

Reserved
(On 09.09.2016)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 29 day of September 2016

Original Application No. 942 of 2007

Hon'ble Dr. Murtaza Ali, Member – J
Hon'ble Ms. Nita Chowdhury, Member – A

K.S. Meena aged about 40 years son of Shri Nanag Ram Meena
presently working as Depot Stores Supdt. I, N.C. Railway under
Sr. MM (D) Diesel, N.C. Railway, Jhansi r/o M.A. 588-A, Railway
Colony, Jhansi.

... Applicant

By Adv: Shri Sudama Ram.

VERSUS

1. Union of India through the General Manager, North Central Railway, Headquarters Office, Allahabad.
2. General Manager, North Central Railway, Headquarters Office, Allahabad.
3. Chief Personnel Officer, North Central Railway, Headquarters Office, Allahabad.
4. Chief Material Manager/COS, North Central Railway, Headquarters Office, Allahabad.
5. Secretary (Estt.) Railway Board, Rail Bhavan, New Delhi-1.

... Respondents

By Adv: Shri Ravi Ranjan.

ORDER

Delivered by Hon'ble Ms. Nita Chowdhury, Member – A

The present OA has been filed under Section 19 of the
Administrative Tribunals Act, 1985 with the following reliefs:

"(i). The Hon'ble Tribunal may graciously be pleased to quash the impugned order dated 23.02.2007 (Communicated vide letter dated 17.03.2007) (Annexure A-2) and direct the respondents to include/interpolate the name of the applicant in provisional panel of AMM Group 'B' declared vide letter dated 13.12.2006 (Annexure A-1) against one unfilled and existing vacancy of S.T. quota under relaxed standard.

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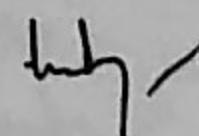
(ii). The Hon'ble Tribunal may further be pleased to partially quash the contents of letters dated 3/4.7.2007 to the extent awarded marks by the DPC under heads 'record of service' and 'viva voce' (Annexure A-3) and further partially quash the contents of para 6 of the Railway Board's letter dated 13.11.1992 i.e. "this is, however, subject to the condition that they will secure the same qualifying marks in record of service" (Annexure A-4)

(iii). The Hon'ble Tribunal may further be pleased to direct the respondents to give all the consequential benefits of service, pay fixation, arrears of pay etc. with retrospective effect from 13.12.2006 i.e. from the date of issue of the provisional panel of AMM Group 'B' dated 13.12.2006 (Annexure A-1).

(iv) Any other writ or order of direction which the Hon'ble Tribunal deems fit and proper in the circumstances of the case may also kindly be issued in the interest of justice.

(v) Cost of the Application may also be awarded."

2. The brief facts of the case as narrated by the counsel for the applicant are that the applicant was working as Depot Stores Keeper Grade II Rs. 5500-9000. Notification dated 16.6.2006 was issued for filling up 14 posts including 2 SC and 1 ST post of AMM Group 'B' by selection. Name of the applicant was included in the eligibility list and he appeared in the said selection and result of written test was declared on 01.11.2006 and applicant was found successful in written test with general standard. Applicant appeared in the viva voce held on 12.12.2006. A panel of 11 candidates was declared for the post of AMM in which name of the applicant was not found even against the S.T. quota with relaxed standard. Applicant represented to CPO/NCR/Allahabad to consider his case, while even though he was undergoing a penalty proceeding during this period and his appeal against the same was pending. He also



requested that he be considered for promotion against the ST Quota either with relaxed standard or under scheme of "Best Amongst Failures". Applicant represented again to CPO/Allahabad that he was the only ST candidate to be considered against one vacancy. Respondents finally replied that he could not be placed on the panel as he was not found fit. He was not considered even under relaxed standard or best amongst failure scheme on the plea that applicant could not secure 15 out of 25 marks under the head "record of service" which was the minimum standard needed for being considered for this post. This is contrary to the existing instructions of the Railway Board's circulars. Applicant represented and sought information through RTI Act. Respondents communicated the marks awarded to the applicant under various heads in the aforesaid selection. Marks awarded against heads 'record of service' and 'viva voce' were arbitrary and respondents' deliberately awarded low marks against the norms set by the Railway Board. Since, action of the respondents is arbitrary, illegal and contrary to rules and law, this Original Application was filed before this Hon'ble Tribunal for sake of justice.

