

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

(11)

O.A. No. 273/1996 199
RAXXNo.

DATE OF DECISION 21.9.1998

Gopal Lal Meena

Petitioner

Mr. S.K. Malik,

Advocate for the Petitioner (s)

Versus

Union of India & Others

Respondents

Shri S.S. Vyas,

Advocate for the Respondent (s)

Nos. 1 to 3.

Shri M.R. Singhvi, Advocate for the Respondent No.5.

None present for the Respondent No.4.



CORAM :

The Hon'ble Mr. Gopal Krishna, Vice Chairman.

The Hon'ble Mr. Gopal Singh, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *NO*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *NO*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*

Gopal Singh
Gopal Singh
Adm. Member

Gopal Krishna
Gopal Krishna
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH: JODHPUR.

O.A. No.273/96

Date of Order: 21.9.1998

Gopal Lal Meena s/o Shri Dhanna Lal, r/o Quarter No.T-5-E, Traffic Colony, Merta Road, Distt; Nagour (Rajasthan), presently working as Sr. Clerk, Merta Road under Station Master, Nagour.

... Applicant

VERSUS

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Jodhpur.
3. The Divisional Personnel Officer, Northern Railway, Jodhpur.
4. Shri Dinesh Gore, Guard Goods, c/o Station Superintendent, Northern Railway, Bhagat ki Kothi, Jodhpur.
5. Shri Satya Prakash Changani, Guard Goods, c/o Station Superintendent, Northern Railway, Bhagat ki Kothi, Jodhpur.

... Respondents

Mr. S.K. Malik, Counsel for the applicant.

Mr. S.S.Vyas, Counsel for the respondents No. 1 to 3.

Mr. M.R. Singhvi, Counsel for the respondent No. 5.

None present for respondent No.4.

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

O R D E R

Per Hon'ble Mr. Gopal Singh

Applicant, Gopal Lal Meena, has filed this application under Section 19 of the Administrative Tribunals Act, 1985,

Gopal Singh

praying for setting aside the impugned order dated 19.8.1996 (Annex. A/1) and to consider the case of the applicant for the post of Wagon Movement Inspector (for short, WMI) in the grade 1400-2300 from the date of occurring of the vacancy with all consequential benefits. By way of interim relief, the applicant has prayed for staying the operation of order at Annexure (A/1).

By an interim order dated 23.8.1996, this Tribunal had directed the respondents to keep one post of WMI grade 1400-2300 vacant till the final disposal of this O.A.

2. Applicant's case is that he was appointed to the post of Clerk grade 950-1500 w.e.f. 4.3.1982 and thereafter promoted to the post of Senior Clerk grade 1200-2040 after due selection w.e.f. 1.4.1988. That the respondents had conducted a selection for the post of WMI grade 1400-2300 in terms of their letter dated 24.4.1996. It was clearly mentioned that the two posts of WMI would be filled up from amongst the category of Shunting Masters and Senior Clerks working in Operating Branch and in case no application is received from these categories than only the category of Guard, Assistant Station Master and Train Clerks would be considered. The applicant had appeared in the written test for the said post on 20.7.1996. That consequent upon declaration of the result of the written test on 14.8.1996, the viva voce test was fixed for 16.8.1996. As the notice for viva voce test was not sent to the applicant, the viva voce was fixed for 19.8.1996 and the applicant appeared on that date in the viva voce test. The result of the final selection was declared vide respondents letter dated 19.8.1996 (Annex. A/1) in which the name of the applicant did not find place. The contention of the applicant is that in terms of the respondents letter dated 24.4.1996 (Annex. A/2) only Shunting Masters and Senior Clerks were to be considered for filling up the post of WMI and it was

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wrong on the part of the respondents to have permitted Guards in the said selection. Moreover, one Shri Dinesh Gore was made eligible for viva voce test by adding his notional seniority marks against the rules on the subject. It has also been pointed out by the applicant that he had cleared the written test as per the respondents letter dated 14.8.1996 (Annex. A/4). It has also been pointed out by the applicant that in terms of the respondents letter dated 5.12.1989 (Annex. A/6), one of the post was reserved for Scheduled Tribe category candidate and that the post reserved for SC/ST candidates could not be filled up by a General category candidate without seeking proper dereservation. In view of the fact that the selection panel declared by the respondents vide their letter dated 19.8.1996 (Annex. A/1) does not consist any candidate from the Scheduled Tribe category and moreover Shri Dinesh Gore appearing at Sl. No. 1 of the said panel was called for the viva voce test against the rules/instructions in this regard, the applicant prays for consideration of his case for selection to the post of WMI as he has cleared the written test for the said selection. It has also been stated by the applicant that he has submitted a representation **dated 20.8.1996** to the respondents in this regard but to no avail.

