

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

O.A. 1117/98

DATE OF DECISION: 26/05/2003

G.D. PRAKASH RAO

APPLICANT

MR. G.P. MOHANRAO

ADVOCATE FOR THE APPLICANT

Vs.

CENTRAL RAILWAY AND ORS

RESPONDENTS

MR. S.C. DHAWAN

ADVOCATE FOR THE RESPONDENTS

C O R A M

HON'BLE MR. GOVINDAN S. TAMPI, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

- (i) To be referred to the reporter or not?
- ii) Whether it needs to be circulated to other Benches of the Tribunal?
- (iii) Library

K.V. SACHIDANANDAN
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. NO. 1117/98

C O R A M .

HON'BLE MR. GOVINDAN S. TAMPI, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

Guntupalli Durga Prakash Rao
Working as Khalasi/Helper at the
Signal and Telecommunication
Workshop, Central Railway Byculla,
Mumbai-400 027.

Applicant

By Advocate Mr. G.P. Mohan Rao

Vs.

1. The Union of India
2. The General Manager,
Central Railway, Mumbai CST
Mumbai-400 001.
3. The Chief Signal and Telecommunication
Engineer, Head Quarter Office,
Central Railway, Mumbai, CST
Mumbai-400 001
4. The Chief Works Manager,
S&T Workshop, Central Railway
Byculla, Mumbai-400 020
5. The Chief Personnel Officer
Central Railway,
Mumbai-CST, Mumbai-400 001.
6. Smt. Shankuntala Sharma
Working as Peon, Chief Works Manager,
S&T Workshop, Byculla
7. Shri B. D. Kotikar
Working as Peon,
in the office of CSTE
Mumbai-CST
8. Shri P.V. Pathak
Working as Peon in the office of CSTE(C)
Mumbai CST.
9. Shri K. R. Devrukhar
Working as Peon in the office of CSTE(C)
Mumbai CST.
10. Shri P.G. Pednekar
Working as Peon in the office of CSTE(C)
Mumbai CST.
11. Shri R. G. Gondule
Working as Peon in the office of CSTE(C)
Mumbai CST.

12. Shri R. G. Bhagvat
Working as Peon in the office of CSTE(C)
Mumbai CST.
13. Shri R. A. Gurav
Working as Peon in the office of CSTE(C)
Mumbai CST.
14. Shri M.J. Yadav
Working as Peon in the office of CSTE(C)
Mumbai CST.
15. Shri T. S. Guravgaonkar
Working as Peon in the office of CSTE(C)
Mumbai CST.
16. Shri R. D. Gurkhe
Working as Peon in the office of CSTE(C)
Mumbai CST.
17. Shri Gopal Deo
Working as Peon in the office of CSTE(C)
Mumbai CST.
18. Shri G.D. Kale
Working as B/Peon with
CSTE, Mumbai. CST
19. Shri A.G. Pednekar
Working as Khalasi Helper
Chief Working Manager
Central Railway S&T, Byculla
Mumbai-400 025
20. Shri V. B. Prabhakaran
Working as Khalasi/helper
Chief Workshop Manager,
S&T Workshop, Central Railway
Mumbai-400 025
21. Shri A. C. Moria
Working as Khalasi Helper in
the office of Chief Workshop Manager,
S&T Workshop,
Central Railway, Byculla
Mumbai-400 025

Respondents.

