

Reserved

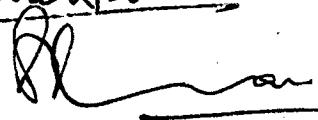
**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. No. 191/2006

Date of Order : 25th March, 2010

C O R A M

**HON'BLE MRS.JUSTICE REKHA KUMARI, MEMBER[J]
HON'BLE MR. SUDHIR KUMAR, MEMBER[A]**



Dhrub Kumar Yadav, Son of Late Chhedi Prasad Yadav, Resident of Quarter No. 373A, New Colony (Railway), Police Station – Town, District- Katihar.

.... Applicant

[Advocate for the Applicant : Shri A.N. Jha]

-Versus-

1. The Union of India through the General Manager, North East Frontier Railway, Maligaon, Guwahati.
2. The General Manager, North East Frontier Railway, Maligaon, Guwahati, Assam.
3. The Divisional Railway Manager, North Frontier Railway, Katihar, Bihar.
4. The Divisional Railway Manager(Personnel), North Frontier Railway, Katihar, Bihar.
5. The Senior Divisional Personnel Officer, North East Frontier Railway, Katihar, Bihar.

...Respondents

[Advocate for the respondents: Shri R. N. Choudhary]

O R D E R

Sudhir Kumar, Member[A]:- The present application has been filed by the applicant seeking to set aside the letter dated 19.01.2006 (Annexure A./5) through which the names of the persons selected for the post of Passenger Guard in the JKL.

scale of Rs. 5000-8000/- have been notified, and the subsequent communication dated 20.02.2006 (Annexure A/8), through which the appeal of the applicant in regard to names of eligible candidates issued on 19.01.2006 (Annexure A/5) has been held to be not maintainable

[2] Being aggrieved by the non inclusion of his name in the list of eligible candidates notified on 19.01.2006 through annexure A/5, the applicant has approached this Tribunal.

[3] The applicant was promoted to the post of Senior Goods Guard in the pay scale of Rs. 5000-8000/- w.e.f. 10.01.2005. He has pointed out that with the 5th Pay Commission's recommendation having been accepted w.e.f. 1.1.1996, the posts of Passenger Guards and 20% of the posts of Goods Guards were placed in the higher scale of Senior Goods Guard/Passenger Guard. Similarly, in the case of higher scale of Rs. 5500-9000/-, the posts of senior Passenger Guards were created equivalent to the pay scale of Mail Guard and the latter was also to the extent of ~~20%~~ 20% of the persons in the lower pay scale. Thus, the following hierarchy was provided:-

1. Goods Guard - Rs. 4500-7000/-
2. Senior Goods Guard/Passenger Guard – Rs. 5000-8000/-
3. Senior Passenger Guard/Mail Guard – Rs. 5500-9000/-

[4] Respondent No. 4 came out with a provisional seniority list of Senior Goods Guards as on 01.04.2005 on 02.05.2005 (Annexure A/1). The applicant's name ~~is~~

found place at sl. no. 23 in the Division among the list of Senior Goods Guards. Options were invited for the selection which was to be held on 25.11.2005 for the post of Passenger Guards in the same pay scale of Rs. 5000-8000/-, and out of 9 such posts 6 were unreserved, 2 reserved for SCs and one reserved for STs. The written test was to be held on 31.12.2005 as per Annexure A/2 notification. In this list, the name of the applicant was missing from the list. He pointed out that per para 216 of Indian Railways Establishment Manual (in short IREM), the persons had to be called for Written and Viva-Voce test three times the number of existing and anticipated vacancies, out of the eligible candidates. In Clause-6 of Para 216 of IREM it is further provided that in case in the general category, candidates equal to 3 times the number of vacancies are not available, the next available candidates one stage lower from the eligibility critiera from whom the promotion could be made, would be considered to meet the zone of consideration by considering the persons three times the number of actual vacancies. However, it has been further provided that in case of SC/ST candidates, 2 grades below the grade from which selection has to be made can be considered.

[4] The applicant's contention is that against the six earmarked unreserved category of posts, 18 candidates of unreserved category should have been called for appearing in the written test for the post of Passenger Guard, while only 13 such candidates were called for. The applicant being aggrieved and dissatisfied with this notification dated 25.11.2006 (Annexure A/2), represented AM.

before the respondent no. 4 on 09.12.2005 through his representation dated 09.12.2005 (Annexure A/3). He has represented that if three times the number of 9 posts had been called for as per his interpretation of the rules, since he was placed at sl. no. 23, his name should have come within the zone of consideration of eligible candidates. However, in the list of candidates notified, 14 SC/ST candidates had been included, which are more than the required number of three times the number of SC/ST vacancies, while only 13 general category candidates had been listed against the 6 general category posts. No action was taken by the respondents on the petition of the applicant, and he issued reminders thereafter on 22.12.2005 and 09.01.2006 (Annexure A/4 series). The Written Test fixed for 31.12.2005 was in the meanwhile postponed to be held on 21.01.2006 through notification dated 25.11.2005, and a fresh panel of eligible candidates ~~got to be~~ ^{to be} issued through Annexure A/5 dated 19.01.2006 before the Written Test. In this also the applicant did not find his name figuring in the list. His appeal dated 1.2.2006 (Annexure A/7) against this revised panel dated 19.01.2006 was also rejected through the impugned order of Appellate Authority dated 20.02.2006 (Annexure A/8). Even from this modified notification only 15 unreserved candidates were called for in the written test in respect of 6 unreserved vacancies. The applicant's contention was that the procedure followed by the respondents was in violation of the IREM, and in support of his contention he cited the order of CAT, Lucknow Bench dated 20.08.2003 in OA No. 88/2003 ; Sabitri Devi Vs. ~~to be~~ ^{to be}

