

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.94/86

R.G.Mathuriya,
S/o.late Shri Ganeshilal,
Assistant Engineer,
Office of the Deputy Chief Electrical
Engineer, Railway Electrification,
Ajni,
NAGPUR. .. Applicant

vs.

1. Chief Personnel Officer,
Central Railway,
Bombay V.T.
2. The General Manager,
Central Railway,
Bombay V.T.
3. The Director of Establishment,
Railway Board Office,
Rail Bhavan,
New Delhi. .. Respondents

Coram: Hon'ble Vice-Chairman Shri B.C.Gadgil

Hon'ble Member(A) Shri P.Srinivasan

1. Applicant in person.
2. Shri V.G.Rege,
Counsel for the
Respondents.

JUDGMENT

Date: 29th March 1988

1
The applicant is currently working as an Assistant Engineer at Nagpur in the Class II service of the Civil Engineering Department of the Central Railway, having been promoted to that post initially on an ad hoc basis in January, 1978 and subsequently on a regular basis from 4-12-1980. His complaint is that he should have been promoted to that post earlier; more specifically his name

P. Srinivasan

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should have figured-but did not-in any one of the three provisional panels for regular promotion announced on 15-2-1977, 1-12-1977 and 1-3-1979 in which his junior, Amarjit Singh was selected.

2. The applicant was admittedly senior to Amarjit Singh in the immediately lower post of Permanent Way Inspector(PWI) in the scale of Rs.450-575. Both of them belong to a Scheduled Caste. Both took the written test for promotion held on 31-10-1976 and qualified therein to be called for interview. 20 posts of Assistant Engineers had to be filled up at the time, of which 3 were reserved for SC Candidates and 2 for Scheduled Tribe(ST) candidates. On the basis of the written test and interview, a provisional panel of 13 persons found fit for promotion was announced on 15-2-1977 and gazetted on 1-4-1977 which included 3 persons belonging to SC but none from the ST category. Amarjit Singh was one of the 3 SC candidates selected but not the applicant. A second provisional panel, based on the same selection, was announced on 25-10-1977 and gazetted on 1-12-1977, containing 18 names including the 13 empanelled earlier. This time also the number of SC candidates remained at 3, including Amarjit Singh but not the applicant and there were no ST candidates. A third provisional panel, also based on the same selection, announced on 1-3-1979 listed one more person in addition to the 18 already empanelled, to make a total of 19; the solitary addition was a

P. L. Singh
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ST candidate Shri S.Venugopal, the applicant yet once again missing the bus.

3. The applicant argued his case personally while Shri V.G.Rege, learned Counsel appeared for the respondents - the Chief Personnel Officer and General Manager of Central Railway and the Director of Establishment, Railway Board, Delhi.

4. A preliminary objection to the application was raised by Shri V.G.Rege, learned Counsel for the respondents. The grievance of the applicant, Shri Rege pointed out, was against 3 provisional panels announced in 1977 and 1979. The Tribunal had no jurisdiction over matters in which the ^{by cause} ~~course~~ of action arose prior to 1.11.1982 and so this application should be dismissed on that ground itself.

5. The applicant sought to refute Shri Rege's contention, submitting that his was a continuing grievance. He had to make representations against his omission first to his own departmental authorities before he could come to this Tribunal. All the three panels were described as provisional and till a final panel was brought out he could agitate his claim.

6. After careful consideration, we agree with Shri Rege that the cause of action arose here when the last of the 3 provisional panels was announced on 1-3-1979. Several Benches of this Tribunal have held that stale matters involving causes of action arising

P. S. Rege

more than 3 years prior to the establishment of this Tribunal i.e. prior to 1-11-1982 are beyond the jurisdiction of this Tribunal. The fact that the applicant made representations to the authorities cannot have the effect of postponing the cause of action. We notice that the applicant made a representation on 12-6-1979 after the third provisional panel was announced: even on the most favourable analysis, the cause of action can be said to have arisen, at best, on the expiry of one year from 12-6-1979 when no reply was received to the representation. Repetitive representations made thereafter cannot be taken into account for this purpose. The application deserves to be dismissed on this ground itself. However, since we heard both the parties at some length, we proceed to deal with the matter on merits also.

7. The first ground of challenge posed by the applicant against the three provisional panels which did not include him was that the Selection Board which formed the panel did not have a SC or ST member and so the whole selection process was vitiated. He relied on Railway Board's letter on the subject dated 24-6-1971 for this. Shri Rege, on the other hand, referring to the same letter, pointed out that the inclusion of a Scheduled Caste/Scheduled Tribe official in the Selection Board was not a mandatory requirement, the non-fulfilment of which would vitiate the selection process itself.