3. It is submitted that applicant was the only ST candidate who was declared successful in the written test on general standard merit. In case, applicant was not eligible to be placed with over all performance with general standard, he was entitled to be placed on the provisional panel with relaxed standard. The post of AMM (Group B) is a non safety category post. An SC/ST employee a candidate obtaining 25 out 50 marks for professional ability and aggregate of 43 marks out of 85 (excluding 15 marks

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for seniority) would be eligible for empanelment as per policy of Railway Board. As per policy of the Railway Board, applicant should have been placed against the reserved ST post for AMM (Group 'B') posts.

4. The G.M. (P), North Central Railway, Allahabad vide his letter dated 17.5.2007 replied to applicant through the PRO & APIO/Allahabad that the applicant was not found suitable for selection of AMM as he has not obtained minimum marks in "Record of Service" i.e. 15 marks out of 25 marks as per instructions of the Railway Board's letter No. E(GP)/88/2/111 dated 20.8.1991. However, copy of the said Railway Board's letter was not communicated to the applicant with the said letter dated 17.5.2007 which was communicated by the PRO & APIO/Allahabad vide letter dated 17.5.2007.

5. The applicant again represented to the General Manager, North Central Railway, Allahabad that complete information asked for about selection of AMM relating to the applicant was not being supplied to him. Finally, General Manager (P), North Central Railway, Allahabad communicated the impugned reply vide letter No. 797-E/U ma Re/RTI Act/KSM/56 dated 3.7.2007 in which he disclosed the marks obtained by the applicant in various heads as under:-

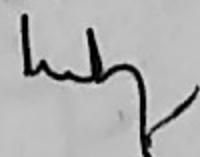
No.	Particulars	Total Marks	Marks obtained
1	Written test	150	90
2	Records of service	25	11.5
3	Viva voce	25	8
Total		200	118.5

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From the marks awarded above by the selection committee, it is revealed that the marks awarded under heads "record of service" and "viva voce" were extremely low from the set norms and criterion for awarding marks under these heads was not even followed deliberately and violated the circulars No. E (NG) I-86/CR/4 dated 23.2.1988, E(GP) 87/2/123 dated 19.9.1988 and 29.9.1988. It is mentionable here that no adverse Confidential Reports of the relevant last five years was communicated to the applicant as such awarding less marks to the applicant was deliberate and contrary to the set norms for awarding marks.

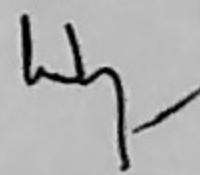
6. It was communicated in the aforesaid impugned reply dated 3.7.2007 that the applicant could not be placed in the provisional panel as applicant could not secure the minimum marks in "Records of Service" where as in terms of Railway Board's letter No. E(GP)/88/2/111 dated 20.08.1991 and 92/E(SCT) I/25/12 dated 13.11.1992 he was required to obtain 15 out of 25 marks. These instructions could not be made applicable in case of SC/ST candidates for placing them in "relaxed standard" or placing them under the policy of "Best amongst Failed" candidates. It is submitted that the aforesaid Railway Board's letters are repugnant to the general policy of relaxation to the SC/ST candidates.

7. It is clear that the respondents are applying wrongly the said policy of minimum marks under the head "Records of Service" to SC/ST candidates under relaxed standard in order to



deprive the applicant from being placed in the panel of AMM (Group B) even under the "Policy of Best amongst Failed" candidates. Therefore, the aforesaid circulars of the Railway Board dated 20.08.1991 and 13.11.1992 are inapplicable in the case of the applicant and are also liable to be set aside to the extent it is repugnant and contrary to the general principles of relaxation of reservation policy as per instructions laid down by the Railway Board time to time vide their letters.

8. Further it was said by the counsel for the applicant that the General Manager (P), North Central Railway, Allahabad vide their letter dated 20.12.2006 while issuing posting order of AMMs (Group B) 70% quota, promoted one Shri Daulat Ram (SC) as Asstt. Material Manager (Group B) against unfilled vacancy of ST category on ad-hoc basis for six months in-service training under the scheme of "Best amongst the Failures" in terms of Railway Board's letter No. 88-E/(SCT) I/23/I dated 8.5.1989 and 97-E/(SCT)I/49/14/Pt. dated 7.7.2000. It shows that Shri Daulat Ram would be placed on the panel of AMM (Group B) on successful completion of 6 months of in-service training though he could not secure even 50% of total marks to be placed against the scheduled quota vacancy with relaxed standard. Shri Daulat Ram was promoted on ad-hoc basis against SC vacancy under the scheme of best amongst the failures despite having obtained less than 50% marks. It is submitted that the applicant was not even considered against the unfilled one vacancy of ST after panel dated 13.12.2006, which required only getting more than 50% marks for non-safety post of ACOS (Group B) and further not considered under 'Best Amongst



