection, were working on Group 'D' post.



Rajendra Sharma, Sandip Bhatnagar, Manoj Kumar Tyagi were working as Cabinman-a Group 'D' post, and placed at serial No. 1 to 3 of the panel; Mohd. Sharif - a Booking Clerk of Group 'C' post placed at serial No. 6 of the final selection panel; and Tej Pal Giri, Nand Ram and Satya Pal Meena were also Cabin Man- a Group 'D' post, whose names found place at serial No. 7 to 9 in the panel. The applicant being Senior Booking Clerk was ranked senior from all these seven persons. The persons who are working in Group 'D' i.e. as Cabin Man, Points Man are firstly to be promoted as Junior Booking Clerk, and then they are to be promoted as Senior Booking Clerk. It is alleged that these persons of Group 'D' had wrongly been permitted to participate in the selection process. But, in all other circumstances, as the applicant was working at the relevant time on a higher post than these employees, then the applicant due to his seniority and due to his work on the senior post, ought to have been placed above these persons, and on this ground also the applicant's name ought to have been included in the final selection panel.

11. Firstly, it will be material to mention that applicant by placing reliance on the Notification dated 24.02.2006 participated in the selection process for selection of Guard Goods in the scale of Rs.4500-7000. He was fully acquainted and aware of the fact that the persons who are working in the lower scale and on lower post, had also been made eligible to appear in the selection process. The applicant was working as Senior Booking Clerk in the pay scale of Rs.4000-6000. But Booking Clerk working in the scale of Rs.3200-4900, Shunting Jamadar in the scale of Rs.4000-



6000, Switchman/Cabin Man in the scale of Rs.4000-6000/Rs.3050/4590, Liver man/Kantewala working in the scale of Rs.3050-4590/-, Assistant Guard working in the scale of Rs.4000-6000/Rs.3050-4590 were also permitted to participate. It means they were eligible to participate in the selection process. It is also undisputed fact that those who appeared in the selection process, and also participated in the Written Examination, then it is immaterial that they are senior or they are working on a higher post. But, all were to be equated equally and on the basis of Written Examination, and after assessment of Annual Character Roll etc., a final panel is to be prepared. Now, it does not lie in the mouth of the applicant to challenge the validity of this Notification dated 24.02.2006 on the ground that the persons of lower scale working on lower post were illegally permitted to appear in the selection process. For conducting Limited Departmental Examination in the scale of Rs.4500-7000/-, employees of different groups, scales and grades were permitted to appear and they were held eligible to appear. Under these circumstances, as the applicant participated in the selection process and has not claimed any relief for adjudging the Notification dated 24.02.2006 as null and void on this ground, argument of learned counsel for the applicant is not tenable to that effect, and it will be presumed that as applicant in pursuance to the Notification participated in the selection process, hence he cannot dispute the validity of the selection process.

12. It has also been argued by learned counsel for the applicant that preparation of panel for selection cannot be the sole basis for

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inter se seniority, as alleged by the respondents in the Counter Reply. In this context, Rule 219 (g) of the Indian Railway Establishment Manual, Volume I is relevant, wherein it is mentioned that "*Selection should be made primarily on the basis of overall merit, but for the guidance of Selection Board the factors to be taken into account and their relative weight are laid down below.*" It has been provided in this Section that after conducting the Written Test, candidate must be called for viva voce, and in order to call the candidates for viva voce, there must be a Written Test. It is further mentioned that 60% of the total marks prescribed for Written Examination, and for seniority also the basis is to call the candidates for viva voce test instead of 60% of the marks for the Written Examination. It is stated by the applicant's counsel that in view of the aforesaid Section, the respondents must call the eligible candidates of the Written Examination for viva voce. But, as we have stated above, that in view of Circular letter No. 12677, the viva voce was dispensed with. Hence, under these circumstances, the circular letter issued by the Railway Board superseded the above Section 219 (g), and the respondents are within their rights not to call the eligible candidates of the Written Test for Viva Voce.

13. It has also been argued by learned counsel for the applicant that vide Notification dated 24.02.2006, 14 posts were to be filled up of Guard Goods in the pay scale of Rs.4500-7000/-, and out of these 14 posts, 7 were earmarked for general candidates, 4 for Scheduled Tribe and 3 for Scheduled Caste, and the respondents

