

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/325/93

01-01-2001

Date of Decision : 12.2000

Shri Khodabhai Lavjibhai Vala : Petitioner (s)

Mr. B.B. Gogia : Advocate for the petitioner [s]

Versus

Union of India & Ors. : Respondents [s]

Mr. N.S. Shevde : Advocate for the Respondent [s]

CORAM :

THE HON'BLE MR. P.C.KANNAN : **MEMBER (J)**

THE HON'BLE MR. G.C. SRIVASTAVA: **MEMBER (A)**

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

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Shri Khodabhai Lavjibhai Vala,
Hindu, Adult, Aged about 42 years,
Occupation : Service,
Railway Quarter No. 20 T/D,
Jetalsar Junction,
Jetpur Daluka,
Rajkot - District.
(Advocate : Mr. B.B. Gogia)

: Applicant.

Versus

1. Union of India,
Owning and representing,
Western Railway,
Through General Manager,
Western Railway,
Churchgate,
Mumbai-400 020.
2. Divisional Railway Manager,
Western Railway,
Bhavnagar Division,
Bhavnagarpara.
(Advocate : Mr. R.M. Vin)

: Respondents.

JUDGMENT
OA/325/93

Date : 01-01-2001

PER : HON'BLE MR. G.C. SRIVASTAVA : MEMBER (A)

The applicant who is working as a Pointsman-B in the scale of Rs.
825-1150/- (RP) under the respondents is aggrieved against their order dated

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16/17.11.92 reverting him from the post of Asstt. guard in the scale of Rs. 950-1400 (RP) to Pointsman-B and seeks the following reliefs :-

A) It may kindly be declared that the reversion order, reverting the applicant from the post of Asstt. Guard in scale of Rs. 950-1400 (RP) to Pointsman B in scale of Rs. 800-1150 (RP) produced as Annexure A/7 is illegal, ineffective, null and void and the same may please be quashed and set aside with declaration that the applicant continues to be in the post of Asstt. Guard with all consequential benefits, as if no such orders at Annexure A/7 have been passed.

B) It may be declared that the applicant is entitled to be promoted on adhoc basis for a period of 6 months as per the Railway Board Circular dated 31.8.74 and his case is to be processed accordingly against the deficient reserve post which was due on account of fraction above 0.5. in the cadre of Assistant Guard i.e. the selection as notified on 2.8.91 No. ET/1025/38 Vol. V and the panel No. ET/1025/36/of 28.10.93 and if he is successful after review of six months promotion, is entitled to be placed on the panel dated 28.10.93 No. ET. 1025/36 issued by the DRM Bhavnagarpara.

C) The cost of the application may kindly be granted to the applicant.

2. According to the applicant, the respondents invited applications from willing employees for promotion to the post of Assistant Guard in the scale of Rs.950-1400 (RP) (Annexure A/1). He submitted his application for the said post and was found eligible to appear in the written test vide notification dated 15.6.1988 (Annexure A/2). He qualified in the written test and was called for the viva voce test vide respondent's letter dated 7.9.1989 (Annexure A/3) However, when the result of selection was notified vide

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notification dated 21.12.89 (Annexure A/4) his name did not figure in the panel. According to the applicant he and three others were given adhoc promotion considering the result of the aforesaid written test vide respondents letter dated 6.2.91 (Annexure A/5). Subsequently, another selection was held and though the applicant appeared in the written test, he did not qualify in the written test and hence his name did not appear in the list notified vide respondent's letter dated 10/14.9.1992. However, the respondents finalised the panel after viva voce test notified vide letter dated 28.10.1992 (Annexure A/6). The applicant contends that subsequent to the finalisation of the panel, he was reverted from the post of Asstt. Guard to the post of Pointsman-B vide respondent's memo dated 16/17.11.1992 (Annexure A/7). According to him, his reversion is contrary to the instructions of the Railway Board in respect of SC/ST candidates as contemplated in the Boards letter dated 31.8.74. He contends that as against 19 posts of Asstt. Guard in Bhavnagar Division 15% of these posts are required to be filled in by S.C candidates, which comes to $2.85 = 3$. As against these three posts meant for SC candidates, there are only 2 S/C candidates and therefore one post is still left to be filled up. He contends that he should have been allowed to continue as Asstt. Guard and not reverted. He also refers to Railway Board's letter dated 10.7.1990 circulated by General Manager vide letter dated 16.10.92, according to which, while working out the reservation quota for SC/ST on percentage basis, the fraction 0.5 and above is to be rounded off to "one" and the fraction less than 0.5 is to be ignored and applying these instructions the applicant would have continued in the post of Asstt. Guard and not reverted.