Failures Scheme' even after having secured 59.25% marks in total, in written test, viva voce, record of service and also in aggregate for selection in Group 'B' service in Non-safety category post as per policy, vide the Railway Board's letter No. 91-E(SCT) I/46/I dated 16.11.2006. The benefit of this policy was applied in Shri Daulat Ram's case but not in applicant's case. Therefore, applicant was discriminated and denied promotion arbitrarily by not extending at least similar treatment as given to Shri Daulat Ram (SC) under the 'Best Amongst Failures Scheme'. Shri Daulat Ram was placed on provisional panel vide office order dated 20.12.2006.

9. The respondent's in their reply and arguments, CA and again in reply to the rejoinder reply say that "Railway Board Circular/letter No. 92/E(SCT) I/25/12 dated 13.11.1992 lays down as given below the rules for selection of SC/ST candidates:-

Sub: Relaxation of qualifying marks for Sch. Case/Sch. Tribe-candidates in selections/LDCE for promotion to Group 'B' posts.

Ref: Board's letter Nos.

- (i) 81E/(SCT)/15/26 dt. 23.3.1981
- (ii) 82E (SCT)/41/6 dt. 15.11.1983
- (iii) E (GP)/88/2/111 dt. 20.8.1991.

In terms of the extant orders contained in Board's letters quoted above, lower qualifying standards for SC/ST candidates for promotion to Group 'B' posts falling under 'non-safety' categories have been provided so as to ensure that adequate number of candidates from these communities qualify in the selections/LDCE against reserved vacancies.

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2. Consequent upon the rationalization of selection procedure affected in the Board's letter referred to.

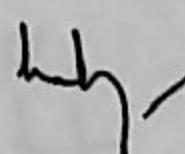
(iii) above and, in particular, the combining of qualifying marks for the candidates of 'Record of Service' and viva-voce, some of the Railways have sought clarifications regarding applicability of relaxations provided for SC/ST candidates in the Board's orders dt. 23.3.1981 and 15.11.1983. It is clarified that there is no intention to withdraw or curtail the relaxations already provided to the SC/ST candidates in the selections as well as LDCE.

3. For selection, the existing scheme of promoting "Best amongst the failed candidates" continues in force. In so far as LDCE is concerned the qualifying marks for SC/ST candidates for non-safety categories will continue to be 3/5th of the qualifying marks prescribed for general community candidates in each individual paper.

4. The above relaxation for SC/ST candidates were equally apply in respect of prequalifying test for LDCE in non-safety categories. In other words, the prequalifying marks for SC/ST candidates would be 3/5 of the marks prescribed for the general candidates.

5. Pre-qualifying test currently in progress or already concluded otherwise than in accordance with Para 4 above need not to be disturbed.

6. As regards viva-voce and 'Record of services', since the qualifying marks to be reckoned for the two processes together the SC/ST candidates are now required to secure at least 18 marks therein as against 80 marks prescribed for general community candidates. This is, however, subject to the condition that they will secure the same qualifying marks in 'Record of Service' as prescribed for general community candidates i.e. 15 as provided in Board's letter dt. 20.8.1991 referred to above.



7. It may please be noted that the relaxations enumerated above have been provided only to enable sufficient candidates to qualify against posts reserved for SC/ST candidates and falling under 'non-safety categories'.

10. Counsel for the respondents also submitted that as per instructions contained in Railway Board's letter No. 92/E (SCT) I/25/12 dated 13.11.1992, there is no relaxation in the marks for SC and ST community employees under the Head, "record of service" and the reserved community employees also have to secure 15 marks in "record of service" out of 25 marks. Since the applicant has not secured 15 marks under the Head, "record of service" he could not be promoted to the post of AMM on ad-hoc basis as the minimum marks under head "Record of Service" is the basic requirement for promotion.