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have committed gross illegality in reserving seats or posts for SC and ST category and the Notification of 24.02.2006 is in valid on this score also. In support of his argument, learned counsel for the applicant cited a Judgment of the Hon'ble Apex Court reported in (2007) 1 UPLBEC page 129 *M. Nagaraj and others vs. Union of India and others*. The Hon'ble Apex Court held that "*The State is not bound to make reservation for SC/ST in matter of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.*" In pursuance of the Judgment of Hon'ble Apex Court, learned counsel for the applicant argued that there was no justification for the respondents to reserve 3 and 4 posts for SC and ST categories respectively. In case they have to reserve the post for that category, then the respondents were required to collect the data showing the backwardness of the class and inadequacy of backwardness of that class. In this connection, it will be material to mention that it has been provided in the notification dated 24.02.2006 that the posts have been reserved for SC and ST category, and in spite of this fact, the Notification dated 24.02.2006 has not been challenged on that ground. In this connection, the notification annexure-4 dated 13.06.2006 is also material. Vide Notification dated 24.02.2006

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only the posts were advertised but in the subsequent Notification dated 13.06.2006 posts were earmarked. The examination was to be convened on 16.07.2006 and in that selection for the post of 14 candidates, 7 were earmarked for general candidates, and 3 for SC and 4 for ST candidates. Even this Notification dated 13.06.2006 has not been challenged and placing reliance on this Notification, applicant participated in the selection process. In the O.A. also, not a single word has been alleged that reservation of seat was violative of provisions of the Indian Constitution, and no relief has been claimed for adjudging the notification dated 13.06.2006 as null and void. Now, the applicant is not entitled to challenge the validity of the Notification only during arguments. On the basis of the Written Examination, following selection chart was prepared of 15 candidates, which is being shown in this Order in two parts: -

**SELECTION CHART OF GUARD GOODS IN
GR. 4500-7000 AGAINST 15% LDCE QUATA**

Page No.1
Total No. of vacancy 14
Reserved post SC 03 ST 04, UR
07

1	2	3	4	5	6	7
S. No	Name of Employee S/Shri	Design. & sin.	Whether SC/ST	BOB	DOA	Wkg in present Gr. & Dt.
1.	Inderveer Singh	STE/MB	-	10.11.76	01.07.94	4000-6000 10.12.99
2	Hussain Ali Khan	Sr. TNC/MB	--	01.06.67	27.08.90	4000-6000 25.09.01
3.	Satpal Meena	CM/TI-MB	ST	05.07.66	30.09.89	4000-6000 06.08.02
4.	Rajendra Sharma	CM/HRH	-	13.07.73	31.12.94	4000-6000 31.01.03
5.	Ajay Singh	CM/RAC	--	28.05.75	10.02.95	4000-6000 31.01.02
6.	Sandeep Bhatnagar	CM/SAR	--	26.12.66	24.01.90	4000-6000 04.08.02
7.	Nand Ram	CM/BTRA	SC	10.03.74	04.02.97	4000-6000 14.08.02
8.	Sarveer Singh	CM/DLF	--	10.07.74	23.09.97	4000-6000 26.02.02
9.	Jaswant Singh	SPC/HPU	SC	15.04.80	19.08.98	4000-6000 26.02.02
10.	Tejpal Giri	CM/RSI	--	01.08.81	14.07.02	4000-6000 14.03.02
11	Mukesh Kumar	SCC/SPN	--	15.12.80	31.12.98	4000-6000 18.03.02
12.	Anwar Shah Khan	SEC/MB	--	18.06.72	20.04.98	4000-6000 7.10.02
13	Manoj Kr. Tyagi	CM/MZM	--	13.01.67	04.06.97	4000-6000

Swapan

						06.12.05
14.	Mohd. Sarif	BC/MB	--	07.09.72	14.08.93	4000-6000 22.04.00
15	Samay Verma	PM/DDN	--	/2/79	04.08.98	4000-6000 01.05.05

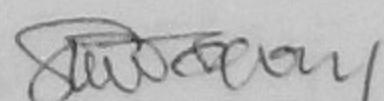
8	9	10	11	12	13	14
Quali.	Commadation of last 3 year	Punish for last 03 year	Profesi- onal ability MM 50	Record of service -30	Total marks 80	Remarks
-- BA	--	sop 02 sET pASS DT. 21.07.04 censure dt. 24.04.04	35	18- 2=16	51	6 UR
BA	--	--	32.5	20	52.5	5 UR
BA	--	WIT 05 months dt. 07.02.05	30	20- 1=19	49	1 ST
BA	--	--	36.5	22	58.5	1 UR
BA	--	--	30	18	48	
MA	--	--	37	20	57	2 UR
BA	--	--	30	20	50	1SC
BA	--	SOP 01 Set Pass dt. 10.07.03 SOP- 01 set dt. 03.12.03 WIT 05 months dt. 31.05.05	30	12-3=9	29	
MA	--	WIT 06 months dt. 13.01.04	32	18- 1=17	49	2SC
BA	--	--	31	20	51	7 UR
MA	--	--	30	18	48	
BA	--	Censure dt. 15.06.05	34	18- 1=17	51	
MA	--	--	39	18	57	3 UR
BA	--	--	35	18	53	4 UR
BA	--	--	30.5	18	48.5	

No D& AR proceeding case is pending against above employees
it is confirmed that above names are in order in seniority.

