

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.687/1997

Date of order :

13/8/97

Present : Hon'ble Mr. S.K. Hajra, Administrative Member
Hon'ble Mr. K.V. Sachidanandan, Judicial Member

N.C. Das

VS.

1. Union of India, Service through the General Manager, S.E. Railway, GRC, Calcutta-43
2. General Manager, S.E. Railway, GRC, Calcutta-43
3. Chief Personnel Officer, S.E. Railway, GRC, Calcutta-43
4. C.S.T.E., GRC, Calcutta-43
5. Divisional Railway Manager, S.E. Railway, Kharagpur
6. Divisional Personnel Officer, S.E. Railway, Kharagpur

.....Official Respondents

7. Sri B.C. Sen, WTM Gr.I, S.E. Railway, Santragachi
8. Sri C.R.K. Rao, WTM Gr.I, S.E. Railway, Tata
9. Sri T.S. Rao, WTM Gr.I, S.E. Railway, Tata
10. Sri S.B. Sarkar, WTM Gr.I, GRC
11. Sri N.K. Mahato, WTM Gr.I, RNC
12. Sri Swapn Chakravorty, WTM Gr.I, S.E. Railway, GRC
13. Sri D.K. Das, WTM Gr.I, S.E. Railway, ADA

.....Private Respondents

For the applicant : Mr. B.C. Sinha, counsel
For the respondents : Mr. S.S. Pal, counsel

O R D E R

Per K.V. Sachidanandan, J.M

The applicant in this O.A. is working as WTM Gr.I under the official respondents. He contends that vide notice dated 20.1.1997 (Annexure-A1) service sheets and working reports of some persons working as WTM Gr.I were called for adjudging suitability for the post of MCM(WTM) in scale of Rs.1400-2300/- RPS of DSTE(MW-M)KGP without disclosing total number of posts to be filled up indicating the break



up of UR, SC and ST quota. According to him it is gross in violation of rules. It is contended that irregular process was conducted. It is further contended that in a similar issue the Railway Authorities suo moto cancelled the selection of O.S. Gr.II posts. The applicant's contention is that Respondent No.13, Sri D.K. Das got accelerated promotion on higher grade on the basis of reservation of post and applicability of roster system and hence he cannot claim further promotion to higher grade posts against general vacancies on the basis of seniority.

However, feeling aggrieved by such selection the applicant has filed this O.A. seeking following main reliefs:-

"(a) To set aside and quash the impugned letter dated 20.01.97(Annexure 'A1');

(b) To direct the respondents to issue a fresh notice indicating the total number of posts and their break-up and call the eligible candidates excluding the ineligible ones by publishing 'inter se' seniority."

2. The respondents have filed reply statement contending that in order to fill up 7 vacancies of MCM(WTM) respondent No.7 to 13 in this O.A. were called for appearing in the suitability test on 28.1.1997. The break-up of vacancies i.e. SC/ST/UR was not given in the letter issued by the DPO. Before granting the promotion as per extant rules it is required to assess the vacancy position in that grade followed by vetting of the same from OS/SC & ST Cell in accordance with the roster point and following the percentage of reservation for the said communities. According to the respondents the break-up of vacancies was 6 UR and 1 SC and as per the seniority list published by respondent No.6 respondents No.7 to 12 were 6 UR candidates and the respondent No.13 was the only SC candidate who were called for the test. Copy of the computation sheet dated 26.9.1996 is annexed as Annexure R-1 to the reply.

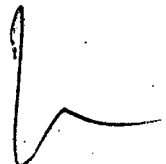
3. Respondents' contention is that the selection to the post of O.S. Gr.II was cancelled suo moto since there was serious procedural lapses, but in this case there was no such procedural lapses at all. Respondent No.13, Sri D.K. Das was called for the test against the

vacancy of SC quota. There is no rule to debar the reserved candidate from getting another promotion against a reserved post. According to the respondents till this O.A. was filed before this Tribunal there was no objection from any corner regarding the process of selection, therefore, the selection was made properly giving due representation to the SC community which the applicant cannot challenge at this stage.

