

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.929/92.

Thursday, this the 29th day of July, 1999.

S.S.Kadam .Applicant

Mr. P.G.Zare .Advocate for
-----Applicant.

Versus

Central Railway. .Respondent(s)

Mr.V.G.Rege .Advocate for
-----Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairma,

Hon'ble Shri B.N.Bahadur, Member (A).

(1) To be referred to the Reporter or not? *~~~~~*

(2) Whether it needs to be circulated to *~~~~~*
other Benches of the Tribunal?

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. 939/85

TUESDAY, THIS THE 26TH DAY OF JULY, 1985

Applicant

M.R.K. KADAM

Advocate for
Applicant

M.R.P.G. ZAFAR

versus

Respondent(s)

CHUPRA RAJIV

Advocate for
Respondent(s)

M.R.V.G. RAO

COURT :

HON'BLE SRI. JUSTICE R.G. AVADHAYANAGAR, VICE-CHAIRMAN

HON'BLE SRI. B.N. BHAGDAS, MEMBER (A)

(1) To be referred to the Registrar or Court

(2) Whether it needs to be circulated to
officer-benchers of the Tribunal

(R.G. AVADHAYANAGAR
VICE-CHAIRMAN)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGIONAL APPLICATION NO. 929/92.

Thursday, this the 29th day of July, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

S.S.Kadam,
Flat No.RB/III/12/4,
Central Rly. Quarters,
Guru Tej Bahadur Nagar,
Koliwada, Sion,
Bombay - 400 022.
(By Advocate Mr.P.G.Zare) ...Applicant.

Vs.

The General Manager,
Central Railway,
Bombay V.T.
(By Advocate Mr.V.G.Rege) ... Respondents.

: O R D E R : (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed their reply. We have heard the learned counsel appearing on both sides.

2. The applicant has approached this Tribunal due to his non-promotion to the post of Assistant Personnel Officer. His grievance is two fold. His first grievance is that he had participated in the Limited Departmental Competitive Examination and he had done well, but still he has not been selected. His second grievance is that in the seniority-cum-fitness promotion he should have been selected since he is an SC candidate. According to him there should have been 3 posts for SC candidates

in the impugned 1990 selection, but only one SC candidate has been selected viz. Mr.A.C.Lankeshwar. If three SC vacancies are there and if Mr.Lankeshwar is appointed to one vacancy then the applicant should have been selected out of the two remaining vacancies. He made number of representations due to his non promotion. Since he could not succeed on the basis of his representation, he has approached this Tribunal by filing this present O.A. He is seeking a direction to the respondents to quash the 1992 selection panel and to direct the respondents to promote the applicant w.e.f. 15.1.1991 and for other consequential reliefs.

3. The respondents defence is very brief. Their stand is that as far as the merit selection is concerned, the applicant could not be selected on the basis of marks obtained by him. They have selected 10 candidates on merit and applicant could not make the grade. As far as the other claim of the applicant for promotion on the basis of his being an SC candidate, the respondents have explained the vacancy position at that time and have stated that SC candidates were in excess and there was only one SC vacancy was available due to a future vacancy due to promotion and that one vacancy was given to an SC candidate viz. Lankeshwar who is senior to the applicant and therefore, the applicant could not be selected for promotion on the basis of reservation.

4. At the time of arguments, the learned counsel for the applicant contended that the calculation of vacancy made by the department is wrong and there should have been at least three SC vacancies and the applicant should have been considered for one of those vacancies, but the selection panel shows that only one SC candidate was selected.

At this time of struggle, the lesser cause for the
lessors' contention that the collection of accurate data by the
department is wrong and futile should have been considered for the
accusation and the objective should have been considered for the
lessors' contention that the collection of accurate data by the
department is wrong and futile should have been considered for the
lessors' cause to end the struggle, the lesser cause for the
lessors' contention that the collection of accurate data by the

Digitized by srujanika@gmail.com

For the promotion of Assistant Personnel Officer which is a Group 'B' post there are two methods of promotion. One is 75% of the vacancies to be filled by conducting normal selection process viz. seniority-cum-merit, remaining 25% of the posts are to be filled on the basis of Limited Departmental Competitive Examination and that too purely on merit.

