

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A 512 of 1993

Date of Decision : 17.07.2001

Mr. Jitendra Singh R. Rathor : Petitioner (s)

Mr. K. K. Shah : Advocate for the petitioner [s]

Versus

Union of India and Ors. : Respondents(s)

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

CORAM :

THE HON'BLE MR. A. S. SANGHVI : 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 ?

Jitendra Singh R. Rathor
Workign as Charge Man 'A'
Working at :
Chief Works Manager (EW's) Office,
W. Rly., Sabarmati.

Address for service of notice :
C/o. Chief Works Manager (EW),
W. Rly., Sabarmati.

- Applicant -

Advocate : Mr. K. K. Shah

Versus

1. Union of India,
Notice to be served through
The General Manager,
W. Rly., Head Quarter Office,
Church gate,
Mumbai.
2. Chief Works Manager (EW),
O/o. Chief Works Manager (EW),
W. Rly., Sabarmati.

- Respondents -

Advocate : Mr. N. S. Shevde

JUDGMENT
O.A 512 of 1993

Date : 17/07/2001

Per Hon'ble Shri. A. S. Sanghvi : Member [J].

The applicant who was serving as a Chargeman 'A' is aggrieved
his non-selection to the post of Dy. Shop Superintendent.
According to him, he belongs to scheduled caste and when the
notification for the post of Dy. Shop Superintendent (Dy. S.S), STR
Shop, Engineering Workshop, Sabarmati was notified, and though

one vacancy for SC was reserved, he was not considered as eligible to appear in the selection as he was not coming within the zone of consideration. According to the applicant the list of eligible candidates showed only two SC candidates in list 'A' instead of 3 SC candidates and his name was also not shown in the list 'B'. Under the provisions of Para 215 of IREM Vol-I, three times the number of staffs to be empanelled is required to be called for written test and or viva-voce by considering them as eligible but in spite of this position, applicant was not considered as eligible to be called for the written test and viva-voce. It is also contended by the applicant that out of the two vacancies notified, one was reserved for Scheduled Caste and another for General candidate and the letter dated 22.7.93 issued by the respondents mentioned that the candidates shown in the list 'B' should remain in readiness but they will not get any prescriptive right to appear if not required to do so. It was also mentioned in the letter that no second chance would be given for the said selection. His name though ought to have been shown in list 'A' was not shown therein and was also not shown in list 'B'. He had therefore represented to the Chief Works Manager vide his representation dated 10.8.93. He was replied by the respondent no.2 on 21.8.93 that a question was referred to the headquarter for clarification and his name would be included in the eligibility list on the receipt of the final decision from the headquarter officer. He was also asked to be in readiness for the written test, which was to be held on 14.9.93. He was also given pre selection training, being an SC employee. No reply however was received from the headquarter and hence, the applicant had

given another representation to the respondent no.1 on 11.9.93. The respondents however instead of postponing the selection or waiting for reply from the headquarter, rejected the request of the applicant. The name of the applicant is thereby not included in the eligibility list and hence he is not permitted to appear in the selection. He has therefore moved this O.A and prayed that the impugned notification / letter dated 22.7.93, Annexure-A, be held to be not in terms of IREM [para 215] and that the respondents may be directed to review the list of eligible candidates by including the name of the applicant and only thereafter the selection may be held.

2. After the O.A was filed and the notice of the O.A issued by way of interim relief, the respondents were directed to include the name of the applicant in the list 'A' of the notification dated 22.7.93 and to call the applicant for the written test scheduled at 11 a.m. on 14.9.93. It was also directed that the result of the test would be subject to the final decision in this O.A. We are told that the applicant was permitted to take the test and his result was kept in a sealed cover. The sealed cover was subsequently opened at our direction and he was declared pass. Vide our interim order dated 4.4.94, this Tribunal had after perusing the result of the applicant directed that the reference may be made, if necessary, to the higher authorities on the question whether only Chargeman, who had completed two years of service as Chargeman, was eligible to appear at the written test for promotion to the post of Dy. Shop Superintendent.

