

FINAL ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL: LUCKNOW BENCH

Friday the 19th day of May 2000 (19-5-2000)

PRESENT

The Hon'ble Shri D.V.R.S.G.DATTATREYULU, MEMBER(J)
and

The Hon'ble Shri S.MANICKAVASAGAM, MEMBER(A)

O.A.NO. 392 of 1991

S.R.Pathik .. Applicant

Vs.

1.Union of India through
General Manager, Northern Railway
Baroda House, New Delhi

2.The General Manager, Northern Railway
Baroda House, New Delhi

3.The Divisional Railway Manager,
Northern Railway,
Hazratganj, Lucknow .. Respondents

H.K.P.Srivastava .. Advocate for the applicant

Mr.A.K.Chaturvedi .. Advocate for the respondents

Order: Pronounced by the Hon'ble Shri S. MANICKAVASAGAM
MEMBER (A)

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The applicant was working as a Section Controller (Rs.470-750) with effect from 11.5.1977. He was subsequently promoted to the grade of Dy. Chief Controller (Rs.700-900) with effect from 24.12.1980. However, His name figured at Sl. No. 12 in the seniority list as on 31.5.1981, published on 2.6.1981 by the respondents. The applicant had also passed the P16-A ~~examination~~ examination which is essential for promotion to the next higher grades.

2. It is further stated that the applicant was considered viz. Chief Controller (Rs. 2375-3500) for promotion to the next higher grade, but he was not selected. The applicant belongs to the reserved category, viz. Scheduled Caste (SC for short) and aggrieved by the action of the respondents, the applicant has come before this Tribunal with the present OA seeking for a direction to the respondents to fix his pay at the appropriate stage in the pay scale of Rs. 2375-35000 with effect from 1.1.1984 on the basis of the 40 point roster ~~examination~~ for SC/ST and grant other consequential benefits.

3. The respondents have filed a sketchy reply. It is stated that the post of Chief Controller is a selection post. Admittedly, the applicant was considered for empanelment as Chief Controller with effect from 1.1.1984 as well as other vacancies. But the duly constituted Departmental Promotion Committee (DPC for short) did not find him fit for empanelment. It is further stated that the applicant had passed the ^{Course} P 16 A ~~examination~~ which is a prerequisite for promotion to the post of Dy. Chief Controller.

4. It is further averred in para 11 of the reply that the Annual Confidential Reports (ACR for short) of the applicant was not up to the mark and therefore

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the applicant was not found fit for promotion as Chief Controller in the year 1985. It is also the contention of the respondents that the OA is devoid of merit and liable to be rejected.

5. We have heard the learned counsel for both sides and perused the records.

6. At the ~~out~~^{sub} ~~stage~~ it may be noted that as there has been a statement in the reply that the ACRs of the applicant was not up to mark, during the course of arguments we asked the learned counsel for the respondents to produce the ACR dossier of the applicant. The ACR dossier was not produced. But, the file relating to the off. of Chief Controller of the applicant was produced and we have perused the same.

That apart we have also perused the departmental records.

7. From a perusal of the records it is seen that on the basis of cadre review and restructuring of Group 'C' cadre, sanction was accorded for 118 posts of Chief Controllers by the Railway Board, out of which Grade-I posts were 18 in the pay scale of Rs.840-1200 and the remaining were Grade-II (100) carrying the pay scale of Rs.840-1040. Based on the guidelines issued by the Railway Board, the respondent prepared a panel, empanelling persons 116 candidates, as two ~~posts~~ were already working in the said post. While preparing the list, it is seen that out of the candidates who have not yet passed P-16 A Course were also empanelled, with a condition that they should qualify in the said course as early as possible. In fact some of them have also been exempted from passing the P-16-A course. After a lot of corrections a list was published in 1985.

A perusal of the notings in the file indicates that there is nothing to suggest that the applicant's name was considered at all. Further his name does not appear in the noting also even in respect of persons who have been left out for adverse entries in their ACRs. A number of cases have been ~~discussed~~ discussed subsequently, like that of the applicant, viz. Veerband Batra, Jaitley and Jaswant Roy and others. But the applicant's name does not

figure anywhere in the notings of the file. Thus it would appear that there is an error committed by the respondents in not considering the case of the applicant at the relevant point of time.

8. Our above view is supported by the following observations. In the seniority list of Dy. Chief Controllers as on 31.5.1981 the applicant's name figured at Sl.No.12. In the above list the following persons were placed above the applicant, viz.

S/Shri S.C.Bajpai
 B.B.Sen
 P.Yadav
 B.B.Saxena

All these persons find a place in the list published by the respondents on 5.7.1985. It is not understood as to how the applicant's case is missing from the list published on 5.7.1985. As stated earlier we are unable to locate in the notings wherein it is stated that the applicant's name has been omitted because his ACRs are not up to the mark. Therefore, this argument of the respondents has to fail, as the same is without ^{any} foundation. Under these circumstances the reply filed by the respondents (Para 11 of the reply) wherein it is stated that the applicant was not selected because his ACR was not up to the mark is not borne out by facts and therefore has no substance.