His another argument is that Mr.Lankeshwar should have been appointed as a General Candidate due to his seniority position and even if there was one vacancy for SC community, the applicant should have been promoted to that SC vacancy. Respondents counsel pointed out that Mr.Lankeshwar is not senior, but he has been selected only on the basis of reservation policy and not as per his seniority. The learned counsel for the respondents pointed out on the basis of record that Mr.Lankeshwar was below number 40 in the seniority list and therefore the question of his selection as a general candidate would not arise at all. He got seniority only on the basis of reservation policy and hence he has been selected in the SC vacancy.

There is dispute regarding number of posts available to the reserved community. The question is whether the reservation should be based on cadre or vacancies. Respondents have clearly stated in their reply that in view of the order passed by the Supreme Court in J.C.Mallik's case and interim orders passed by this Tribunal in T.A. No.154/86 and other connected 26 cases, respondents had to fill up the post on the basis of posts available to reserved category in the cadre and not dependent on the vacancies which occurred from time to time.

5. The main dispute is about number of vacancies available at that time. A Notification was issued in March, 1990. The

for the promotion of Associate Personnel which is
a group of 8, both male and female of promotion. One is
set to the vacancies to be filled by conductive hours
selection process as, seniority-cum-month, remaining 5% of
the posts are to be filled on the basis of limiting Departmental

competitive examination and if any post is available
the superior authority is to Mr. Lakheshwar should have
been appointed as a general candidate due to his seniority
position and say if there was one accuse for SC community, the
post of ascension to the post need even though posts
available to the post of ascension to the post of ascension
Responsible council botched out the first Mr. Lakheshwar is not
senior, but the post need selected only on the basis of reservation
policy and not as per the seniority. The reserved council for the
responsible council botched out on the basis of reservation post Mr. Lakheshwar
was given number 40 at the seniority list and therefore the
despatch to the post of ascension to the post of ascension
as it. He got seniority only on the basis of reservation policy
and hence he was need to be selected for the SC ascension.

there is claim's regarding number of posts available to
the reserved community. The despatch to Mr. Lakheshwar the reservation
should be based on cadre of ascension. Responsible panel clearly
stated in their list if any post is available based on the
Supreme Court of U.C.M.L.K.A case and internal orders based on
this judgment in A.T.A. No. 184/86 and other cases based
responsible panel to fill to the post on the basis of ascension
and hence to selected candidate to the cadre and not depending on
the ascension which occurred from time to time

2. The responsible panel to the post of ascension available
in the classification was issued in March, 1990. The
date of this entry is

learned counsel for the respondents has placed before us all the relevant files. The office note prepared in March, 1990 shows that they have taken into consideration all future vacancies up to 31.12.1991. The names of Officers who are likely to retire are shown including whether they are General, SC or ST candidates. Then a calculation is made to show the vacancies for the year 1990 and vacancies for 1991. Separate headings are given for General vacancies, SC vacancies, ST vacancies and then total vacancies. The calculation sheet shows that in all there were 31 vacancies including existing and future vacancies up to 31.12.1991 and out of that 25 vacancies were meant for General candidates, 4 vacancies for SC candidates and 2 for ST candidates. Then it is pointed out that there were already four SC candidates and therefore strictly speaking there will be no SC vacancies. However, the department has taken into consideration the promotion of one SC candidate who was likely to be promoted to JAG and therefore they have taken that one vacancy as SC vacancy and that is how in the Notification only one SC vacancy is notified and accordingly that vacancy has gone to Mr. Lankeshwar who is admittedly an SC candidate. We do not find any illegality or irregularity in the calculations of vacancies which are produced before us. The learned counsel for the *claimant* applicant contended on the basis of the cadre strength. Even if we go by cadre strength, the strength of the cadre is 49 and as per reservation policy there should be 7 SC candidates, but on the date of Notification there were already 8 SC candidates which means one candidate was in excess, therefore they could not have appointed any SC candidate under the Notification, but taking

