

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A

R.A.No.: 490 of 1996

(Patna, this *Thursday*, the *22nd* Day of April, 2004).

C O R A M

HON'BLE MRS. SHYAMA DOGRA, MEMBER (JUDICIAL).

HON'BLE MR. MANTRESHWAR JHA, MEMBER (ADMINISTRATIVE).

Jawahar Lall Chowdhury, S/o Late Dashrath Chowdhury,
resident of mohalla Anwarpur, P.O.: Hajipur, District
Vaishali (Bihar), at present working as Goods Supdt. at
Hajipur Station of N.E.Railway. APPLICANT.

By Advocate :- Shri M.P.Dixit.
Shri Sudama Pandey.

Vs.

1. The Union of India, through General Manager, N.E.Railway, Gorakhpur, P.O. & Distt. : Gorakhpur (U.P.).
2. Divisional Rail Manager, N.E.Railway, Sonpur, P.O.: Sonpur, District Saran (Chapra) (Bihar).
3. Shri Ram Nath Jha, at present working as Senior Commercial Inspector at Barauni, P.O.: Barauni, Distt.: Begusarai.
4. Shri Ashutosh Sharan, at present working as Senior Commercial Inspector, in the office of Divisional Commercial Manager, N.E.Railway, Sonpur, P.O.: Sonpur, Distt.: Saran.
5. Shri M.Z.A.Rizvi, at present working as Senior Commercial Inspector in the office of Divisional Commercial Manager, N.E.Railway, Sonpur, P.O.: Sonpur, District, Saran.
6. Shri M.H.Ansari, Senior Commercial Inspector, Working in the office of Divisional Commercial Manager, Sonpur, P.O.: Sonpur, Distt.: Saran.
7. Shri Ramesh Prasad, Senior Commercial Inspector, posted at Khagaria Railway Station, P.O.: Khagaria, Distt. : Khagaria.
8. Shri Narendra Kumar, Senior Commercial Inspector, posted in the office of Divisional Commercial Manager, N.E.Railway, Sonpur, P.O.: Sonpur, Distt. : Saran (Chapra). RESPONDENTS.

By Advocate :- Shri P.K.Verma.

O R D E R

Shyama Dogra, Member(J) :- This OA has been preferred by the applicant for direction to the respondent no.2 to amend the panel of selected candidates by dropping the names of respondents no. 5 & 6 and declare the applicant selected as Senior Commercial Inspector (Rs.2000-3200) against the Scheduled Caste quota with all consequential benefits.

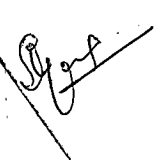
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2. The applicant has also sought alternative prayer for quashing the results declared for the said post at Annexures-A/1 & A/4 and consequent posting orders of respondents no. 3 to 8 with direction to the respondents to hold a fresh selection as per rules and procedure after giving an opportunity to appear in the said selection afresh while allowing this OA with cost.

3. The background of the case, as submitted by the applicant, is that while he was working as Goods Superintendent Gr. II in pay-scale of Rs.1600-2660/-, in pursuance of the notification issued by the Divisional Railway Manager)P), N.E.Railway, Sonpur, dated, the 6th March, 1995, for holding selection for six posts of Commercial Inspector/Gr.I in pay-scale of Rs.2000-32000, the applicant ~~also applied~~ for the said post as he belonged to Scheduled Caste.

4. As per prescribed terms ~~and~~ of notification, 25% of the above posts were to be filled-up by option from the candidates belonging to Goods Superintendent, Commercial Superintendent, Coaching & Reservation Supervisors working in the scale of Rs.1600-2660/-. The applicant also appeared in the written test, however, under protest as the said notification was against Railway Rules because no pre-selection coaching was arranged for SC/ST candidates and seniority was left unsettled though it was mandatory on the part of the respondents to arrange such coaching for said candidates.

5. After declaration of the result of the written test, out of nine candidates, seven were declared successful, including the private respondents and were called for viva-voce, but after publication of final result applicant's name did not find place in the list of selected candidates which compelled the applicant to prefer representation to the authorities concerned, but without passing any order on the representation of the applicant, the respondents have issued posting orders in favour of respondents



no. 3 to 5 vide letter dated, the 23rd August, 1995. In the representation the applicant has pointed out various irregularities and discrepancies in the said selection vide Annexures-A/7 to A/10, but of no avail. One of these irregularities being pointed out by the applicant was to the effect that respondent no.8, being a SC candidate and who had scored more marks than the respondents no.5, who was a general candidate and was declared passed under relaxed standard as per Railway Board's letter No. E(NG) 1-83 P.M 1-65/P.N.M./NER dated, the 5th December, 1984, the respondent no.8 should have been promoted under General quota (not SC quota) and the post reserved for SC quota should have been given to the applicant and; therefore, these appointments have been made in a very illegal and arbitrary manner.