P. L. [Signature]

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8. We have perused the Railway Board's letter dtd. 24-6-1971 which, after setting out the recommendations of the Parliamentary Committee on the subject, goes on to say, "It may not, therefore, always be possible to include Scheduled Caste/Scheduled Tribe Officers in them. However it is ^{Suggested} requested that the recommendations of the Committee reproduced above should be kept in view as far as possible while nominating officers on the Departmental Promotion Committees, Selection Board etc. for recruitment/promotion to posts under your Control" (emphasis supplied) The recommendation under reference is for the inclusion of at least one Scheduled Caste/Scheduled Tribe member in a Selection Board. On a reading of the letter we are inclined to agree with Shri Rege that the inclusion of a SC/ST member in the Selection Board was not mandatory and therefore failure to do so in the instant case did not vitiate the selection process. This objection of the applicant is rejected.

9. Next, the applicant urged that the provisional panels were illegal because in the first two no ST Candidate was selected and in the third there was only one ST Candidate against the reserved quota of two posts. Under the Rules even failed ST candidates should have been given promotion on ad hoc basis for an initial period of six months and on satisfactory performance during that period, included in the panel. The applicant relied on Board's letter dtd. 22-12-1981 on the subject. There were two



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ST candidates available for promotion and the failure to include them in any of the panels was a legal infirmity vitiating the whole panel.

10. Shri Rege produced the records of the Selection Board on 2nd and 3rd February, 1977 and explained that the Board had in fact considered the case of two ST candidates, Shri S.Venugopal and Shri N.K.Pichad, both of whom had failed in the selection test, but could not include their names in the first panel or recommend their ad hoc promotion for six months because Shri Venugopal was undergoing a penalty which would expire only on 25-1-1978 while the disciplinary action against Shri Pichad was in progress. The position was the same when the Board met again on 14-9-1977 and 20-10-1977¹⁷ and finalised the second provisional panel: the Board observed Shri Venugopal would be available for "being put out on trial basis", meaning promoted on ad hoc basis, only after 25-1-1978 and Shri Pichad after the proceedings against him were finalised. Shri Venugopal was however promoted "on trial basis" by order dated 21-1-1978 and on his performance being found satisfactory he was placed in the third provisional panel at Sr.No.19 by an order of 8-1-1979 and Shri Pichad could not be promoted on trial and empanelled because of the disciplinary^{by action} still pending against him. There was therefore no illegality in the panels on account of the ST quota not having been filled up.

P. Rege

11. We are satisfied that there were proper and adequate ^{reserves} for the ST quota of posts not having been filled up in the three panels. We ~~are~~ therefore reject the applicant's objection in this regard.

12. The next contention of the applicant that in the absence of suitable ST candidates, the ST quota should have filled in by SC candidates (relying on Board's letter dtd. 17-8-1974) also does not help him. We agree with Shri Rege that such an interchange was possible only if there was a suitable SC candidate in the zone of consideration. The applicant had failed in the interview and was not a suitable candidate to be empanelled in a ST vacancy.

13. The applicant then argued that a person already working in a post on an ad hoc capacity could not be failed in interview. This contention also does not help the applicant because the interview in which the applicant was failed was held in 1976 while he was promoted as Asstt. Engineer on ad hoc basis only in January, 1978.

14. The applicant then urged that in awarding marks in the interview separate marks had been allotted for professional ability which was not right as professional ability is judged by the written test alone. On a perusal of the records we find that this contention is incorrect and that the assessment of professional ability has been made only in the written test which the applicant passed. This contention is also rejected.

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15. As per Board's letter dated 27-8-1968, the applicant urged, a SC candidate was entitled to be given one grading higher than the grading otherwise assigned to him and if that had been done in his case he would have been found suitable for empanelment. We find that the said letter talks of upgrading persons who had been graded as "good" or above and does not apply to candidates who failed in the qualifying test. The applicant having failed in the qualifying test was not eligible for any such upgrading and so this ground also fails.

16. The next contention of the applicant is that he should have been given relaxation of 10% in qualifying marks and selected in the panel. This relaxation, in our opinion is applicable where the requisite number of SC candidates are not available for empanelment. In this case the quota of 3 posts reserved for SC candidates was duly filled up. This contention is also rejected.

17. SC and ST candidates should have been interviewed in a separate block, the applicant urged, relying on a letter dated 19-11-1970 of the Board and that not having been done in this case, the selection was vitiated. We do not agree that this is a mandatory requirement, and more so when the requisite number of SC candidates were duly empanelled. This objection is also rejected.

18. Another grievance of the applicant is that in awarding marks for record of service he should have been given one grade higher. We have perused the

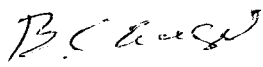
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relevant circular which applies only to cases where a SC candidate secures 15 marks out of 25 i.e. the minimum qualifying marks. The applicant having secured less than 15 marks, this contention also fails.

19. The applicant finally complains that due credit had not been given to integrity in awarding marks and the commendations received by him from time to time. There is nothing to suggest that either of these factor was ignored by the Selection Board. This objection is also rejected.

20. In view of the above, this application fails and is dismissed. Parties to bear their own costs.


(B.C.GADGIL)
Vice-Chairman


(P.SRINIVASAN)
Member(A)