

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:17.98

FRIDAY the 8th day of MARCH 2002

CORAM: Hon'ble Shri Gopal Singh, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

R.H. Maithanya  
Residing at  
Railway Quarter  
No. RB/III/113/1  
Railway Building  
Thana (E)

...Applicant.

By Advocate Shri G.S. Walia.

V/s

1. Union of India through  
General Manager  
Central Railway  
Head Quarters Office  
CST, Mumbai.
2. Chief Electrical Engineer  
Central Railway  
Head Quarters Office  
CST, Mumbai.

...Respondents.

By Advocate Shri R.R. Shetty.

ORDER(ORAL)

{Per Gopal Singh, Member (A)}

This is an application under Section 19 of the Administrative Tribunals Act 1985. The applicant, R.H. Maithanya has prayed for as under:

(a) This Hon'ble Tribunal will be pleased to order and direct the Respondents to include the name of the applicant in the panels declared on 31.5.1996 and 4.4.1997 for the post of Assistant Electrical Engineer, Central Railway.

(b) This Hon'ble Tribunal will be pleased to order and direct the Respondents to promote the applicant to the post of Assistant Electrical Engineer from the date of the panel i.e. 31.5.1996 with all consequential benefits of pay, arrears in respect of salary, fixation of pay and seniority.

*Gopal Singh*

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(C) Any other or further order as to this Hon'ble Tribunal may deem necessary in the circumstances of the case may be passed.

2. The applicants case is that he is presently working as Senior Section Engineer in the pay scale of Rs. 2375- 3500. The post of Senior Section Engineer is Group C post and he is entitled to be considered for promotion to the post of Assistant Electrical Engineer Group B post. 70% of the post in the cadre of Assistant Electrical Engineer are required to be filled up by LGS and remaining 30% by Limited Departmental Competitive Examination. It is the contention of the applicant that the selection held in the year 1993 against 8 posts reserved for SC, only one post was filled up and balance 7 posts has not been carried forwarded for the next Recruitment year of 1996. The applicant had appeared for the selection in the year 1993 but had failed. He had also appeared in the selection for the year 1996 but because of non-inclusion of carry forward vacancy (7 in number ) for the selection conducted in the year 1996 he could not be promoted. It is the contention of the applicant that if 7 posts carried forward from the year 1993 to the next Recruitment year of 1996 he would have been selected. Hence this application.

3. In the counter it has been stated by the respondents that the vacancies reserved for SC which could not be filled up by the selection of 1993 were not available for Recruitment year 1996 as the same had been filled by direct recruitment during the year 1993 to 1995, <sup>it</sup> has, therefore, been contended by the respondents that the applicant has no case and this application is liable to dismissed.

*Copy of*

4. We have heard the learned counsel for the parties and perused the the records.

5. The learned counsel for the respondents has pointed out that Annexure R -4. IREC Vol. I in terms of 209 (B) (2) read with Railway Board letter dated 11.1.1998 para 3(i). Vacancy in Group B can be filled up by direct recruitment of Group A Officers. We consider it proper to extract below para 209 (B)(2).

209 (B) (2)

If the quota reserved for Group 'B' officers for promotion to Junior scale is not fully utilised, the remaining vacancies may be filled by Government in accordance with the recruitment rules and in consultation with the UPSC and

The Departmental Promotion Committee for this purpose shall consist of a representative of the Union Public Service Commission as Chairman and two representatives of the Ministry of Railway as Members.

We also extract below para 3(ii) of 11.1.1988.

Vacancies for two years should be assessed properly with the aid of all known factors and possible anticipation. To the vacancies so assessed an addition of 30% (Thirty per cent of the cadre of both Group 'B' and Junior Scale posts including Construction Reserve should be made. This is in modification of the existing instructions for provision the addition at 20%

6. Para 209 (B) (2) deals with filling up of post of junior scale and which provides if quota reserved for Group 'A' officers for promotion to junior scale is not fully utilised, the remaining vacancies may be filled by Government in accordance with Recuritment Rules in consultation with the UPSC. Similarly para 3 (ii) of letter dated 11.1.1988 provides as to how vacancies are to be assessed and no where provides that vacancies

*legally*

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*can't*  
in Group 'B' ~~can't~~ be filled by Group 'A' officers. In this view of  
the contention of the respondents ~~the OA~~ is liable to be  
dismissed. The learned counsel for the respondents also  
submitted that application is barred by limitation. It is the  
contention that the panel was declared on 31.5.1996 and the  
applicant represented against the panel on 13.11.1996 and he has  
filed this application on 12.1.1998, about 13 months after he  
made representation to the respondents. He could have filed the  
application within 18 months of representation. In this view of  
the matter this contention of the respondents is also not  
tenable. It is also pointed out that applicant has not impleaded  
the affected parties against whom he is seeking relief. In our  
view he is praying for his right to be considered against the  
post and if the department has given the benefit to some other  
person to whom it was not due, it is for them to rectify the  
mistake. *The*

At this stage the applicant's right cannot be taken  
away by this objection. If the applicant is entitled to the  
post on the basis of selection held in the year 1996,  
supernumerary post may be created and the post be personal to the  
applicant. We have also seen the 1996 selection produced by the  
respondents. We find that the applicant has been declared  
successful in that selection. In this view of the matter we are  
of the view that this application has merit and deserves to be  
allowed. Accordingly we pass the following order.

*Certified*

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7. The OA is allowed. Since the applicant has passed the selection held in the year 1996, he should be considered for appointment against the post of Assistant Electrical Engineer, and if no post is available, a supernumerary post will be created in favour of the applicant as personal to him till he is adjusted with all consequential benefits. The respndents are given three months time to comply with the order. No order as to costs.

S.L.Jain  
(S.L.Jain)  
Member (J)

Gopal Singh  
(Gopal Singh)  
Member (A)

NS