6. Even respondent no.6 was not eligible for his consideration on the said post as the main eligibility criteria to appear in the said test as per notification was that only those candidates who were working in the scale of Rs.1600-2660/- were eligible to be selected as Commercial Inspectors in the Grade of Rs.2000-3200/-.

7. In support of his contention with regard to mandatory instructions for arranging pre-selection coaching for SC/ST categories, the learned counsel for the applicant has placed reliance on the decisions passed by this Court in OA 116 of 1995, decided on 04.04.2001, filed by the same applicant and OA No. 829 of 2001 & OA No. 859 of 2001, decided by Allahabad Bench of CAT (Gulam Mustafa & Ors. Vs. Union of India & Ors., cited in 2003(2) ATJ 58. Therefore, the said selection is liable to be vitiated on this ground.

8. The respondents have filed written statement and refuted the claim of the applicant on the ground of suppression of material facts from this Court with regard to one OA 443 of 1995 preferred by the applicant for similar

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claims and the same was dismissed by this Court. Apart from this, the applicant has also filed another OA, bearing OA No. 116 of 1995 raising some questions and challenging the selection of Commercial Superintendent Gr. I (Rs. 2000-3200) in which he himself had appeared and had passed. The result of that selection was also declared on the same day i.e., on 21st August, 1995, when the result ~~of~~ selection for the post of Commercial Inspector was declared. The applicant had also obtained stay from this Court in the said OA 116 of 1995, but later on himself got ^{u-2}vacated for getting promotion in the higher grade to the post of Commercial Superintendent Gr. I in pursuance of which vide office order dt., the 12th April, 1999, the applicant was granted promotion in the grade of Rs. 2000-3200/- (Revised Rs. 6500-10500/-) and since then the applicant has been working on the said post. In support of this contention the respondents have placed on record copies of office orders dated, the 12th April, 1999 and 21st August, 1995.

9. Next submission of the respondents is that since both these posts of Commercial Inspector and Commercial Supdt. Gr. I are parallel posts and since the applicant has already joined the permanent post of Commercial Supdt. Gr. I long time back; therefore, after having found to be not selected in the said selection test held for the post of Commercial Inspector he cannot challenge that selection process as principle of estoppel, waiver and acquiescence is applicable in his case due to his own commissions and omissions on the part of the applicant.

10. The respondents have vehemently submitted that due process of procedure for the said selection has been followed by the respondents and the respondent no. 8, who belongs to SC category, has been selected in view of his being found more meritorious than the applicant.

11. In reply to the applicability of mandatory provision with regard to arranging pre-selection coaching for SC/ST candidates, the plea of the respondents is that the said plea of the applicant has already been rejected by this Court in orders passed in OA 443 of 1995; ^{dismissed on} therefore, the case of the applicant is otherwise hit by the principles of res-judicata.

12. The applicant has filed rejoinder reiterating his claim as submitted in the OA. He has denied that the said OA 443 of 1995 was dismissed with regard to his prayer for pre-selection coaching for SC/ST categories, whereas, in fact the said OA was dismissed on the ground of plural remedies sought for by the applicant. Moreover, it is submitted by the applicant that the present OA has been filed specially for promotion to the post of Commercial Inspector which has no relation or connection with the earlier case. Therefore, since the applicant was declared successful in the written test and his name was placed at sl.no.5 in the order of merit, he should not have been deprived of being allowed after appearing in the viva-voce test as he ~~(is)~~ sure that he has got more marks than the other private respondents.

13. With regard to the various discrepancies occurred in the said selection the applicant has made reference of the complaints to the General Manager (Vigilance), N.E.Railway, Gorakhpur, in which the applicant had received a letter dated, the 11th October, 1995, which was duly replied ^{letter by} by the applicant in time. Similarly, one ~~one~~ Shri S.P.Singh, Chairman, Passenger Service Committee, G.O.I., Ministry of Railway (Railway Board), was forwarded to D.R.M., N.E.Railway, wherein it had been stated that the entire selection proceeding of the said selection has been taken by the Vigilance Department for enquiry which fully find support with the contention of the applicant to the effect that the said selection process has been done in a very favourable and

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arbitrary manner and the respondent no.8 has been given undue favour while ignoring the genuine right of the applicant for considering his case for such promotion. However, the applicant has not placed on record any documentary evidence to support his contention in this regard.

14. No written statement has been filed by private respondents.

15. We have heard learned counsel for the parties and carefully gone through the record.

16. The applicant has challenged the selection process and promotion orders of respondents mainly on the ground that before initiation of said process, the respondents have not arranged for training to be undergone by Scheduled Caste & Scheduled Tribe candidates which was mandatory. But surprisingly he had appeared in the selection test without any protest and after not found to be successful he has challenged the entire process of selection thereafter on various counts. No document has been placed on record to show that he appeared in the said test under protest.