By Advocate Mr. S.C. Dhawan

26.5.2003

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant joined service in the Central Railway on 8.2.86 as Khalasi Helper. He was recruited for the same post in the existing vacancy in the Signal and Telecommunication Workshop Central Railway, Byculla vide Ext-A order dated 8.2.86. Respondent No. 2 to 4 had issued notification dated 19.10.98 for departmental examination for promotion of Group-D employees to Group-C against 39.1% quota

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in terms of Railway Board letter dated 27/30.9.75 vide Ext.-B dated 27.10.95. As per the Indian Railway Establishment Manual promotion of subordinate staff is to be done on the basis of seniority subject to suitability. Rule 189 of the Indian Railway Establishment Manual has been quoted in the O.A. For Group-D categories for whom no regular avenue of promotion exists 33.1% of the vacancies in the lowest grade of Commercial Clerks, Ticket Clerks, Collectors, Trains Clerks, Number Takers, Time Keepers, Fuel Checkers, Office Clerks, Typist and Stores Clerks, etc. should be enmarked for promotion. The quota for promotion of Group-D staff in the Accounts Department to Group-C post of Accounts Clerks will be 25% subject to certain conditions i.e. it should be made on the basis of selection, there should be a written test to assure the educational attainments of candidates followed by interview where considered necessary. The test should be corrected to the standard of proficiency that can reasonably expected from Railway Servants who are generally non-matriculates. The Written test should consist of lone paper of 3 hours duration divided into two parts-part-A to test the working knowledge of the Railway servant of the English language and part-B his general standard of intelligence and proficiency through questions in Arithmetic, General knowledge mainly pertaining to Railway matters and matters immediately pertaining to the work he has been acquainted with during his Railway service. The oral test should adjudge other factors of suitability if so considered necessary by the General Manager. The selection may not be restricted to three times the number of vacancies but kept upon to all eligible candidates who would likely to be considered for such selection. All those who qualify in written and oral test, the qualifying percentage of marks being prescribed by the General Manager, should be arranged

in the order of their seniority for promotion against the yearly vacancies available for them in Group-C categories. They should have put in a minimum 3 years of continuous service and this does not apply to SC/ST candidates and the standard of training imparted to the group-D Railway Servants selected for Group-C posts should be the same as for direct recruits for the same Group-C categories and in the case of failures in the first attempt such employees may be given a second chance to qualify and those to be promoted as Typist should have a minimum speed of 40 words per minute in typewriting as for direct recruits. Group-D servants when promoted to Group-C posts in the Accounts Department shall go through the same training and test and shall be subject to the same conditions of service as are in force for the new recruits. during the period of their training they would get as stipend the pay that they should have normally drawn on promotion to Group-C will be allowed and all applicable allowances like Dearness, compensatory and House Rent allowances. A senior railway servant may be passed over only if he has been declared unfit for promotion to the post and in filling of a non-selection post when a senior railway servant is passed over the authority making the promotion shall record briefly the reason for such supersession. The applicant states that the section is based on a written test to adjudge the professional ability, vivavoce and assessment of records by the selection committee. He stated that the respondents 1 to 6 called for the applications from the eligible candidates who are working as Peons and by the notification dated 8/12.10.98. A copy of the notification is annexed as Ext.C and applicant applied for departmental promotion to Group-C category through Chief Workshop Central Railway, Byculla, Mumbai-400 027. Respondents have called for respondents 6 to 18 as they were working as Peon with

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respondents and applicant along with other 9 others were not permitted to appear for the written examination by the office order dated 16.11.98 (Ext.D). Thereafter the applicant approached the Chief Workshop Manager, Signal and Telecommunication, Workshop, Central Railway, Byculla and informed that he forwarded an interdepartmental note to the Respondents 3 & 4 for permitting the other 8 candidates who applied for the examination. The respondents 19 to 21 were also permitted to appear for the examination on 12.7.98 on the strength of an order of this Tribunal in O.A. NO. 970/96. He made a representation dated 17.2.98 to the respondents requesting them to conduct a supplementary examination for the applicant and further requested the respondents 2 to 4 not to declare the results of the written examination. He has passed M.A. examination and he contended that he has put in all the requirements as per the notification. The respondents had earlier permitted all the Peons and Khalasis who have completed a minimum of 3 years of service, till the last examinations held in 1995 to be considered for the examination. the applicant is aggrieved by not permitting him to appear for the examination and submitted that he will be losing the most favourable opportunity as he is the highly qualified candidate among all the respondents 6 to 21 and omitted as it is clear discrimination. Aggrieved by the said inaction on the part of the respondents the applicant has filed this O.A. seeking the following reliefs:

(a) That this Hon'ble Tribunal be pleased to issue a writ of category or any other appropriate writ, order, direction and to call for the record and proceedings, and after perusing the legality, propriety and validity of the written examination held on 8/12.12.98, and set aside the selection panel if any prepared.



