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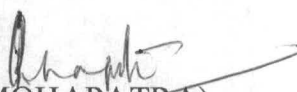
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.333 of 2007
Cuttack, this the 07th day of December, 2007.

G.D.Sarkar ... Applicant
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

- +1. Whether it be referred to the reporters or not?
2 Whether it be circulated to all the Benches of the CAT or not?


(C.R. MOHAPATRA)
MEMBER(A)


(DR.D.K.SAHU)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.333 of 2007
Cuttack, this the 07th day of December, 2007.

C O R A M:

THE HON'BLE DR.D.K.SAHU, MEMBER (J)
AND
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

Sri G.D.Sarkar, aged about 44 years, son of Late M.L.Sarkar, working as Assistant Commercial Manager, E.Co.Railway, Khurda Road staying at Railway Quarter No. K 18/C, Traffic Colony, Jatni, Dist. Khurda, PIN 752 050, now admitted in Railway Hospital.

..... Applicant.

By legal practitioner: M/s.Achintya Das, D.K.Mohanty, Advocate.

-Versus-

1. Union of India represented service through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar.
2. Chief Personnel Officer, E.C. Railway, Chandrasekharpur, Bhubaneswar, PIN 751023.
3. The Deputy Chief Personnel Officer, E.Co.Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist. Khurda, PIN 751 023.
4. The Divisional Railway Manager, E.Co. Railway, Khurda Road, PO. Jatni, Dist. Khurda, PIN 752050.
5. Sr. Divisional Personnel Officer, E.CO. Railway, Khurda Road, PO. Jatni, Dist. Khurda PIN-752 050.

...Respondents.

By legal practitioner: Mr. S.K.Ojha, & Mr.Ashok Mohanty,
Standing Counsel.

Dr. Ashok

ORDER

DR.D.K.SAHU, MEMBER(J):

The admitted facts of this case are that the Applicant has been appointed as Assistant Catering Manager in the Respondents-Railways' administration. He belongs to SC category. He was empanelled for Ad-hoc promotion to the post of ACM/ACO on the principle of best among failed SC/ST candidates in ECoR (Gr.B/Commercial) against 30% Limited Departmental Competitive Examination quota vide order dated 225.08.2006 (Annexure-A/1). He was then given promotion on Ad-hoc to Group B/Commercial for six months being best among the failed SC/ST candidates vide order dated 30.10.2006 (Annexure-A/2). He joined the promotional post on 22.11.2006 but by orders dated 21.09.2007 (Annexure-A/5 & A/6) he was reverted to his original cadre in Group 'C' post. Thus, by filing the present Original Application U/s.19 of the Administrative Tribunals Act, 1985 he has sought to quash the orders dated 21.09.2007 (Annexure-A/5 & A/6) with consequential relief to direct the Respondents to allow him to continue in his promotional post of ACM retrospectively.

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Further admitted facts are that in order to get promotion to higher cadre/Group 'B', candidates should appear at a test consisting of 150 marks out of which the Applicant has only secured 46 marks. Further 70% of such promotional posts are to be filled up by selection whereas 30% by LDCE. It is the case of the Applicant that in accordance with the Railway Board's Circular, SC/ST candidates securing 20% of the total marks is eligible for promotion on Ad-hoc basis for six months. So, he having secured 46 marks out of 150 was given Ad-hoc promotion. Accordingly, it is submitted that the order of reversion Annexure-A/5 & A/6 are not in accordance with Board's instructions and are not sustainable.

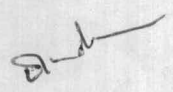
2. Respondents-Railways submit that securing qualifying marks of 20% is only applicable for SC/ST candidates while on promotion by way of selection, and is not applicable for the 30% posts meant to be filled up by Limited Departmental Competitive Examination [LDCE]. In that case a SC/ST candidate is to secure $\frac{3}{5}$ th of the qualifying marks meant for a general candidate. A General category candidate is required to secure 60% i.e. 90 marks out of the total marks of 150 to be qualified for promotion. Accordingly, a SC candidate is required to secure $\frac{3}{5}$ th marks thereof i.e. 54. As the Applicant has only secured 46 marks,

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he was not eligible to be promoted as against the vacancies of 30% quota of LDCE. But by erroneous consideration, he was given Ad-hoc promotion and when it was found to be an error, necessary clarification order under Annexure-A/5 was issued for reversion of the Applicant to his original Group 'C' cadre.