It is evident that from perusal of the above selection chart, three persons namely S/Sri Indra Vir Singh, Tej Pal Giri, and the applicant secured 51 marks, and Indra Vir Singh and Tej Pal Giri were selected. Learned counsel for the applicant argued that as the applicant was holding a senior post of Senior Booking Clerk whereas Tej Pal Giri and Indra Vir Singh were working on the lower post, then the applicant ought to have been selected. Much has been argued by learned counsel for the applicant that what are the options for the department concerned in case more than one person secured equal marks. According to the applicant's counsel, preference must be given to the person who is working on a senior post in a senior scale and as the applicant was

Subh Verma

working as a Senior Booking Clerk in the pay scale of Rs.4000-6000, then the applicant ought to have been selected in comparison to the persons who were working on Group 'D' posts. It is a fact that the applicant was working on a higher post in a higher scale in comparison to Indra Vir Singh and Tej Pal Giri. We have already commented regarding eligibility of the persons of different cadre, different groups and different in the selection process and vide Notification dated 24.02.2006 even the employees who were working on lower scale, were permitted to participate in the examination conducted in pursuance to the Notification dated 24.02.2006. Hence, this argument is irrelevant that in case more than one person secured equal marks, then the person who was holding a senior post, must be given preference. Learned counsel for the respondents in this connection has placed reliance on the Railway Board's letter R.B.E. No. 203 of 2001, as most relevant. It has been provided in this Railway Board's letter that "*the matter has been carefully considered by the Board and it has been decided that if two or more candidates secure equal marks in the aggregate (Written test + Viva Voce test + Record of Service) in limited departmental competitive examination for promotion to Group 'B' posts against 30% quota, then their relative merit position for the purpose of their empanelment may be determined on the basis of their relative seniority in the feeder grade (s). The candidate who is senior shall rank higher.*" According to this Railway Board's letter, in case two persons secured equal marks, then the person who is senior in the feeder cadre will be empanelled. It is a fact that 'Anwar Shah Khan-applicant was working as Senior Booking Clerk on a higher post,



and higher scale but the feeder cadre of the applicant is of 07th October 2002, whereas Tej Pal Giri joined the service on 14.03.2002 and Mr. Indra Vir Singh joined the service on 10.12.1999. The feeder cadre of both these employees Indra Vir Singh and Tej Pal Giri is earlier to the feeder cadre of the applicant, and as per rules of the Circular letter of the Railway Board, preference is to be given to the persons who are senior in the feeder cadre. Under these circumstances, we disagree with the arguments of learned counsel for the applicant that in case securing equal marks by more than one person, then the preference must be given to the person who are senior and that as the applicant was working on a higher post in the scale of Rs.4000-6000/- in comparison to Tej Pal Giri, then the preference ought to have been given to the applicant. But the feeder cadre of these two employees were earlier to the applicant hence the respondents are justified in view of Railway Board's letter in giving preference to these two employees in comparison to the applicant. Learned counsel for the applicant could not produce any Judgment on this point that a preference ought to have been given to a person who is holding a higher post in case more than one person secured equal marks.

14. Learned counsel for the applicant also argued that there are some other employees, who secured lesser marks to the applicant. Satyapal Meena secured total '49' marks, Nand Ram '50' marks, and Jaswant Singh secured '49' marks but in spite of securing lesser marks, they were selected. We have stated above that in the Notification dated 13.06.2006, 3 posts were reserved

W.S. Biju

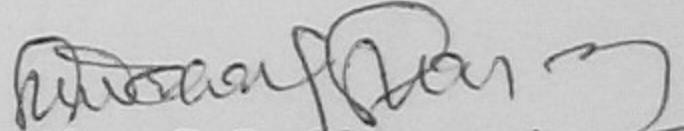
for SC and 4 for ST candidates. Satyapal Meena belongs to ST category, whereas Nand Ram and Jaswant Singh belong to SC category, and there was no competition of the applicant with the candidates who belong to SC and ST category, and regarding unreserved candidates, we have stated that the employees, who belong to senior feeder cadre, shall be given preference in case securing equal marks. Under these circumstances, we disagree with the arguments of learned counsel for the applicant.

15. For the reasons mentioned above, we are of the opinion that the panel prepared by the respondents is perfectly in accordance with the Rules of the Railway. There appears no illegality or irregularity in preparation of the final selection panel. O.A. lacks merits, and it is liable to be dismissed.

16. O.A. is dismissed with no order as to costs.


(D.C. Lakha)
Member (A)

/M.M/


(Justice S.C. Sharma)
Member (1)