17. The applicant has also suppressed the fact from the Court that on the same date he had appeared for another test held for Commercial Supdt. Grade I with the same scale of Rs.2000-3200/- as of Commercial Inspector on 21.08.1995 and on his selection he had been working as such. Though admittedly both these posts were of parallel nature carrying same pay-scale and applicant was eligible for the said posts but it was incumbent upon the applicant to bring forth all these facts before the Court to have clear picture of his case. Though undoubtedly he had every right to appear in the selection test for both the posts.

18. Now the question arises as to whether he had raised the same point as has been raised in the present case when he appeared for selection to the post of Commercial Supdt. Gr.I. After calling for the case file of OA 443/95, decided on 23.08.1995, it was found that said OA was dismissed on the ground of seeking plural remedies, including prayer

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~~for training for SC/ST candidates for the post of Commercial Superintendent Grade-I.~~

19. Therefore, we find force in the contentions of the respondents that when applicant could not come out as successful in the test of Commercial Inspector he preferred the present OA to challenge the impugned order of selection of private respondents. Therefore, since the applicant has participated in the test without any protest or objection, he cannot now come out with the pleas that there was procedural irregularities committed by the respondents concerned while preparing question papers, etc.

20. So far as mandatory provision to impart training to SC/ST candidates are concerned, the decisions 2003 (2) ATJ 58 (Gulam Mustafa Vs. Union of India & Ors.) relied upon by the learned counsel for the applicant can be distinguished on the ground that in that case the entire selection process was ordered to be vitiated not only on that count but it was vitiated on other grounds also as there was non-compliance of Railway Board's circular dated, 19th March, 1976 by the authorities concerned.

21. The applicant has also failed to substantiate his case with relevant documents with regard to the plea that Narendra Kumar who has been selected under SC category has obtained lesser marks than the applicant. So far as marking done by the selection committee at the time of viva-voce is concerned, the same cannot be questioned or evaluated by the Court as the selection committee is the best authority to assess the eligibility and suitability of the person before it appearing for interview.

22. Even after perusal of Annexure-R/1, dated, the 21st August, 1995 & 12th April, 1999, the plea of respondents finds force with respect to the fact of selection of applicant to the post of Commercial Supdt. Gr.I on 21.08.1995 but the order was stayed by this Court in OA 116/95

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preferred by the applicant but later on ^{he} got that stay vacated vide M.A.No. 223 of 1996 & 260 of 1997 and finally said OA is found to be disposed of with directions to the respondents to decide the representation of the applicant vide order dated, the 4th April, 2001. The applicant was later on promoted vide order dated, the 12th April, 1999, but subject to final disposal of said OA.

23. The applicant has also not specifically supported his pleas with regard to malafide against any particular person or member of the selection committee who has taken viva-voce test. The allegations of malafide though are easy to level but unless the same are proved by substantial documentary evidence, the authorities concerned cannot be said to have been acted with malafide intention at the time of viva-voce test and that too without making that particular person as party against whom such allegations are levelled.

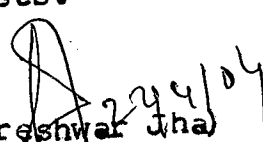
24. Even otherwise also in view of the fact the applicant participated in the selection process for the post of Commercial Inspector that too, without any protest, he later on cannot challenge the irregularities, if any, therein once the selection process is over. This has also been held by Hon'ble Apex Court in AIR 1986 SC 1043/ (Om para 23 Prakash Shukla Vs. Akhilesh Prasad Shukla & Others) and 1999 (3) SLJ 34 (Sushma Suri's case).


25. Above all, the things which have settled long time back cannot now be unsettled at this stage which would otherwise result into chaos and the private respondents have been working on the said posts for the last more than eight years. We are also alive to the fact that applicant is otherwise working on the parallel post of Commercial Supdt. Gr.I carrying the same pay-scale of Rs.2000-3200 (Revised Rs.6500-10500/-); therefore, his pleas as submitted by the applicant as aforesaid paras, are not sustainable.

[Signature]

26. Therefore, in the given facts and circumstances of the case and for foregoing reasons, we are of the considered opinion that the applicant has failed to substantiate his contentions with cogent reasons and he has further not succeeded in his case because of his own acts, omissions and commissions as principle of estoppel, waiver and acquiescence is also applicable in his case as discussed hereinabove.

27. Resultantly, the present OA being devoid of merits is hereby dismissed and disposed of accordingly.
No costs.


(Mantreshwar Jha)
Member (A)


(Shyama Datta)
Member (J)

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