

9

11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No.509/1991
Cuttack this the 8th day of Sept., 1997.

...

Sri Trilochan Samal, S/o Late Durgal Charan Samal, At present working as Head Train Examiner, S.E. Railway, Khurda Road, Dist. Puri.

... .. Applicant.

Vs.

1. Union of India, represented by General Manager, South Eastern Railway, Garden Reach, Calcutta-42.
2. Divisional Railway Manager, South Eastern Railway, Khurda Road.
3. Divisional Personal Officer, South Eastern Railway, Khurda Road.
4. Divisional Mechanical Engineer, South Eastern Railway, Khurda Road.

... .. Respondents.

...

C O R A M

THE HONOURABLE MR. SOMNATH SOM, VICE CHAIRMAN
THE HONOURABLE MR. A.K. MISRA, JUDICIAL MEMBER

...

Present

Mr. Mr. G. Rath, Advocate, for the applicant.
Mr. Ramesh Chandra Rath, Advocate, for the respondents.

...

PER HONOURABLE MR. A.K. MISRA, JUDICIAL MEMBER :

The Applicant has filed this Application with the prayer that respondents be directed to promote the applicant to the

302

post of Carriage Foreman/Wagon Foreman/CWI, w.e.f. 24.1.1991 and to give all service benefits.

2. Notice of this O.A. was given to the respondents who have filed their Counter mentioning therein that applicant is not entitled to promotion and the relief as claimed by him. The O.A. deserves to be dismissed.

3. We have heard the learned counsel for the parties and gone through the case file. Both the learned counsels have supported their contentions as mentioned in their pleadings.

4. It is alleged by the applicant that twelve persons including the applicant, were called to sit in written examination for the post of Carriage Foreman/Wagon Foreman/CWI, vide Respondents' letter dated 17.10.1990 (Annex.A-1). There were four promotional posts, out of which three were unreserved and one post was reserved for Scheduled Tribe candidate. Applicant and Others, appeared in the written examination and those who were found successful in written examination, appeared in the Viva Voce test. Thereafter, respondents issued a promotion order on 24.1.1991 (Annex.A-3), to fill-up unreserved three vacancies. It is the case of the applicant that Shri Ch.K.Ratnam (S.C. Candidate), had foregone his promotion, therefore, respondents should have promoted the next person and in order to fill-in all the four posts, applicant should have also been promoted. Instead of giving promotion to applicant, the respondents have given posting to Shri G.N.Saha, on a higher post for a period

3m

of three months, which is illegal and liable to be set aside. The applicant has prayed for his promotion as narrated above.

5. The respondents have stated in their Counter that applicant did not qualify the Viva Voce test. Amongst the available vacant posts, one post was reserved only for Scheduled Tribe candidates and the same was not available to general category candidate. They have further contended that since the applicant was not found successful in the Viva Voce, he was not empanelled. The order Annex.A-2, dated 31.10.1990, was never issued by the respondents and it is a manufactured document. The O.A. deserves to be dismissed.

6. In order to appreciate the factual aspect, as alleged by the respondents, the Tribunal had directed that papers relating to empanellment of the successful candidates, be produced at the time of hearing in the matter. The same were produced before us. Note dated 27.11.1990, in respect of test and empanellment for filling-up four notified vacancies shows that twelve candidates in order of seniority, were nominated to appear in the examination. Out of them, two candidates remained absent and did not undertake the written examination and thus, were shown absent in the Assessment Sheet. Out of remaining ten candidates, two candidates were declared failed in the written test and their names were not considered for Viva Voce and further one of the remaining candidates, failed in the professional ability test. Thus, finally seven candidates including the applicant were found

27/11

successful. Thereafter, on the basis of the result sheet, the Senior Divisional Personnel Officer, South Eastern Railway, Khurda Road, recommended the names of S/Shri Ch.K.Ratnam, S.P. Nandy and R.N.Curtics, in order of merit, for empanellment and promotion in the Scale Rs. 2000-3200 (RPS). Incidentally, the seniority of these persons also is the same. Since the fourth post was reserved for Scheduled Tribe candidate, name of Shri N. M.Patra, a general candidate, who is also senior to the applicant and was at No.4 in the merit, was recommended for adhoc promotion on the post of Scheduled Tribe candidate, after according dispensation for filling the post reserved for Scheduled Tribe candidate by a General category candidate.

7. On the recommendations as mentioned above, promotion was given to all the three empanelled candidates vide order dated 24.1.1991, Annex.A-3. Out of these three candidates, Shri Ch.K. Ratnam, had foregone his promotion, therefore, it is presumed that the next man i.e. Shri N.M.Patra, a general candidate, must have been given promotion accordingly. Applicant Shri T.C. Samal, who is at No. 5 in order of merit and junior to Shri N.M. Patra, was not affected by this promotion. In any case, all these four persons are originally senior and have also secured better merit in their performance in written as well as viva voce test than the applicant. Thus, it will be clear that all the three unreserved posts have been filled-in by general category candidates who were senior to applicant and were better placed in merit than the applicant.

