

51

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.534/93 & OA.580/94.

Dt. of Decision : 20-3-97.

Krishnalingaiah

.. Applicant in OA.No.
580/94.

1. Ramaiah
2. P. Madhu Mohan
3. Bheemraj
4. Shaik Mader
5. M. Lingaiah
6. M. Eshwariah
7. G. Narsing Rao
8. R. Yadagiri
9. K. S. Lazarus
10. E. Bala Prasad
11. Prem Singh
12. Chandraiah

.. Applicants in OA.No.
534/93.

vs

1. The Union of India, Rep. by
Railway Manager, Sec'bad, SC Rly.
2. The Divl. Railway Manager (BG/SC),
Sec'bad Division, SC Rly,
Sanchalan Bhavan, Sec'bad.

.. Respondents in both
the OA.

Mr. Krishna Devan in both the OA.

Counsel for the respondents : Mr. N. R. Devaraj, Sr. CGSC
in both the OAs.

CORAM:

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

THE HON'BLE SHRI B. S. JAI PARAMESHWAR : MEMBER (JUDL.)

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ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

Heard Mr.Ethirajulu for Mr.Krishna Devan, learned counsel for the applicants in both the OAs and Mr.N.R.Devaraj, learned counsel for the respondents in both the OAs separately.

2. In both the OAs the empanelled list for the post of Ticket Collector issued vide memorandum No.CP/529/2/1/Selection/TC. dated 25-2-93 (Annexure-7-page-25 to the OA) is challenged. The contentions in both the OAs are same so also the relief asked for. Hence, both the OAs are disposed of by a common order after hearing the parties and with their consent.

3. In OA.534/93 there are 12 applicants and they are working as Sr.CCAs (Senior Corridor Coach Attendants) except applicant No.7 who is working as CCA only. All the applicants ~~now~~ are working at Secunderabad and Kazipet. In OA.580/94 there is only one applicant who is working as Sr.CCA in Secunderabad. All the applicants in both the OAs are Group-D staff.

4. A notification No.C/P/529/2/1/Selection/TC dt. 30-1-92 (Annexure-1 to the OA) was issued for filling up 34 posts (27 OCs, 5 SCs and 2 STs) of Ticket Collectors in Group-C cadre in the Secunderabad division of SC Railway by test comprising of both written and viva-voce. The feeder category for the post are those employees who are in the lower categories of Group-D in open line. The vacancies are to be filled against 33 1/3% quota earmarked for Gr-D staff of Commercial Branch of open line for promotion as Ticket Collector. To that notification 174 candidates responded. On 19-9-92, 164 candidates appeared for the examination and 97 candidates had qualified for viva-voce. The applicants in both the OAs have passed the written examination and were called for viva-voce held on 11-1-93 and 12-1-93. On the basis of the written and viva-voce tests the panel for promotion to the Gr-C was issued by the impugned order No.CP/529/2/1/Selection/TC. dated 25-2-93

-3-

(Annexure-7 to the OA). In that impugned order 34 candidates were empanelled. The names of the applicants did not find a place in that impugned list.

5. This OA is filed for setting aside the impugned memorandum No.CP/529/2/1/Selection/TC. dated 25-2-93 (Annexure-7 to the OA) issued by R-2, as bad, arbitrary and null and void and for a consequential direction to reconduct the selection to the post of TCs by considering the Sr.CCAs and others who are holding equivalent grade in other branches of Commercial Department.

6. The main contentions of the applicants in these OAs are two fold:-

1) While awarding the marks in the selection no mark was earmarked for seniority and hence the applicants who are senior have been deprived of that promotion. On that count itself the impugned memorandum dt. 25-2-93 is liable to be set aside.

2) Executive instruction exists to conduct viva-voce for scheduled caste and ST candidates enblock separately and they not should be interviewed in between along with other OC candidates. The applicants No.3,5,6 and 8 in OA.534/93 and the lone applicant in OA.580/94 are SC candidates and they were interviewed by calling them for viva-voce in between OC candidates and they were not interviewed separately enblock. Hence provisions in the executive order are violated in the selection.

7. We have heard both the parties. The method of selection to the higher grade post in Gr-D and from Gr-D to Gr-C posts have been given for all the departments in IREM starting from para-180 to 189. The applicants in these OAs are open line commercial staff and para-189 is relevant in their cases for selection from Gr-D to Gr-C posts. It is stated that railway servant in Gr-D category for whom no regular avenue of promotion exists 33 1/3% of the Collectors, vacancies in the lowest grade of Commercial clerks, Ticket, Trains

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Clerks, Number Takers, Time Keepers, Fuel Checkers, Office Clerks, Typists and Stores Clerks etc., should be earmarked for promotion. In consonance with that provision the applicants in these two OAs were called for selection to the post of Ticket Collectors against the 33 $\frac{1}{3}$ % quota. The selection ~~showing~~ consists of both the written and oral test, as can be seen from that para. In sub-rule (a) (4) of para-189 it was directed "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". Thus from the above it is apparent that a Group-D employee of the Commercial Branch open line should be empanelled for the post of Ticket Collector on the basis of the written examination followed by viva-voce if he qualifies in both and their names should be arranged in the order of seniority for promotion. That Rule does not indicate separate marks to be allotted for the purpose of seniority. However the applicants relying on sub-para-(g) of para 219 of IREM submit that there should be a separate marks for seniority as the seniority marks was not separately given the selection is vitiated.