(b) That this Hon'ble Tribunal be pleased to issue a writ of Mandamus and/or any other writ in the nature of Mandamus and/or any other appropriate writ, order or direction to the Respondents 1 to 5 to issue a fresh list of promotion after conducting a supplementary examination for the applicant and declaring the results thereof and the selection process if any including the applicant.

(c) That pending the hearing the final disposal of the application the respondents 1 to 5 be directed to conduct a supplementary examination for the applicant for the post of Junior Clerk cum Typist as per the Notification dated 8/12.10.1998 and the results of selection be declared along with the Respondents No. 6 to 21.

(d) That pending the hearing and final disposal of the application the results of the respondents 6 to 21 be withheld and stayed.

(e) Costs of this application be provided for.

(f) For such further and other reliefs as the nature and circumstances of the application be granted for.

2. Respondents 1 to 5 has filed a reply statement contending that the application is misconceived and not maintainable and there is no rule under which the applicant should be considered for selection for the post of Junior Clerk and the applicant has no cause of action as 33.13% quota are to be filled up from Group-D employees who are working in the offices of CWM Byculla, CSTE and CSTE(C) and who have no channel of promotion in the categories in which they were appointed or working originally or are specifically specified. The applicant was regularly appointed and posted as Khalasi under CWM Byculla Workshop on or from 8.2.96 and since 2.11.1992 he is working as Helper and has his own channel of promotion as provided in Para 159 of IREM. The impugned notification for selection for the post of Junior Clerk against 33 1/3% quota was issued and published on 12.10.98, clearly mentioning that class IV staff having their own channel of promotion need not apply and the said selection is now complete and the panel has already been declared and promotions made accordingly. The applicant was engaged as Casual Labour in the office of the DEE (C) CS.

Dadar and thereafter was granted the benefit of temporary status. At present he was regularly appointed and posted as in G. Rs. 750-940(RPS) under CWM BY W/Shop on or from 8.2.86 and at present he is working as Helper in the grade of Rs. 800-1150 (RPS) He has his own channel of promotion in the category of skilled Artisans grade-III in Scale Rs. 950-1500 as per Para 159(1) of IREM. The impugned notification dated 12.10.98 clearly mentioned that class-IV employees working in the offices of CSTE, CSTE(C) and CWM Byculla who were having own channel of promotion in the categories in which they were appointed were not eligible. As the applicant is having his own channel of promotion in skilled categories, he was not considered eligible to appear for the selection for the reasons stated in the letter dated 16.11.98. The examination was held on 12.12.98 and the result of the written test was published on 22.12.98, and viva voce of those secured the requisite qualifying marks was held on 30.12.98. The panel of the selected candidates has already been published and posting orders issued. The applicant has applied in response to the notification though he was not considered eligible to appear for the examination. The applicant made a representation dated 17.12.98 which was received on 18.12.98 in the office of the General Manager. Before any reply could be sent to the same the applicant has filed this Application on 24.12.98. It is true that by mistake the applicant and some other employees working in the offices of CSTE, CSTE(C) and CW by who had their own channel of promotion were allowed to appear in the previous selection. However, none of the said employees were finally selected or posted as Junior Clerks. The respondents are not bound to perpetuate the mistake and no directions can be given by this Tribunal against the rules or to follow the same mistake and give benefit to the applicant. The

notification clearly indicated that a class IV staff having his own channel of promotion need not apply. The applicant is not entitled to appear in the said selection as he has not fulfilled all the qualification as per the notification. He has no right for promotion in Clerical cadre and as such the question of losing opportunity does not arise as alleged or otherwise. Not permitting the applicant to appear for the examination is not illegal or bad in law or liable to be quashed and set aside as alleged or otherwise. The ex-party interim order granted on 29.12.98 is liable to be vacated and the O.A. has no merit and is to be dismissed.