9. Consequent upon issue of the selection list for filling up the vacancies of upgraded posts with effect from 1.1.1984 it is seen from the letter of 4.11.1985 that there were various representations regarding the manner in which the panel was to be prepared. Accordingly, a modified selection procedure was adopted. Based on the said procedure, ~~the~~ a further list was issued on 6.12.1986. The said list contained 19 names. But even in the said list the applicant's name does not figure.

9. It is also seen from the official records that a notice was issued calling for names of persons who would like to appear for selection to the post of Chief Controller(Rs.2375-3500) on 10.5.1988. The test was conducted on 28.5.1988 and 4.6.1988. The applicant was declared successful in the written examination - vide letter dated 5.8.1988(sl.No.2) and the applicant was subsequently called for the viva-voce test. A perusal of the marks obtained would show that the applicant had obtained marks as follows:-

Written test : 18 out of 35

Viva-voce test : 7 out of 15

Personality,

address,

leadership etc. 10 out of 20

Seniority : 15 out of 15

Record of Service: 9 out of 15

59 out of 100

The respondents were apparently warned by Rule 219 of the IRTI wherein it is stated that the qualifying marks to be obtained in an examination conducted for selection posts is 60%. In view of the fact that the applicant had obtained only 59% perhaps his name was not considered for promotion to cadre of Chief Controller. The list was ultimately published on 28.4.1989. It is stated that the applicant has been making representation about his name not being placed in the select panel.

10. We find that the action of the respondents suffers from many flaws, including the statements made in the counter wherein apparently a misrepresentation as to the facts has been made by the respondents. There is no evidence on record to show that the ACRs of the applicant were found to be inadequate at any point of time for inclusion of his name in the panel published in 1985. Neither any

positive analysis has been made in the file which we have perused nor the respondents were able to produce the ACRs of the applicant to show that he was not up to the mark. This coupled with the fact that the applicant has made a positive statement that no adverse remarks were communicated to him at any point of time would clearly prove that the statement of the respondents is not borne out by facts on record. Therefore the contention of the respondents that the applicant's ACRs are not up to the mark has no foundation and has to be rejected ab-initio. We record our displeasure in that the respondents have attempted to misguide the ~~court~~ Tribunal.

11. In so far as the selection done in 1988 is concerned admittedly the applicant passed the P-16 A course long time back, his ACRs are more than adequate and that the applicant belongs to reserved category. When this is the admitted position, the respondents while assessing his performance in the examination, ~~the respondents~~ ought to have kept in mind the relaxed standards applicable to SC/ST even in the matter of selection posts, especially when vacancies were ~~more~~ reserved ~~more~~ more in number and the ~~and~~ candidates are lesser in number. In fact there are Govt. of India instructions issued by the Department of Personnel with regard to applying relaxed standards to employees belonging to reserved category (SC/ST). Further the Apex Court had also recently held that relaxed standards should be extended to persons belonging to SC/ST in the matter of promotions, including selection posts. In the instant case we find that the applicant missed the selection by just one mark. Certainly had the respondents extended the relaxed standards available to SC/ST in the matter of selection, the applicant would have certainly come within the parameters of selection and thus would have become also eligible for empanelment for the post of Chief Controller. But this was not done. We therefore opine that the action of the respondents is not empanelling

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the applicant in the 1985 selection as also in the 1988 selection is not only illegal but also amounts to miscarriage of justice, especially when the respondents had failed to extend the relaxed standards applicable to SC/ST in the matter of selection and promotion.

12. We further find that the applicant must have retired by now, without enjoying the legitimate benefits of promotion which had accrued to him. As already held injustice has been done to him in the matter of promotion to the post of Chief Controller and his case deserves to be considered by extending the benefit of relaxed standards as also in view of the latest decision of the Apex Court with regard to extension to relaxed standards to reserved categories like SC/ST.

13. In the result the applicant succeeds and the following orders are passed:-

(a) The respondents shall reconsider the case of the applicant for inclusion of his name in the panel published on 5.7.1985 and on 18.4.1989 by applying the relaxed standards to SC/ST employees in the matter of selection and promotion. In the event of his name being found fit for inclusion in the panel published in 1985, obviously there is no need to consider ^{his} case subsequently. Otherwise, his case shall be considered for inclusion in the list published on 18.4.1989 by applying the relaxed standards. This exercise shall be completed within two months of receipt of a copy of this order by the respondents.

(b) On such reification of date of promotion, the applicant shall be entitled for all arrears of pay and allowances from that date and arrears arising out of revision of retiral benefits. This exercise shall be completed within two months of receipt of a copy of this order by the respondents.

(c) In case the respondents fail to comply with the direction contained at (b) above, the respondents shall

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shall pay interest at the rate of 12½ p.a. on the amounts due to the applicant as stated in clause(b) with effect from the date of expiry of two months period from the date of receipt of a copy of the order by the respondents, till the date of actual settlement.

14. The OA is allowed to the extent indicated above with no order as to costs.

S. Manickavasagam

(S. MANICKAVASAGAM)

MEMBER(A)

D.V.R.S.G. DATTATREYULU

(D.V.R.S.G. DATTATREYULU)

MEMBER(J)

19-5-2000

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