Union of India & Ors. The applicant alleged that the respondents have acted in a high handed manner and have denied an opportunity to the applicant for his case to be considered against the unreserved category candidates. He further submitted that when the test was finally held on 25.01.2006, only 21 candidates out of 27 appeared, and 6 remained absent, and that the panel for the formation of Senior Passenger Guard had still not been finalised at the time of filing of the OA on 21.03.2006. He claimed that non inclusion of his name is violation of the Articles 14 and 16 of the Constitution of India, and prayed that apart from quashing the two impugned orders, the respondents should be directed to issue a fresh panel strictly in compliance with para 216 of IREM.

[5] In their reply, the respondents denied his averments. It was pointed out that 5 SCs and 1 ST candidates were already available above the applicant for being considered against the 6 unreserved posts, at sl. no. 1,3,4,5,6 and 7 of the seniority list. Apart from these, 6 SC candidates and 3 ST candidates had also to be called against the 2 SC and 1 ST posts available after considering the earlier 6 as general category unreserved candidates under their normal seniority in terms of Railway Board Circular No. 99-E(SCT) 1/25/13 dated 20.06.2003. They pointed out that the representation of the applicant was considered in detail and on detailed examination of the earlier panel of select list, it was found that 2 out of the 5 SC candidates amongst 6 SC/ST candidates above the applicant were undeserving, as they were last promoted on the basis of availing relaxed standard. 

Accordingly, it was decided that they were not to be counted against the unreserved candidates, and were to be counted only against the SC candidates and 2 more unreserved candidates as per their seniority were, therefore, included. Also since Shri L.K. Choudhary , SC candidate had since retired on 31.01.2006, whose name was earlier included in the list because the written test was to be conducted on 31.01.2006, but was later held on 25.02.2006, was also deleted. Since the said Shri L.K. Choudhary, SC candidate had already been treated as unreserved due to his normal seniority, the next seniormost unreserved candidate was called for selection. The respondents admitted that incidentally, in this manner all the candidates who were above the applicant in the seniority list as on 1.4.2005 got to be called to appear in the written test. They also pointed that the applicant's representation had lost force because when the result of the panel was declared on 20.06.2006, the result was nil as none of the candidates who had appeared in the examination had been determined to be passed.

7. The respondents further explained that 18 UR candidates were called against the 6 posts of unreserved category, but in view of the fact that one ST and 3 SC candidates, 4 persons above in merit to the applicant got included along with 14 other unreserved candidates to constitute a list of 18 persons in terms of the Railway Board Circular dated 20.06.2003 cited above, the persons who were called for the selection against the SC/ST posts were, however, all junior to the applicant. The administration pointed out that Shri Chedi Paswan and Shri 

Ramdeo Mahto at sl. no. 3 and 5 of the list dated 01.04.2005 were considered not against general category candidates, but against the SC candidates on account of their prior selection against relaxed standards. However, since Shri Rana Pratap Singh, ST at sl. no. 1, Shri Debi Paswan, SC at sl. no. 4, and Shri Dina Nath Paswan, SC at sl. No. 7, were counted against the UR candidates, the total number of UR candidates who were called were only 15, to make up the total of 18, while sl. no. 6 Shri L.K. Choudhary retired on 31.01.2006. The respondents admitted that only 19 candidates appeared in the written test on 25.02.2006, and 5 more appeared on 29.04.2006 and two submitted their refusal at a later stage and one candidate did not respond. However, out of all the 24 candidates none passed as per the NIL result declaration.

8. During the arguments, the learned counsel for the applicant vehemently opposed that SC/ST candidates could be considered against unreserved category vacancies, as was mentioned by the respondent authorities in the light of their circular dated 26.02.2003. However, the learned counsel for the respondents explained that the Constitutional provisions had been fully adhered to, and that the SC/ST candidates competing on their own merit, without having availed the benefit of reservation or any relaxation, have to be counted against the unreserved category posts as per their eligibility criteria.

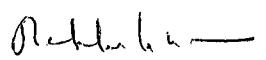
9. In the light of this, the respondents were fully justified in counting 3 among the SC/ST candidates above the applicant in the list as on 01.04.2005 as SL.

UR category candidates, calling only 15 others for the written test. It is the applicant's unique misfortune that in the arithmetic as shown above, after allowing 3 among the 3 SC/ST candidates above the applicant to be counted as UR candidates, one person having retired, and 2 being counted against the SC category, when 15 UR candidates were called, the list of the 15 UR candidates so drawn stopped just above his name. However, there appears to be no illegality or incongruity in the stand taken by the respondents in this regard, and the applicant's case fails, though just by a whisker.

10. In the result, the OA is rejected. No order as to costs.



[SUDHIR KUMAR]
MEMBER[A]



[REKHA KUMARI]
MEMBER[J]

srk.