3. The respondents have resisted this O.A and in their reply have contended inter alia that the applicant was not called for the selection for the post of Dy. Shop Superintendent notified on 22.7.93, as he was no eligible for the same. According to the respondents, the applicant who was working as Chargeman 'B' in the scale of Rs.1400-2300/- was promoted to officiate as Chargeman 'A' in the scale of Rs.1600-2660/-purely on temporary basis as per his seniority against the work charge post of Dy. S.S. temporarily down graded, the currency of which was available up to 13.8.93. He was therefore promoted and appointed only on temporary basis as Chargeman 'A' and was not holding the post of Chargeman 'A' on regular basis. The post of Dy. S.S. is classified as a safety category post and is a selection post. 8 % of the vacancies are to be filled in by the selection from the employees one grade below only who fulfill the condition of working in substantive grades for two years irrespective of whether the employee belongs to reserved category or not. According to the respondents selection for the two vacancies of Dy. S. S. was notified and out of these two vacancies one was reserved for SC and one for General. The name of the applicant was not shown in the list of eligible candidates as the applicant had not completed two years of service in one grade below i.e. as a Chargeman 'A' in substantial capacity. He had completed only 2 ½ months as on 22.7.93 i.e., the date of the issuance of the notification for selection and hence his name was not included in the list of eligible candidates. He was appointed purely on temporary basis as Chargeman 'A' and his service was

not a regular service. He was in fact deemed to have been reverted to Chargeman 'B' in the scale of 1400-2300/- as per the order dated 10.5.93, as the currency of the work charge post against which the applicant was promoted on ad hoc basis has expired on 31.8.93. According to the respondents, the promotion of the applicant to the post of Chargeman 'A' was a fortuitous promotion for a short term i.e., for the period from 5.5.93 to 31.8.93 and hence he was not eligible for consideration in terms of Para 215 (E) of IREM. They have also stated that the representation of the applicant was duly considered by the headquarter and the decision has been conveyed to the applicant on 11.9.93 i.e., much before the date on which the selection was to be held. They have maintained that the name of the applicant was not included in the list of the eligible candidates, as he was not eligible on the date of the notification. They have prayed that the O.A be dismissed with costs.

4. We have heard the learned advocates of both the parties and have carefully considered the rival contentions.

5. In view of the rival contentions, the short question that arises for our determination is whether the applicant was eligible to be included in the list of eligible candidates for selection to the post of Chargeman 'B' in the scale of Rs.1400-2300/- and vide order dated 10.4.92 he was promoted to officiate as Chargeman 'A' in the scale of Rs.1600-2660/-? However, vide order dated 23.6.92, Annexure A/14, it was made clear that his promotion along with other Chargeman 'A' was purely on ad hoc basis against the work charge

provision available up to 30th May 1993 and this will not confer on them any claim or right for seniority or confirmation on the regular basis. It is therefore obvious that the promotion of the applicant as Chargeman 'A' was not regular promotion but was purely on ad hoc basis against the work charge post which was available only up to 30th May 1993. Now the notification for selection to the post of Dy. S.S. in the scale of Rs.2000-3200/- was issued on dated 22.7.93. Since the applicant was appointed purely on ad hoc basis as Chargeman 'A' with effect from 8.4.92 on work charge post on the date of the notification i.e., 22.7.93, he had completed only 1 year and 3 months service on ad hoc basis on the lower grade post of Chargeman 'A'.

6. Mr. K. K. Shah for the applicant has submitted that the said notification dated 22.7.93 was not in accordance with the provisions of para 215 of IREM. According to him, for the selection post, three times candidates are to be called for each vacancy and since there were two vacancies at least 3 SC candidates ought to have been included in the list 'A'. If that had been done, the applicant's name would have definitely figured in list 'A' of the eligible employees. We have carefully gone through the provisions of para 215 of the IREM and we find ourselves in disagreement with the submissions made by Mr. Shah. Sub-para A of para 215 of IREM lays down as under :-

"Selection post shall be filled by a positive act of selection made with the help of the Selection Boards from amongst the staff eligible of selection. The positive act of selection may consist of a written test and / or viva-voce test; in every case viva-voce being a must. The staff in the

immediate lower grade with a minimum of two years service in that grade will only be eligible for promotion. The service for this purpose will include service if any, rendered on ad hoc basis followed by regular service without break. The condition of two year's service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration.

Thereafter sub para (E) of 215 lays down as under :-

"Eligible staff up to 3 times the number of staff to be empanelled will be called for written and / or viva-voce test. The staff employed against fortuitous short term or stop gap promotion to the immediate lower grade in the manner otherwise than in accordance with the regular approved method of promotion will not be eligible for consideration. It is desirable to hold written test as part of a selection in respect of all initial selection grade post in the different channel of promotion, but in every case a viva-voce test shall be held. If a written test is proposed to be held, advance intimation shall be given to all eligible candidates."