3. Learned Counsel for the Applicant has referred to previous orders of the Railway Board. Admittedly, in the year 2006, Gr.B posts in the Commercial Department were under non-safety Department. Reference has been made to Railway Board's Estt.Sl.No.57/95 issued on 28.06.1995 therein their letters dated 31.08.1974, 29.04.1977 and 08.05.1989 have been referred to. It is stated therein that in the **selection** proceedings for promotion from Group C to Group B category, the best among the failed SC/ST employees who secure a minimum of 20% marks separately under each heading i.e. in the written test, viva-voce, record of service, etc. and also in the aggregate, should be earmarked for being placed in the panel to the extent the vacancies have been reserved in their favour. It is manifest there from that 20% mark principle is applicable for promotion on selection out of 70% quota meant for that .



4. Both the parties have referred to Railway Board's Circular No. 2004-E(SCT)1/25/20 dated 12.09.2007 therein the previous circulars of the Railway Board had been referred to inclusive of dated 15.11.1983 and clarification on selection of "**Best among failed SC/ST**" in Group B/Commercial against 30% LDCE quota was issued. The aforementioned circular dated 29.11.1983 (Estt. Srl.No. 251/83) enclosed as Annexure-R/5 provides that no relaxation should be given in such promotion in safety department; whereas for non safety department the lower limit of qualifying marks has been set as $3/5^{\text{th}}$ of the qualifying marks prescribed for general community candidates in individual papers/viva voce excluding marks for Record of Service based on Confidential reports. Accordingly, the aforesaid circular of 1983 scheme of giving promotion to best among the failed SC/ST employees was ordered to be discontinued for promotion to Group B posts through LDCE. This has been reiterated in RBE No. 189/92 dated 13.11.1992 (Annexure-R/6). The relevant portion of the aforementioned circular is quoted herein below:

"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

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continue to be $\frac{3}{5}^{\text{th}}$ of the qualifying marks prescribed for general community candidates in each individual paper."

5. The aforesaid instructions manifest that no relaxation should be given to SC/ST employees for safety department whereas for non-safety department the qualifying marks of 20% for **promotion on selection** i.e. out of 70% vacancies is in force. Whereas the minimum qualifying marks for SC/ST candidates under LDCE quota of 30% has been prescribed as $\frac{3}{5}^{\text{th}}$ of qualifying marks of general category candidates i.e. 54 out of 150 marks.


6. In the instant case, admittedly, the Applicant has secured only 46 marks out of 150. So, he secured less than the minimum marks required to secure by a SC candidate under LDCE quota. Obviously, error has been committed in giving such promotion because he was not eligible for promotion and in giving him promotion there was violation of the Board's Circular. The Railway Authorities are ^{is} quote within their competence and jurisdiction to correct the error committed by them. So they have rightly reverted the Applicant to his original cadre. The Applicant cannot claim a right to get promotion when he has not secured the qualifying marks and further he cannot claim a right basing on an

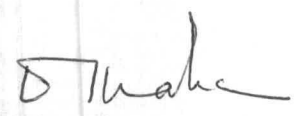
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erroneous order. His continuance in the promotional post would amount to perpetuating the error that has been committed by giving Ad-hoc promotion to him.

7. In the circumstances, we do not find any reason to interfere with the impugned orders under Annexure-A/5 & A/6 and thus, the claim of the Applicant is not sustainable,

8. In the result, this OA is dismissed being devoid of any merit. There shall be no order as to costs.


(C.R. MOHAPATRA)
MEMBER(A)


(DR.D.K.SAHU)
MEMBER(J)