fulfilled his duty for the responsibility was imposed before as all the
legitimate officer. The office note prepared in March, 1960 shows
that they have taken into consideration all future accusations in
terms of officers who are likely to receive the same to the extent of
ST to SC rank and General rank as General, SC or ST
are shown throughout which is the basis of the word the accusations for
candidates. There is a classification of the word the accusations for
the year 1960 and accusations for 1961. Separate headings are
given for General accusations, SC accusations, ST accusations and the
other accusations. The classification shows that in all three
years 31 accusations including extra and future accusations up to
31st March and out of that 25 accusations were made for General
candidates, 4 accusations for SC candidates and 5 for ST
candidates. There is a point that three were already found
SC candidates and therefore specially speaking there will be no SC
accusations. However, the department has taken into consideration for
the promotion of one SC candidate who was likely to be promoted
to OAO and therefore they have taken note one as accused as SC
accused and first of all in the nomination only one SC accused
is notified and accordingly first accused has done to
Mr. Laikeasian who was similarly to SC candidates. We do not think
such a classification or differentiation in the classification of accusations
which is the procedure before us. The lessening concern for the
applicants concerned on the part of the cadre selection. Even if
we do not consider it, the selection of the cadre is as it is and as
per reservation policy there should be 2 SC candidates which
the date of nomination there were already 8 SC candidates which
means one candidate was in excess, therefore they could not have
applicants only SC candidates under the nomination, but taking
... .

into consideration the likely promotion of one SC Senior Scale Officer to Junior Administrative Grade they have provided one SC vacancy in the 1990 Notification which accordingly has gone to Mr.Lankeshwar. Hence, we do not find any mistake or any irregularity in the calculations of vacancies made by the Aministration.

6. From the selection papers, we find that in the case of selection on the basis of seniority-cum-merit applicant has been found suitable but however, he could not be accommodated due to want of SC vacancy.

7. As far as the merit selection is concerned, it is dependent on the performance in the written examination followed by a viva voce and marks for record of service. We have seen the selection papers produced before us. Here we find ~~that only 10~~ ^{three many} candidates including the applicant. The candidate at S1.No.1 on the basis of merit has obtained 287 marks, the candidate at S1.No.10 in the merit list has obtained 265.5 marks, whereas, the applicant has got only 258 marks and therefore, he was found unsuitable for the post. We also notice that in respect of the total marks obtained by the applicant, he has failed in the viva voce. Therefore, both on the ground of failing in the viva voce and total marks obtained is less than the candidate at S1.No.10, the applicant could not be promoted on the basis of merit.

8. Therefore, we find that the applicant cannot get promotion either on the basis of merit selection or on the basis of seniority-cum-merit. Hence, no relief can be granted to the applicant in the present O.A.

into consideration the likely promotion of one SC senior scutie officer to junior Amanuensis. Please find the above SC ascusca in the 1960 Motivational Matrix accordingly has done to Mr. Raykeshwar. Hence, we do not find any mistake or any irrationality in the accusations made by the

Administrator

From the selection bases, we find that in the case of selection on the basis of seniority-cum-merit basis has been found suitable but however, it could not be accommodated due to

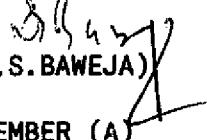
Want of SC vacancies

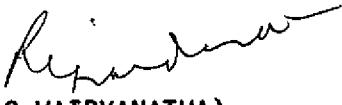
As far as the merit selection is concerned, it is dependent on the merit of the individual examination followed by a short note and write for record of service. We have seen the selection bases proposed before us. Here we find that only to consider bases functioning the applicants of S.I.M.O.1 on S.I.M.O.10, the candidates of S.I.M.O.1 on S.I.M.O.10 were offered 587 marks, the candidates of S.I.M.O.10 were offered 586.5 marks, whereas, the candidates of S.I.M.O.10 were offered 586 marks and therefore, he was found ineligible for the post. We also note that in respect of the short note and total marks appearing in the application, he has written in the short note and total marks less than the total marks appearing in the application, hence he is ineligible for the post. Therefore, only on the ground of the short note and total marks appearing in the application he is ineligible for the post.

merit

Therefore, we find that if the applicant comes to the promotion either on the basis of merit selection or on the basis of seniority-cum-merit. Hence, no letter can be issued to the short note of the present O.A.

9. In the result, the application fails and is dismissed.
No order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

8.