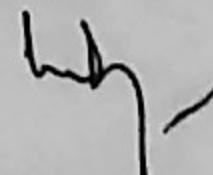
11. Heard both the parties and perused the records of this OA. The contention in the matter under dispute in this OA relates to the method and mode and criterion in selection of SC/ST candidates especially selection under the head of "Record of Service" under the category of 'Best among the failed'. It is the contention of the applicant that the Railway Board could not have put the condition that anybody who did not obtain a minimum 15 out of 25 marks under the head "records of service" could not be placed under the panel for promotion. This minimum criterion 15 out of 25 marks under the head "records of service" must be obtained by all persons including general community candidates before further marks obtained by them in the test, interview etc. are taken into account. The contention of

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the applicant that he was left out of being considered of promotion simply because he had less than total 15 out of 25 marks under the head "records of service" does not stand scrutiny as per Railway Board's prescribed rules.

12. Further the assessment of marks reflected in ACRs (Annual Confidential Reports) of the applicant Shri K.S. Meena has been done as per guidelines contained in Railway Board's letter No. P(GP)87/2/123 dated 19.9.1988 and letter No. 92/E (SCT)I/25/12 dated 13.11.1992. Shri Meena has not obtained minimum qualifying marks i.e. 15 out of 25 in the Head, "Record of Service". As such he could not be placed on the provisional panel for the post AMM (Group B) grade Rs. 7500-12000 (RSRP) against 70% promotion quota. Further, he obtained less than minimum qualifying marks in the record of services, so he could not be promoted as AMM (ad-hoc) under the scheme of "best amongst the failed.

13. As far as the claim of the applicant for quashing of the Railway Board's letter dated 13.11.1992 in which the rules for a minimum of 15 out of 25 marks have been made mandatory qualifying marks under the head of 'record of service' is concerned the applicant alleges that he is a Scheduled Tribe candidate and this condition should not be applied on him. On examination it was found that this minimum qualifying marks have been uniformly laid down for all categories of employees with the intention that all persons claiming a promotion post should at least have minimum qualifying marks in the category of 'record of service'. We do not find any discrimination against any



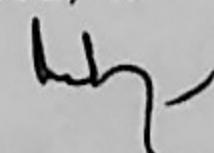
employee and find no reason to strike down the Railway rules which are equally applied to all those considered against promotion quota. No category of employee is discriminated against under Article 14, hence, this relief in this OA is denied.

14. Further the OA impugned the selection of another candidate from scheduled caste category i.e. Shri Daulat Ram who was given the benefit under the "best amongst the failed" category and was placed on the provisional panel vide office order dated 20.12.2006. The "best amongst the failed" Scheme as per existing rules provides as under:-

11.5.5.1 POLICY OF 'BEST AMONG FAILED'

(a) *In non-safety categories if the requisite number of Scheduled Caste/Scheduled Tribe candidates are not empanelled, the best among the failed candidates should be earmarked for placing on the panel against reserved vacancies. They should be promoted on adhoc basis for six months. During the six month period they should be given all facilities for improving their knowledge and coming up to the requisite standard. At the end of the six months period a decision has to be taken by the competent authority for inclusion of their names in the panel or otherwise."*

15. The provisional promotion given to another candidate i.e. Shri Daulat Ram is found to be as per the provision of the "Best amongst failed scheme" which itself provides for ad-hoc promotion to this category, so that within a period of six months they can improve their knowledge and come up to the required requisite standard. The scheme itself provides that at the end of the period of the ad-hoc promotion i.e. six months period, a



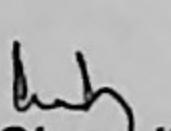
decision has to be taken by the Competent Authority for the inclusion of their names in the panel or otherwise. The respondents have acted as per their rules and they are fully entitled to do so.

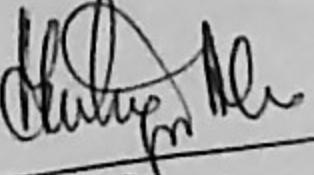
16. No grounds for grant of prayer of the applicant to give direction to the respondents to give him consequential benefits of service, pay fixation, arrears of pay with retrospective effect is made out and accordingly it is denied.

17. Hence, we do not find any violation of Rules in this matter and no case for relief is made out and this O.A is liable to the dismissed.

18. In view of the above, the O.A. is dismissed.

19. No order as to costs.


(Ms Nita Chowdhury)
Member (A)


(Dr. Murtaza Ali)
Member (J)

/SS/