3. Notices were issued to the respondents and they have contested the application in their reply.

4. We have heard the learned counsel for the parties and perused the records of the case carefully.

5. It is seen from the respondents' letter dated 24.4.1996 (Annex. A/2) that only Shunting Masters and Senior Clerks were

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required to be considered for selection to the post of WMI and if there are no application from these categories of staff then applications from other category of staff namely, Guard, Assistant Station Master and Train Clerk would be considered.

It has been stated by the respondents that due to non-receipt of adequate applications from Shunting Masters and Senior Clerks for the said selection, applications from other category of staff namely, Guard would be considered in terms of their letter dated 27.5.1996 (Annex. R/1) and accordingly they have gone ahead with the selection to the said post considering the cases of other categories of staff also.

6. In our view, considering the cases of categories other than Shunting Masters and Senior Clerks for the said selection was against spirit of the respondents' letter dated 24.4.1996 (Annex. A/2). The learned counsel for the applicant has also brought to our notice Circular dated 18.4.1997 (PS No.11499/97), relevant portions of which is extracted below:

"In this connection attention is also drawn to Rly. Boards letter No.E(NG)I-84 PM-7-36 (AIRF) dt. 26.11.86 circulated under this office letter No.831-E/63-3/EIV dt.7.1.86 (PS No.9149). While holding a selection by a Divisional Office an error was committed that while calling the candidates for via voce test, the candidates, who secured even less than 60% marks were called by giving the weightage of notional marks of seniority which was wrong and not required in such selection. However, as mentioned in para 219 (h) (i) II of I.R.E.M. the final panel should be drawn up on the basis of marks obtained in written and viva voce test in accordance with the procedure for filling selection posts.

It is, therefore, reiterated that in terms of above quoted instructions only those who secure 60% marks in written test for selection of general posts will be eligible to be called for viva-voce and the panel is to be drawn as per instructions contained in para 219 (h) (i) II of I.R.E.M. as mentioned above."

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7. It is seen from the above Circular that action taken by the respondents to give weightage for notional seniority to Shri Dinesh Gore appearing at Sl. No. 1 of the selection panel for the post of WMI was against the instructions issued by the Northern Railway Headquarters from time to time. The defence put up by the respondents in this regard, therefore, deserves to be rejected and is hereby rejected.

8. It has already been mentioned that one of the post of WMI was reserved for the ST category candidate and the same could not have been filled up by a General category candidate without dereserving the same. The argument putfourth by the respondents that the cadre of WMI is of only one post and, therefore, does not attract reservation provisions appears to be an after-thought as the respondents had advertised two posts of WMI in the grade 1400-2300 vide their letter dated 24.4.1996 (Annx. A/2). Earlier also the respondents vide their letter dated 5.12.1989 (Annx. A/6) had advertised three posts of WMI in the grade 1400-2300. Thus the present argument of the respondents that WMI cadre consist of only one post is not tenable.

9. We are of the view that the respondents should have considered the application only from the categories of Shunting Masters and Senior Clerks for filling up the posts of WMI and further they should not have given weightage of notional seniority to Shri Dinesh Gore who had failed to secure 60% marks in the written examination for the said selection.

10. In the light what has been discussed above, we find much force in the application and the same deserves to be

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allowed. By an interim order dated 23.8.1996, this Tribunal had already directed the respondents to keep one post of WMI vacant till the outcome of this O.A.

11. In the circumstance this O.A. is allowed and disposed of with the following observations;

(i) In the ~~interim~~ order dated 19.8.1996 (Annex. A/1) the name of Shri Dinesh Gore placed at Sl. No. 1 of the panel be deleted as he did not qualify the written test in the said selection.

(ii) The candidature of the applicant should be considered for filling up the vacant post of WMI as per his performance in the selection test and according to the reservation policy of the Government.

(iii) This order should be complied with within a period of three months from the date of issue of this order.

12. Parties are left to bear their own costs.

Gopal Singh
(Gopal Singh)
Administrative Member

Gopal Krishna
(Gopal Krishna)
Vice Chairman

Aviator/