

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.58/1999
DATED THE 4th DAY OF DECEMBER, 2002

CORAM:HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY, MEMBER (A).

Shri R. Karunkaran,
at present working as
Ad hoc PI in the office
of DRM (E) BCT,
Mumbai Central.

.. Applicant.

By Advocate Shri S.P. Inamdar.

Versus

1. The General Manager,
Western Railway, Old Bldg.,
Churchgate, Mumbai-400020.
2. The Divisional Railway Manager(E),
Western Railway, Mumbai Division,
Mumbai Central.

.. Respondents.

By Advocate Shri R.R. Shetty.

ORDER (Oral)

{ Per : Hon'ble Smt.Shanta Shastri, Member (A) }.

This application is filed by the applicant against his non promotion to the post of Personnel Inspector Gr.III in the scale of Rs.1400-2300 (RPS) in Rs.5000-8000 (RSRP) and the rejection of his representation by orders dated 5.3.1998 and 26.3.1998.

2. A notification was issued by the respondents on 20.5.1996 for filling up four posts of Personnel Inspectors. One vacancy each was reserved for SC and ST. The applicant who had joined service on 17.12.1979 as Group D employee applied for the selection and was found suitable for appearing for the written test conducted on 21.9.1996. Two employees namely Smt.Suchitra Bhandari from the general category and Shri S. Khambait from SC

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category were finally selectd vide order dated 21.2.1997. The applicant was not selected.

3. A second selection was notified on 14.8.1997 for two vacancies meant for general category with no reservation for SC/ST. The applicant appeared in this selection also but was not selected. Being aggrieved he has approached this Tribunal with a prayer to consider him for promotion to the post of Personnel Inspector Gr.III.

4. The case of the applicant is that the notification of 20.6.1996 specified a vacancy reserved for SC. The applicant belongs to SC. In terms of Railway Board's Circular dated 3.6.1989, he was entitled to be considered based on his securing 20% marks i.e. by the relaxed standard. According to the circular dated 3.6.1989 of the Railway Board, SC/ST must secure atleast 20% of marks in the written examination, viva-voce test and record of service separately and in aggregate to be selected. It is the contention of the applicant that he had secured 20% marks and, therefore, being the only SC Candidate in the fray he aught to have been granted benefit of the best amongst failed on SC/ST candidates. However, it is seen from the panel published that one ST was promoted and the SC vacancy remained unfilled.

5. The applicant further submits that he had been granted ad-hoc promotion with effect from 31.5.1993 as Personnel Inspector Gr.III. His performance was very good and, therefore, while adjudging his record of

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service in comparison to other employees who were in lower grade, he was required to be adjudged one step higher than the others. Since he had worked in the higher post he could not have been declared failed in the viva-voce test, as has been laid down by the Railway Board itself in their own circulars.

6. Coming to the subsequent selection notified on 14.8.1997, the applicant contends that one of the vacancies should have been reserved for SC because earlier vacancy of the SC had remained unfilled. That ought to have been carried forward for deservation keeping it without carrying it forward for three recruitment years. The respondents had not taken any steps towards deservation as per the prescribed procedure.

7. According to the applicant, there are 7 posts of Personnel Inspectors in Gr.I, II and III. There is no SC Personnel Inspector amongst these atleast one should have been reserved for SC. Even according to roster point, the SC point falls at No.4 and ST point at Sl.No.7, but the respondents have failed to observe the roster and deprived the applicant the promotion to the post of Personnel Inspector on a regular basis. The action of the respondents is illegal, arbitrary and in controvention of the circulars of the Railway Board.

8. The applicant made a representation and the same has been rejected wrongly according to him. There is no

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application of mind to the facts and circumstances of the case.

9. The respondents submit that according to the Railway Board the post of Personnel Inspector Gr.III is a selection post, the minimum required qualifying marks in the written examination to be conducted for selection to the post is 50% for general candidates whereas for the SC/ST the standard is relaxed to 20% marks.

10. In the first selection for which the written examination was held in 1996 and the panel was published on 21.2.1997, the applicant failed to secure even 20% marks, therefore, the applicant could not be considered for viva-voce test and promotion thereof. The respondents admits that Shri Khambait belonging to the ST had infact been promoted on the basis of relaxed standard of 20% marks and because he had secured the highest marks amongst failed SC/ST considered for promotion. The respondents also admitted that it was, therefore, through inadvertance that in the notification dated 20.6.1996, one post was shown as reserved for SC, whereas the reservation was only for ST. Even assuming that it was a mistake still the applicant not having secured even 20% marks could not have been called for the interview, even bearing in mind the terms of the Railway Board Circular dated 3.6.1989.

