

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.656/95.

Dt. of Decision : 31-03-98.

Syed Gayaz Chisty

.. Applicant.

Vs.

1. The Union of India, Rep. by
the General Manager,
SC Rly, Rail Nilayam,
Sec'bad.
2. The Addl. Railway Manager,
SC Railway, Vijayawada.
3. The Sr.Divl. Personnel Officer,
SC Rly, Vijayawada.

.. Respondents.

Counsel for the applicant : Mr.Pratap Narayan Sanghi

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

CORAM:-

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

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

ORDER

Heard Mr.Pratap Narayan Sanghi, learned counsel for the applicant and Mr.N.R.Devaraj, learned counsel for the respondents.

2. The applicant in this OA studied upto B.Sc., 2nd year. He joined as Store Keeper under the Extra Labour Recruitment Scheme on 22-03-76. He was confirmed as regular employee of railways as Khalasi on 21-01-81 and posted in the ~~pay~~ scale of pay of Rs.750-940/- under the Chief Telecom Inspector, Nellore.



He was further promoted as Helper in 1983 under the Chief Telecom Inspector, Nellore and is discharging that duties from the date onwards. A notification bearing No.B/P.(RC)563/GDCE/VOL.I, dated 16-1-95 was issued for filling up the vacancies through General Departmental Competetive Examination (GDCE for short) for filling the vacancies of Pro-Commercial Clerk, Pro-Ticket Collector and Pro.ASMs against the 25% of the Direct recruitment quota. Number of vacancies to be filled is also given in the notification dated 16-1-95 (Page-1 to the OA). For applying for that notification, age limit has been fixed. The maximum age limit will be 40 years for general candidates and 45 years for SC/ST candidates as on 20-08-93. A further notification bearing No.B/P.563/GDCE/Vol.I dated 31-3-95 (Page-4 to the OA) was issued by the Vijayawada Division fixing the date of examination and the avenue and other details. The applicant was aged more than 40 years by 20-8-93 and hence he was not eligible to apply for the post covered by notification dated 16-1-95 referred to supra.

3. Aggrieved by the above, this OA is filed for setting aside for limiting the names on the basis of age for appearing for the examination in response to the notification No. B/P.(RC)563/GDCE/VOL.I dated 16-1-95 (Page-1 to the OA) and order No.B/P.563/GDCE/VOL.I dated 31-1-95 (Page-4 to the OA) by holding them as illegal, arbitrary, unconstitutional and for a consequential direction to the respondents to permit the applicant to appear for the written test and consider his case on merits without insisting ^{upon} the age limit and if he succeeds on merits, to appoint him to the post of Ticket Collector.

4. An interim order was passed in this OA dated 25-5-95. The operative portion in that interim order reads as below:-

"Hence the only Interim order that is going to be given is that the selections that are going to be made in pursuance of the examination to be conducted on the basis of the notification dated 16-1-95 will be subject to the result in this OA and necessary instructions in regard to the seniority will be issued in case the applicant succeeds and the same has to be mentioned in the orders of appointment

that are to be issued."


5. Railway Board vide letter No.E(NG)I/92/PM 2/16 dated 20-8-93 issued the memorandum for "Introduction of General Departmental Competitive Examination for filling up 25% Direct Recruitment vacancies in certain Group 'C' categories." The reasons for issuing that circular is to accelerate the process of redeployment of surpluses as a one time measure. The categories to be filled by this GDC Examination are restricted to non-technical popular categories viz., Train Clerks, Ticket Collectors, Commercial Clerks, Telephone Operators, Shroffs, Accounts Clerk and Office Clerks; Operational categories viz., Diesel/Elect. Assistants (where direct recruitment is made to the extent of shortfall), etc., and ASM. The reservation quota for SC/ST will also be applicable in the selection and the maximum age limit is 40 years for general candidates and 45 years for SC/ST on the cut of date.

6. The preamble of this circular reas as below:-

"As the Railway Administrations are aware, with the rapid modernisation of Indian Railways, phasing out of Steam Traction resulting in closure of Steam Loco Sheds, and closure of Goods Sheds and Transhipment Yards etc., a large number of regular staff are being retained and redeployed in alternative jobs quickly. Instructions already exist that the surplus staff should be priority in filling up the vacancies and the indents for direct recruitment should be placed on Railway Recruitment Boards only to the extent of net recruitment. However, the position still remains acute and there is need to make more and more vacancies available for redeployment of surplus staff."

From the above preamble it is evident that the GDCE is meant for working off the surplus due to phasing out of Stream Traction and that the surplus staff should be encouraged to apply for the same to work off the surplus under the Steam Traction cadre etc.

