

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-Chairman,

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

(1) To be referred to the Reporter or not? *no*

(2) Whether it needs to be circulated to  
other Benches of the Tribunal? *no*

  
(R.G. VAIDYANATHA)  
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 929/82.

Thursday, the 25th day of July, 1982.

Applicant

S. S. Kadam

Advocate for  
Applicant

Mr. P. G. Zare

Versus

Respondent(s)

Central Railway.

Advocate for  
Respondent(s)

Mr. V. G. Raje

CORAM :

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

Hon'ble Shri S. 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)  
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL 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

...2.



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.

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 1990 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.

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

...4.



For the promotion of Assistant Personnel Officer which is a Group 'B' post there are two methods of promotion. One is 15% of the vacancies to be filled by conducting normal selection process viz. seniority-cum-merit, remaining 85% 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.

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

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 applicant <sup>claimant</sup> ~~contended~~ on the basis of the cadre strength. Even if we <sup>go</sup> ~~to~~ 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





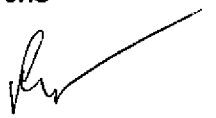
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into consideration the likely promotion of one SC Senior Scale Officer to Junior Administrative Grade they have provided one SC vacancy in the 1990 Notification which accordingly has gone to Mr.Lankeshwar. Hence, we do not find any mistake or any irregularity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

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 <sup>there were many</sup> ~~that only 10~~ candidates including the applicant. The candidate at Sl.No.1 on the basis of merit has obtained 287 marks, the candidate at Sl.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 Sl.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.



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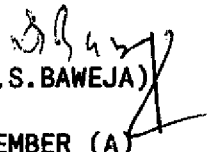
6. From the selection papers, we find that in the case of selection on the basis of seniority-cum-merit applicant has been found suitable but however, he could not be accommodated due to want of SC vacancy.

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 candidates including the applicant, the candidate at 21.No.1 on the basis of merit has obtained 287 marks, the candidate at 21.No.10 in the merit list has obtained 266.5 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 21.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.

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

B.