8. Although, the applicant has made a reference of Sh.G.N.Saha, who have been given adhoc posting on a higher post, but he has

3m

not sought any relief against him, neither, Shri Saha is a party respondent in this case. The applicant has claimed promotion on the basis of his being successful in the promotional test. Originally, applicant was ranking at No.5 as per his merit amongst the successful candidates. Candidate at No. 1 had foregone his promotion, therefore, the applicant gained one position higher and became at No.4. Three persons, senior to the applicant were given promotion to the promotional post ment for the general candidates but the authorities concerned have neither granted dispensation for filling the reserved post of Scheduled Tribe by a General category candidate, nor carried forward the vacancy of Scheduled Tribe candidate, to be filled by next selection, therefore, the applicant, as of right, cannot claim to be promoted on the post reserved for Scheduled Tribe candidate. There is nothing to show that the applicant had represented to the concerned authorities for de-reservation of the post and consider his case for promotion on that post. He has represented in his representation (Annex.A-5), that few more promotional posts had fallen vacant in the meantime and candidates are available for being promoted to the newly available post, therefore, he be given promotion. But the Authorities proceeded to conduct another examination, wherein, inspite of repeated opportunities, the applicant did not appear. Thus, the position remains that in earlier vacancies, the applicant could not be promoted for the reasons as discussed above and in the examinations relating to subsequent vacancies, he did not appear.

Zm

The applicant did not pray for staying the process of subsequent examination for promotion to the post of Carriage Foreman/Wagon Foreman/CWI, therefore, the same must have been undertaken by the authorities, as notified. We do not know whether a fresh selection has been made in respect of available new vacancies or not.

9. In this respect, the learned counsel for applicant has argued that panel of successful candidates remain in force for two years, therefore, the respondents should not have undertaken the exercise of holding the examinations afresh. On the contrary, the learned counsel for respondents has argued that the Selection Board recommended names of three persons in the order of merit and one person for promotion on adhoc basis, therefore, the panel can be said to have contained only four names. One of the candidates had foregone promotion, other three have been promoted and thus panel stands exhausted. Therefore, for filling the new vacancies, examinations were notified.

10. We have considered the rival contentions. In our opinion, the name of the applicant was not empanelled. The names of only four candidates were empanelled and the panel stands exhausted. It has not been shown to us that the names of all the successful candidates were required to be empanelled. In Para 215 (e) of the Indian Railway Establishment Manual, it is mentioned that eligible staff upto three times, the number of staff to be empanelled will be called for written test and/or viva voce test. This clears the position in respect of empanellment of the candidates. In this case, twelve candidates were called for written examination

gm

because three posts of general candidates and one post of scheduled tribe candidate, was to be filled-in. Hence, the panel was to contain the names of four persons, three from the general category and one from scheduled tribe category. Since there was no scheduled tribe candidate available for that test, therefore, the name of fourth person was provisionally empanelled for his provisional appointment. Therefore, inspite of coming out of examinations successfully, the applicant's name could not have been entered in the panel. In view of this, applicant cannot successfully argued that he continues to be in the panel for being promoted against the new vacancies.

11. Before parting with the case, we may observe that in this case, Shri Ajay Kumar Mohanty, the Officer who verified the Affidavit, has stated on oath that facts stated in the Counter, are true to his knowledge based on official record and information of the case, which he believes to be true and has gone to say that the applicant did not qualify the Viva Voce test. But this particular statement is falsified by the Average Sheet, which has been produced by the respondents on a direction by the Tribunal. In this Sheet, the applicant has been shown as successful and his name appeared just below Shri N.M.Patra, as successful candidate. Stating wrong fact on oath, in a Court proceedings, is a serious matter and may sometimes lead to mis-carriage of justice. Therefore, the Divisional Railway Manager, South Eastern Railway, Khurda Road (Respondent No.2), is directed to initiate Inquiry against the Officer and submit its Report preferably within three months to the Tribunal.

By

12. From the above discussion, we come to the conclusion that applicant is not entitled to be promoted as Carriage Foreman/ Wagon Foreman/CWI, as prayed by him in his O.A. Neither he can be promoted as against the subsequent promotional vacancies on the basis of being a successful candidate of earlier examination. The O.A. deserves to be dismissed.

13. The O.A. is, therefore, dismissed with no order as to costs.

Somnath Som
(SOMNATH SOM)
Vice Chairman 18/9/92

A.K. Misra
(A.K. MISRA)
Judicial Member

...

mehta