When both these sub paras are read together, it becomes quite clear that for selection to a promotional post, minimum two years of service in the lower grade is the first eligibility criteria. However, service for this purpose includes the service rendered on ad hoc basis also, but it ought to have been followed by regular service without break. So far the zone of consideration is concerned, three times the number of staff to be empanelled are to be called for written and or viva-voce test i.e., if there are two vacancies, then, six eligible candidates were required to be called for written and / or viva-voce test. It cannot be interpreted that when there are two vacancies, out of which one vacancy is reserved for SC, then, three SC candidates should be called. What is required is that eligible officers up to three times the number of vacancies is to be called. Since the applicant on the date of the notification did not complete

two years of even ad hoc service, he was not considered eligible and we do not find any illegality or error or mistake committed by the respondents therein. The office order No. 336 dated 9.12.93 [Annexure A/22] reveals that the applicant was regularised as Chargeman 'A' with effect from 24.7.93. Hence, his ad hoc promotion with effect from 8.4.92 can be considered for eligibility criteria in terms of para 215 (A), but on the date of the selection he had not completed two years service required for complying with the eligibility criteria. Under the circumstances, he cannot claim that the respondents had illegally and with ulterior motive not included his name in the list of the eligible candidates for selection to the post of Dy. S.S.

7. Mr. K. K. Shah for the applicant has submitted that several other employees who had not completed two years service in the lower grade were also considered and even appointed to the promotional post and since the applicant is similarly situated, his case also should be considered. He has even cited some instances where the eligibility criteria was relaxed and the employees were given promotion even though they had not completed services in the lower grade. We are not aware under what circumstances the authorities had relaxed the eligibility criteria in their favour, if the instance is cited by Mr. Shah are correct. However, even if, by mistake candidates not answering the eligibility criteria were considered in the past it does not mean that the same mistake should be repeated by the authorities and the applicant be allowed to appear in the selection. It was also sought to be contended that

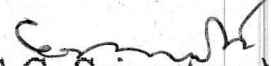
subsequently vide Railway Board's letter dated 11/10.11.94 circulated on dated 11.12.94 and 5.1.95 the eligibility period is curtailed from two years to one year and the applicant could have been given the benefit of this letter. We find that this contention was raised before the competent authority by the applicant in his representation and considering this contention the competent authority had rejected the same by a speaking order which was communicated to the applicant on 31.10.95. The relevant portion of the speaking order reads as under :-

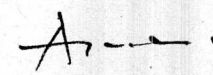
"The revised instructions issued under Rly. Board's letter dated 11.10/11.94 circulated vide GM (E) CCG's letter No. EP/1025/0 Vol. IV dtd. 19.12.94/5.1.95 is with regard to the curtailment of period from 02 years to 01 year for eligibility for promotion to the higher grade in inescapable circumstances and not related to the eligibility for appearing in the selection. The eligibility / zone of consideration for appearing in the selection is still that, 'an employee must be regular in the immediate lower grade.' Hence the applicant was not considered eligible to appear in the selection of Dy. S.S.-STR notified on 22.7.93 as he was not regular in the immediate lower grade as on that date. However, he was allotted to appear in the written test on 14.9.93 as per the Interim orders of the Hon'ble CAT-ADI subject to the final decision on the issue of eligibility for appearing in the selection. The applicant has been regularised as Chargeman 'A' (eligibility grade) from 15.4.94 vide this office O.O. No. 190 dated 25.9.95 & thus now considered eligible for appearing in the selection notified vide this office notification No. E/1025/B of 27.9.95 and called upon to appear in the written test in connection with the selection of Dy. S.S.-STR vide this office notification No. E/1025/8 dated 28.10.95."

8. Since this speaking order is self explanatory and elaborately deals with the contentions raised by the applicant, we do not see any reason to enter into the question of curtailment of period of one year from two years for eligibility for promotion to the higher grade.

In any case, it is not shown that this circular of 1994 is made applicable retrospectively and hence the question of applying the circular to the facts of the instant case does not arise.

9. For the reasons discussed above, we hold that the applicant was not eligible to be called for selection to the post of Dy. S.S. notified on dated 22.7.93 and held on dated 14.9.93. We further hold that the applicant even if he had appeared in the said selection, pursuant to our interim directions and had cleared the same, will not be eligible to claim promotion to the post of Dy. S.S. by virtue of the said selection as he was not eligible to be considered for selection. We do not see any merit in this O.A and in the conclusion we reject the O.A with no order as to costs.


(G.C. Srivastava)
Member (A)


(A.S. Sanghvi)
Member (J)

Mb