4. Mr. B.C. Sinha, ld. counsel appeared for the applicant and Mr. S.S. Pal, ld. counsel appeared for the respondents.

5. Ld. counsel for the applicant argued that Annexure A-1 is a notification which does not show the break-up of Quota Rota Rule. Annexure A-4 to the O.A. is the provisional seniority list from which it appears that the applicant's name found place at Srl.No.12 whereas the name of respondent No.13 appears at Srl. No.20. According to the ld. counsel for the applicant, there was no reservation for the post in question and no reservation policy could be adopted in this case since the SC quota has already been filled against the post based roster. He also argued that the Quota-Rota Rule should be applied to post based method and not vacancy based method. Ld. counsel for the respondents persuasively argued that in every Government Department it is the rule that the reservation policy should be adopted. If that is not done, even the selecting officers can be held responsible. It is the constitutional guarantee to the reserved community to be considered for the grade to which Quota-Rota rules are applicable. He did not accept that Annexure A-I is a notification. Even assuming there is a specific indication the third para of the document i.e. Annexure A-I reads as follows:

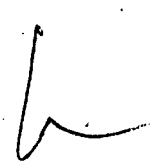
"The SC/ST candidates should be given pre-test coaching for 15 days and the report should be submitted to the DSTE(MW-M) KGP before test."



Id. counsel for the applicant further contended that this is a clear indication that reservation policy will be followed in this case and accordingly vide Annexure R-I the roster point was operated and selection was completed which cannot be faulted.

6. We have given due consideration to the arguments of ld. counsel for both sides. On going through the Annexure A-1 we are fully convinced that even though there was no specific declaration as to the number of vacancies to be filled up against SC quota, there is an indication that the reserved candidates will be considered for the selection. Apart from this, on a perusal of Annexure R-I proceedings and computation of reserved quota in terms of the circular of the Railway, we find that six posts have been earmarked as unreserved and one post was meant for SC community. Admittedly the 13th respondent who was at Srl. No.20 in the Seniority List was selected as the 7th person in the SC quota being the senior most in the SC category. On going through the provisional seniority list at Annexure A-4 we find that the applicant is at Srl.No.12 and three more seniors above him were also not considered and selected whereas the respondent No.13 being at Srl. No.20 in the seniority list was considered for promotion in SC quota as per the reservation rule.

7. The applicant's counsel has taken us to the circular No.42/84 dated 22.3.1984 regarding Procedure for holding Selection and Suitability test and contended that it has insisted to declare the actual size of the panel for selection post or the select list for non-selection post proposed to be made indicating the number of UR, SC & ST so that all concerned are aware of the same. The service records and working reports of the candidates were called for by the Divisional Officer for adjudging the suitability for the said post where there is a clear indication of reservation of SC ST candidates (Annexure A-I). It was made clear that Sri D.K. Das who has been selected in the SC quota has been described in the SC quota itself. Therefore, we are fully convinced that the said circular at Annexure A-I was issued indicating the number of vacancies and quota rules to



make aware of this fact to all concerned. Even assuming that the 13th respondent is not selected, the applicant is not coming within the zone of consideration in any way since three persons were above him in the seniority list. Regarding the contention that it is not according to the roster point, we have gone through the selection process in terms of the railway circular and found that this was done in accordance with the roster point and the selection cannot be faulted. The selection of respondent No.13 is in accordance with the selection policy which is guaranteed under the Constitution of India.

8. The ld. counsel for the applicant has also taken us to some decisions of this Bench of this Tribunal bearing No.O.A.814/1996 dated 18.9.1997 in case of S.M.I. Irfeen Vs. Union of India and O.A.1151/1996 with M.A.130/1997 dated 15.8.1997 and canvassed about the requirement of indicating break-up of vacancies of reserved and unreserved quota beforehand and that inter se seniority amongst the unreserved and reserved candidates has to be maintained correctly in terms of the relevant circular. On going through the circular at Annexure A-1 it is clear that names of 7 candidates were proposed to be considered and the vacancy position had been clearly indicated by mentioning that one of the posts shall be reserved for the SC candidate, and, therefore, the aforesaid decisions are not squarely applicable to this case.

9. In the conspectus of facts and circumstances mentioned above, we are of the considered view that selection was made ~~through~~ ^{by Selection Authority} which cannot be faulted in any way as observed by us and, therefore, this O.A. does not merit any consideration and it has to be dismissed. We do so accordingly with no order as to costs.


MEMBER(J)


MEMBER(A)