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3. In reply, the respondents have stated that the applicant failed to qualify himself in the selection and therefore his name does not figure in the panel. According to them, as per the order dated 6.2.91 arrangement for promotion of S.C/S.T candidates is purely on adhoc basis and will cease as soon as empanelled candidates become available. The applicant had applied for selection as per the list of eligible staff called for the subsequent written test vide order dated 25.2.92, but he failed in the written test and therefore, the question of continuing the applicant on adhoc post of Asstt. Guard does not arise and he has been correctly reverted to his substantive position. As far as the panel prepared in 1989 is concerned, there were one S.C and S.T candidate and as such the question of applying relaxed standards in terms of Railway board letter dated 31.8.1974 does not arise. As regards subsequent selection notified vide order dated 2.8.91, there were 24 posts i.e. 15% reservation posts come to 3.60 which means 3 reservation posts. Since 3 S.C employees are already working there was no further requirement of S.C employees as can be seen from notification dated 2.8.91 (Annexure R)

4. We have heard Mr. B.B. Gogia and Mr. R.M. Vin, learned counsels for the applicant and respondents respectively and have gone through the pleadings and documents on record. The main contention of the applicant is that in terms of Railway board letter dated 10.7.90 circulated vide G.M. letter dated 16.10.92 while working out the reservation quota for SC/ST on percentage basis, the fraction of 0.5. and above may be rounded off to one and the fraction less than 0.5. may be ignored and applying this method 15% reservation would have come to 3.60 rounded off to 4 thus leaving vacancy of one unfilled reserved quota against which the applicant was eligible to be

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considered. It is, however, seen that the applicant is claiming consideration against the unfilled vacancy in reserved category with reference to filling up of vacancies for the panel notified vide respondent's letter dated 28.10.92 for which according to his own admission he failed in written test and therefore was not allowed to appear in the viva voce test held before finalising the said panel. Since he did not qualify in the written test and did not come upto the stage of viva voce test, the question of considering him for adhoc promotion in terms of Railway board's letter dated 31.8.74 does not arise. As far as the adhoc promotion given to the applicant vide letter dated 6.2.91 is concerned, we find that this promotion has been given purely as an adhoc measure pending preparation of a new panel apparently in terms of the relaxed standard as envisaged in the board's letter dated 31.8.74 as he qualified in the written test for the earlier selection notified vide letter dated 1.3.88. However, in the subsequent selection for the new panel, he failed in the written test and hence he can not claim adhoc promotion on the basis of the relaxed standard. Moreover, the clarification regarding the method of computing vacancy in the reserved quota on percentage basis as contained in the letter dated 10.7.90 is effective from the date of issue and as such the benefit of this letter can not be extended to the applicant who qualified in the written test in the earlier selection for which vacancies were notified vide letter dated 1.3.88 and panel prepared vide letter dated 21.12.1989.

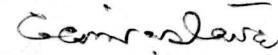
5. In the light of the above we are of the considered view that pending finalisation of a fresh panel, the applicant was given adhoc promotion based on his level of performance in the written test in earlier

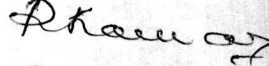
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selection notified vide letter dated 1.3.88 and this adhoc arrangement was discontinued as soon as a fresh panel was notified on 28.10.92. The fact that the applicant continued on adhoc promotion from 6.2.91 upto the time new panel was notified vide letter dated 28.10.92 clearly shows that he was allowed to function as an Asstt. Guard on adhoc basis till such time regularly selected candidates were available after preparation of the new panel. We find that the order of adhoc promotion of the applicant clearly stipulates that this would cease as soon as empanelled candidate is available and this would not confer any claim or right to the post or scale on the applicant over their seniors and this would not mean that they are on the panel of the Asstt. Guard. In view of this we do not find any fault with the action of the respondents in terminating the temporary arrangement of giving adhoc promotion of the applicant on availability of regularly selected candidate after preparation of the new panel.

6. In the facts and circumstances of the case, we find that the O.A. is devoid of any merit and deserves to be rejected. We accordingly reject the O.A. with no order as to costs.


(G.C. Srivastava)
Member (A)


(P.C. Kannan)
Member (A)

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APPLICANT (S)

VERSUS

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RESPONDENT (S)

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Certified that the file is complete in all aspects.

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Signature of S.O. (R)



Signature of Dealing
Hand.