

In the Central Administrative Tribunal
Calcutta Bench

OA 862/97 AND
M.A. 60/98

Present : Hon'ble Mr.S.Biswas, Member(A)
Hon'ble Mr.A. Sathath Khan, Member(J)

Baijnath Ram, Son of Late Durbal Ram, aged about 54 years
working for gain in E. Rly, resident of K.T. Road P.O. Asansol
..... Applicant

-Vs-

- 1) Union of India through the GM, E. Rly, 17 N.S. Road, Calcutta-1
- 2) The DRM, Eastern Rly., Asansol
... Respondents

For the applicant : Ms B. Mondal
Mr.B.Chatterjee (Sr)
For the respondents Mr.R.K. De

Date of Order: 13/3/03

ORDER

Mr.S.Biswas, Member(A) :

By this application under Section 19 of the
Administrative Tribunal Act, 1985, the applicant has
sought the following reliefs :

Direction to the respondent authorities, not to
give final effect to the provisional seniority list dated
12-3-97 which has been impugned by the applicant, further
seeking insertion of the name of the applicant.

2. The applicant has contested the provisional
seniority list dated 12-3-97 stating that the same is
illegal and full of anomaly and had represented to the
respondents. The said representation dated 23-4-97 has
not been disposed of by the respondent authorities.

3. We have heard both the sides. The undisputed
facts in this case are that the applicant was appointed
as Substitute Porter at Asansol Dn. on 6-1-71 in the pay
scale of Rs70-85/- and he was subsequently promoted to

2040/-(RS) consequent on restructuring of the cadre. Lastly, he was promoted to the post of Head TNC in the scale of Rs1400-2300/- with effect from 12-5-93.

4. The allegation of the applicant is that when in October, 1996 a selection by viva-voce was undertaken for filling up of 18 posts in the higher scale of Rs1600-2660(RP)/Rs5500-9000/-(RS). In all 47 candidates were called and his position was 13 in the said list appended to the call letter. Further in order of seniorority he was the second scheduled caste candidate in the list. Accordingly, he appeared in the selection interview on 10-12-96 and found to his dismay that he was not included in the panel of 11 candidates who were promoted by the respondent authorities on 12-3-97 in the first phase and one S.C. Das was also promoted thereafter in the 2nd phase. All the promoted appointees have been asked to officiate provisionally. As his name did not figure in this list, the applicant made representation on 23-4-97 but ^{with} no avail. It is further contended that in the list of ^{the} persons promoted names of three SC candidates find place though his name was not included though his juniors were promoted. The learned counsel for the applicant further alleged that the applicant had represented his case before the DRM stating that he was superseded by C.R. Paswan, R.N. Roy and D.K. Roy, whose position had been indicated at Sl's 14, 15 and 18 respectively in the Call Letter dated 26-11-96 and his position should have been just below D.K. Roy, SC candidate, who was at Sl.12 of the Call letter. Briefly thus he has ^{also} assailed the promotion order dated 12-3-97 in CTNC which was indicated to be provisionally published.

S.A.

5. The learned counsel for the respondents has refuted the claim of the applicant stating that the submissions are not factually correct. It is a fact that a selection test including viva voce was conducted for the category of HTNC in the scale of Rs1400-2300(RP) at Asansol Dn. for promotion as Chief Trains Clerk in the scale of Rs1600-2660/-. The Board was held on 31-12-96 for selection and 18 were empanelled finally and the list published on 6-1-97, but they filled up the available vacancies of only 11 candidates in order of seniority and merits from the impugned list in the first phase. The applicant was not found successful in the said viva voce test and therefore could not be empanelled, whereas, as per the quota, the three SC candidates were selected including one who is senior and two juniors to the applicant as per rules. In other words, the name of the applicant does not figure in the list as he could not qualify in the common and prescribed viva voce test. Therefore, there is no question of either the panel being revised or the seniority list of CTC being corrected. The name of one Shri S.C. Das who was the 12th person in the panel was subsequently promoted. 12 selected persons from the panel in order of seniority had then promoted. For reasons stated, the name of the applicant does not find place in the panel at all.

6. The learned counsel for the applicant however at this stage contested the empanelment stating that selection by viva voce alone is illegal and contended that ~~this~~ position is well settled now in terms of decision of Hon'ble Apex Court in Praveen Singh V. State of Punjab and Others (AIR 2001 SC 152), the viva voce test as sole basis is not held proper in this order and therefore, the said selection is liable to be quashed.

5 N This decision is clearly late in time whereas the

has not been challenged as yet.

8. The learned counsel for the respondents brought to our notice Rule 215(e) of IREM which is reproduced below :-

"Eligible staff upto 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 channels 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."

9. Therefore, for preparing a panel by selection, either written or viva-voce test can be adopted. The learned counsel for the respondents Department has further clarified by citing S.No.6253 circulated under E 1023/0/4 dated 2-2-66 that for Head Trains Clerk the nature of test would be only viva. The relevant extract is reproduced below :-

The Chief Operating Superintendent has decided that the following should be added as a new item in the list enclosed with this office serial No. under the operating Department.

<u>Sl.No.</u>	<u>Category of staff</u>	<u>Scale</u>	<u>Nature of test</u>
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47-A	H.T.C.	Rs250-380(AS)	ORAL
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10. We have further perused the tabulation sheet in this case to see the correctness of the submission by the respondents.

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The applicant ~~have~~ failed as he secured less than the prescribed marks and all who were empanelled including his juniors, got higher marks in the said viva-voce test, including personality leadership, seniority and record of service.