11. In the subsequent selection which was notified on 14.8.1997 ony two vacancies were shown with no

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reservation for SC/ST and, therefore, though the applicant secured more than 20% marks i.e. 38% marks he could not be considered as there were other candidates securing more than 50% amongst the general category candidates. There was no reservation.

12. The contention regarding the applicant's good performance in the post of Personnel Inspector on adhoc basis and that he should be adjudged one step higher than those in lower pay scale etc. are matters of consideration by the Scrutiny Committee only when the candidate qualifies for viva-voce test, the applicant had not secured the minimum of 20% marks by relaxed standard for SC and, therefore, there was no question of considering his performance on adhoc basis, as he was not called for viva-voce test, even his promotion on adhoc basis was against the reserved post.

13. The respondents submit in regard to the roster point that whenever there is a small cadre of less than 4 (four) posts and where grouping is not possible and vacancies worked out is less than 0.5% for the reserved category then the posts are to be reserved for SC/ST as per roster provided. It is true that there is no SC/ST candidate already available in the cadre except one ST promoted as a result of the first selection in the category of Personnel Inspector. There are 3 grades i.e. Personnel Inspector Gr.I, Cadre of 3 posts, Personnel Inspector Gr.II, Cadre of 2 posts, Personnel Inspector Gr.III, cadre of 2 posts. Since the cadre of Personnel

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Inspector Gr.III consists of only 2 posts and one candidate from ST has already been placed in position as a result of the selection notified by letter dated 20.6.1996 in the subsequent selection notified on 14.8.1997, there was no reservation provided for. The respondents submit that the applicant was given a suitable reply by letter dated 26.3.1998 in the matter.

14. We have heard the learned counsel for the applicant as well as the respondents and have also perused the roster.

15. We find that the first selection was notified for filling up of 4 posts of Personnel Inspector Gr.III vide notification dated 20.5.1996 in this connection notification which was notified that there was one reservation each for SC/ST. However, the written examination was held, a letter was issued on 14.1.1997 whereby Smt.Suchitra Bhandari, Sr.Clerk and one Shri Khambait, ST who was working as adhoc Personnel Inspector Gr.III were called for viva-voce test on 20.1.1997. Although, Shri Khambait had failed to secure 50% marks but he had secured more than 20% marks in the written test itself. He had secured more marks amongst SC/ST who had failed. The respondents have later on submitted that the post was shown as reserved for SC inadvertantly whereas it was meant for ST. We have seen the original notification and find that there was some over writing creating confusion about the reserved post. In view of the clarification made by the respondents it is clear

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that the vacancy was only for ST and not SC, because even according to the roster point, the point No.4 was to go to ST and rightly, therefore, Shri Khambait was allowed to appear for the viva-voce test and finally declared successful. The applicant also appeared in the written examination but he not only failed to secure 50% marks but also failed to secure even minimum 20% marks i.e. the relaxed standard meant for the reserved category. Having thus failed in the written examination, he could have no claim of selection even if the vacancy had been for SC. The applicant could not have been considered for the viva-voce test and further promotion on his officiation on adhoc basis in the post of Personnel Inspector cannot give him any benefit as he had not secured even minimum 20% of marks. Therefore, the respondents could not be faulted for not selecting the applicant the applicant as far as first selection is concerned.

16. In regard to the subsequent selection notified on 14.8.1997, there was a clear indication that no post was reserved for SC/ST and accordingly, though the applicant secured more than 20% marks i.e. 38%, he could not be considered for promotion for which the general standard is 50% in the written examination as well as in the viva-voce test. The applicant's contention is that one post should have been reserved for SC. This has been rebutted by the respondents by stating that even according to the roster point it could not have been

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reserved for SC. It was meant for ST only. He did not secure 20% marks in the first selection held in 1997 and rightly, therefore, the applicant could not have been considered for promotion to the post of Personnel Inspector Gr.III.

17. In view of the reasons stated and the facts of the case it is abundantly clear that the applicant could not have been promoted either in the first selection or in the second selection. The application being devoid of merit is dismissed, without any order as to costs.

Lant J.

(Smt.Shanta Shastry)
Member (A)

Lakshmi Swaminathan

(Smt.Lakshmi Swaminathan)
Vice Chairman (J).

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