3. The applicant has filed an affidavit in rejoinder contending that respondents had selected and promoted all the Khalasis till 18.1.96 as Junior Clerk under 31 1/3% quota, he will also have to be considered under the said category as Junior Clerk. The respondents have selecteds two candidates who were working as Khalasi Helper. The applicant states that his promotional avenues are permanently curtailed by the respondents under the notification as such the impugned order deserved to be quashed and set aside on this ground. He stated that there is no reason stated as to why they have stopped the Khalasi Helpers and the applicant from appearing for the post of Junior Clerks and hence the impugned notification is arbitrary and iliegal and the rule 159 is not a bar to apply the applicant of the post of Junior Clerk under 33 1/3%

4. Respondents 1 to 5 have also filed another reply statement on 1.11.99 reiterating the same contentions as that of the earlier statement.



5. Shri B. Dattamurthy for G.J.Mohan Rao appeared for the applicant and Shri S.C. Dhawan appeared for official respondents 1 to 5, and Ms Gode through Shri R.S. Tulaskar for respondents 6,8,19 to 21.

6. We have heard learned counsel who have taken us to the pleadings and materials and evidences placed on record. The learned counsel for the applicant submitted that the applicant should have been considered for promotion and included for the same. The respondents committed a grave error by ignoring the claim of the applicant to appear for the written examination without prejudice to whatever stated in the O.A. The applicant has complied with all the requirements and he cannot be ignored under any circumstances as it directly violate the principles of equality and non-discrimination provided in Article 14 of the constitution of India. The only criteria that is given out in the notification is 3 years service that the applicant and 8 others fulfilled and in the alternative it is incumbent on the part of the respondnet to conduct supplementary examination for the applicant and declare the result of the examination only after such supplementary examination.

7. The counsel for the respondents on the other hand submitted that the applicant has his own channel of promotion in the category to which he was appointed originally. The channel of promotion as provided under Para 159 is available to applicant and 8 others whereas the notification specifically barred such persons for consideration of selection for promotion because they do have other chance of promoition. After consideration of the expert committete and finding that certain category of persons who do not have secific channel of promotion this notification has been

published only to give them promotion. Otherwise they will be stagnated and there will be frustration in the services of such employees. As far as the applicant and such other persons are concerned since there is clear promotional avenue left out to them as per the rules they cannot be permitted to be promoted through this channel of promotion, if done will be totally depriving of such categories of persons.

8. The counsel for the party respondents 6 to 19 advanced the same arguments as that of the official respondents.

9. We have given due consideration to the pleadings, arguments and material placed on record. For better elucidation it is worth while to know what Rule 159(1) of the IREM states which is quoted below.

159(1): The vacancies in the category of Skilled Artisans Grade-III in scale Rs. 950-1500 in various engineering departments will be filled as under:

i) 25% by selection from course completed 'Act Apprentices', ITI passed candidates and Matriculates from the open market; serving employees who are course completed Act Apprentices or ITI qualified could be considered against this quota allowing age relaxation as applicable to serving employees

(ii) 25% from serving semi skilled staff with educational qualification as laid down in Apprentices Act and

(iii) 50% by promotion of staff in the lower grade as per prescribed procedure."