8. It is necessary to point out ^{here} that sub-para-(g) of para-219 quoted by the respondents' counsel comes under the Chapter-II which deals with "Rules governing the promotion of Group-C staff". The present selection is ~~from~~ to be checked whether the sub-para-(g) of para-219 will also be applicable in the present selection. The learned counsel for the applicants submitted that this is a general rule and has to be followed irrespective of the fact whether it is a selection from Group-D to Group-C or within the Group-C. When he was asked to show any instructions in this connection to come to the conclusion that sub-para-(g) of Para-219 will equally apply to the selection

from Group-D to Group-C he expressed that this is only a general rule and he has no record to prove the same. As stated earlier the rule quoted by him sub-para-(g) of para-219 is applicable only to the selection within Group-C and may not be applicable from Gr-D to Gr-C. Hence, it has to be held that the contention as above is not substantiated.

9. However from sub-para-(a) (4) of para-189 of IREM it is evident that the General Manager should prescribe the marks to be obtained for the selection to the post of Gr-C from Gr-D and those who had obtained that mark should be empanelled as per the seniority to the extent vacancies are notified. In order to examine whether that condition was fulfilled or not, we called for the selection proceedings in this connection. The file containing the selection proceedings was produced today. The proceedings are minuted at page-72 of that file which was dated 11-2-93. The marks obtained by the candidates in the selection has also been enclosed. From the marks list it is seen that 50 marks is earmarked for written test, 25 marks for viva-voce and 25 marks for service records. The total marks for the selection is 100. One should get 50% of the mark i.e., one will be eligible for empanelment if he had obtained 50% of the mark ~~in aggregate~~. The applicants in these OAS have got less than 50% and hence they were not empanelled. It is also seen that there is no mark allotted to the seniority. But it may not be necessary as no provision exists for giving marks for seniority in para-189 of IREM. Para-219 as observed earlier is not applicable in this examination.

10. In view of what is stated above, we hold the view that the selection was conducted in accordance with the provision of the Manual and the selected candidates were empanelled in accordance with the seniority in the lower Gr-D cadre. Hence, we do not find any irregularity much less error in the formation of the panel.

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11. The next contention of the applicants is that the SC candidates have to be interviewed enblock separately and that was not done. As some of the applicants in OA.534/93 and the applicant in OA.580/94 are Scheduled Caste candidates they should have been interviewed separately enblock.

12. The learned counsel for the respondents submitted that they were not interviewed enblock separately. But they were called for interview in accordance with the seniority position.

13. No doubt the above will to a certain extent vitiate the proceedings as the rules are not followed fully. However, we find that out of 12 applicants in OA.534/93 there are only 4 SCs and lone applicant in OA.580/94 is also an SC candidate. Thus, if any relief to be given it is only to those 5 candidates and none else. Presuming that this should be given it is to be seen to what extent such relief can be given. The point to be seen is whether the so called irregularity committed had caused severe harm to the SC employees in the selection. A perusal of the mark list shows that the respondents had followed the rules in that SC and ST candidates had already been empanelled in accordance with the roster point though they may be junior to the SC applicants in this OA. Hence, constitutional obligation for filling up the vacancies by SC and ST candidates had been fulfilled. Mere fact that some of the senior SC candidates had failed in the examination should not be a reason to set aside the whole proceedings. The totality of the circumstances has to be taken into account before deciding in regard to the setting aside of the proceedings. Hence, in the facts and circumstances of the case it is not desirable to set aside the whole proceedings just for a minor lapse and that to in non-adherence of an executive order which is not a statutory rule. Hence, we are of the opinion that on this count the selection cannot be set aside. However, we strongly feel that the applicants should be given some relief

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if not in the present selection at least in the future selection that will be conducted. It is stated for the applicants that no selection was conducted after the selection which is challenged now. Hence, in the next selection to be conducted due importance to the seniority of the SC applicants should be given while finalising that selection if the SC applicants in these OAs take part in that selection.

14. In the result the OAs are dismissed subject to the observation made as above. No costs.

(The selection proceedings perused and returned back)

20.3.97

(B.S. JAI PARAMESHWAR)
MEMBER(JUDL.)

(R. RANGARAJAN)
MEMBER(ADMN.)

Dated : The 20th March 1997.
(Dictated in the Open Court)

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D.R.S.