It is quite evident from the above rules that the applicant can seek promotion against the 25% quota for serving semi-skilled and unskilled staff with educational qualification as laid down in Apprentices Act employees or 50% quota by promotion of staff in the lower grade as per prescribed procedure. Therefore it is evident and clear that the applicant and similarly placed employees do have a

channel of promotion as laid down in para 159(1) of the IREM quoted above. The relevant portion of the impugned notification is reproduced as under:

No. HPB/D.797/DS/ST/C1.IV to C1 III Dt.8/12.10.98

NOTIFICATION

Sub : Departmental examination for promotion of Group-D employees to Group-C for the posts of Jr. Clerk-cum-Typist, CSTE, CSTE(C) and CWM(ST) W/S By Offices

Departmental examination for promotion of Group-D employees to Group-C against 33 1/3% quota in terms of Railway Board's letter No. E(NG) I/75/CFP/28 dt. 27/30.9.75 is to be held.

Applications are invited for conducting the above departmental examination for filling in 06 vacancies all general from amongst; -

(i) C1.IV staff of the offices of CSTE, CSTE(C) and CLWM/By who have put in minimum 3 years of continuous service as on 31.12.97 C1.IV staff having their own channel of promotion in skilled categories need not apply.

(ii) Having typing skill of 30 w.p.m. in English or 25 wpm in Hindi.

From the above, it is clear that class-IV staff of the office of the CSTE, CSTE(C) and CWM Byculla who have put in 3 years of continuous service as on 31.12.97 and class-IV staff having their own channel of promotion in skilled categories need not apply. Therefore, this notification is specifically meant to class-IV staff mentioned above who have put in minimum 3 years of continuous service as on 31.12.97 and those staff having their own channel of promotion in skilled categories has been excluded. It is also pertinent that this notification has been issued in terms of Railway Board's letter which has opened the avenues of promotion to stagnated categories of employees. Since the applicant who had his own channel of promotion in the skilled category though applied for in pursuance of the notification was not considered since

he was not eligible for selection for the reasons stated in letter dated 16.11.98 (Ext. D) wherein it was specifically stated that the applicant and 8 others have not been considered since they have got their own avenues of promotion.

10. Then the question comes whether the action on the part of the respondents in not permitting them in the selection, will stand to reason or not. Our attention was brought to the order of this Tribunal dated 1.11.2000 in O.A. 870/96 and 872/96 wherein this question was considered and in para 28 of the said decision this Bench held that

"....Rule 189 of IREM has no application to the present case for the reason that according to him the applicant has promotional avenue such as semi skilled workers, skilled workers and Supervisors after passing proper trade test. In such circumstances Rule 189 does not help the applicant. On perusal of the said Rule we are inclined to agree with the learned counsel for the respondents in this respect. Hence the applicant is not entitled to seek any relief on this account."

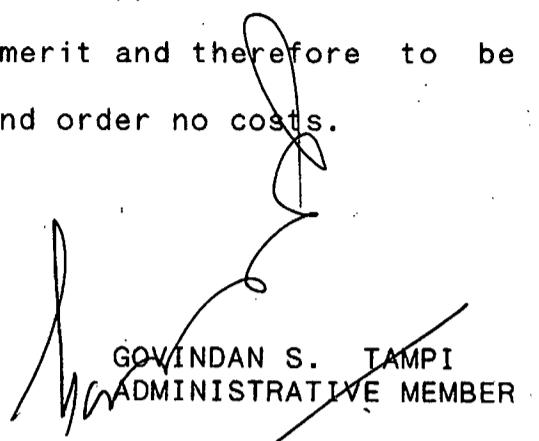
We are in respectful agreement with the said orders.

11. Then the question comes whether the permission granted to appear for the examination will confer a right to the applicant. The Hon'ble Supreme Court in the decision reported in in State of Bihar and Others Vs. Kameshwar Prasad Singh (2000 JT (5) 389) declared that wrong decision by the department does not confer a right to enforce a wrong order and claim for parity and equality can never be justified. Two wrong can never make a right.

12. Considering the above aspects and in the conspectus of facts we are of the view that the applicant had not made out a case and the O.A. does not merit and therefore to be dismissed. We do so accordingly and order no costs.

Dated the


K.V. SACHIDANANDAN
JUDICIAL MEMBER


GOVINDAN S. TAMPI
ADMINISTRATIVE MEMBER

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