7. In accordance with the circular of the Railway Board letter dated 20-08-93, the Vijayawada Division issued notification dated 16-1-95 for filling up the 25% of the Direct Recruitment quota vacancies in pro-Commercial Clerks, Pro-Ticket



Collector and Pro-ASMs. This circular also indicates the fixation of age limit as indicated in the Board's letter. That was followed up by the further circular dated 31-3-95 for conducting the examination indicating the employees who responded to the notification dated 16-1-95 for appearing for the examination. The names of the applicant is not found in the list who can appear for the examination. The applicant as per his prayer is interested for considering his case on merits without insisting the age limit for the post of Ticket Collector. The case of the applicant for appearing for the examination was rejected as he was over aged i.e., above 40 years on the cut of date on 20-8-93.

8. A reply has been filed in this OA. The main reason given in the reply for restricting the age as 40 years for general candidates and 45 years for SC/ST candidates is given in Page-2 of the reply. It is stated that the age limit of 25/28 years for direct recruitment is relaxed to 40/45 years for serving employees keeping in view the service rendered by them. How the age of 40/45 years was arrived at has not been explained. The only reason given probably for restricting the age to 40/45 years is that "they should be sufficiently young to acquire new proficiency or skills which is conducive for the department and also for the candidates to progress further by way of promotions". In the reply there is no other plausible reasons given for restricting the age to 40/45 years except the short reason as extracted above. Hence it has to be held that the reply does not contain any detailed reasons for restricting the age to 40/45 years which is challenged in this present OA.

9. The learned counsel for the applicant submits that the Rules for Recruitment and Training of Group 'C' and Group 'D' and Workshop staff given in Chapter-I of IREM (Revised Edition 1989) is very clear. In para-127 of the IREM, the Rules for

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recruitment to the post of Ticket Collectors is given. This Para-127 reads as below:-

"127 (1) The vacancies in the category of Ticket Collectors in scale Rs.950-1500/- will be filled as under:-

(i) 66-2/3% by direct recruitment through the Railway Recruitment Boards; and

(ii) 33-1/3% by promotion by a process of selection from eligible Group 'D' categories of staff as specified by the Zonal Railway Administrations.

(2) Qualification etc. for direct recruitment are as under:-

(i) Educational:- Matriculation or its equivalent with not less than 50% marks in the aggregate.

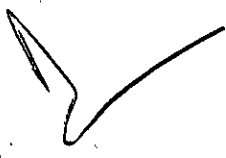

(ii) Age:- Between 18-25 years.

(iii) Training & Stipend:- Period of training will be (for a duration & less than one year) as fixed by the Railway Administrations. Stipend will be Rs.950/ p.m."

From the above the applicant submits that 33-1/3% of the vacancies are to be filled by Group 'D' categories by way of promotion. For them there is no age restriction as can be seen from the Recruitment Rules and for direct recruitment the age is restricted between 18 to 25 years. Even though the present GDCE selection is against the 25% of the direct recruitment quota of 66-2/3% the applicant being the serving employee, cannot be differentiated against the other serving employee who can appear against the 33-1/3% quota without any age restriction. The age given in the recruitment rule is only for direct recruits from the open market and for the serving employees no age restriction need to be prescribed. Even if some age restriction has been prescribed the respondents have the full power to relax the age as per para-155 of the IREM. Though that rule prescribes the Relaxation of age limit for certain categories, the applicant being a serving employee can be given age relaxation for short period and on that basis he can be permitted to sit for the examination. The respondents have also got powers under Rule-114 of the IREM to relax or modify the rules and hence the General

Manager or his CPO can easily relax the rule. In view of the above, the learned counsel for the applicant submits that the rejection of candidature of the applicant for appearing for the GDC Examination on the ground that he had crossed the age of 40 years on the cut off date is irregular and cannot be sustained.

10. The learned counsel for the respondents contended mainly on two grounds for restricting the age. When we heard him we felt that the submission of the respondents may not be adequate and hence it is preferable to hear the senior officials of the Railway to get at the crux of the problem. Hence we suggested to the respondents learned counsel to ask one of the departmental officials to be present in the Court and further explain this case. This chance was given by us as the field condition is necessary to be seen to come to the conclusion whether the restriction of age was necessary or not. The legal point involved in this case was simple and the decision taken in this connection to restrict the age may be due to the ~~recruitment~~ field necessities. However, the learned counsel for the respondents submitted that the age is restricted because of the Railway Board's letter dated 20-08-93 and hence the local official of the railway may not be able to contribute anything further in regard to this case. He further submitted that as it may not be possible for the Railway official to come to this case he said that the case may be decided on the facts available on record. We fully dis-agree with the views expressed by the learned counsel for the respondents, in that the local official will not be able to enlighten the Bench the reason for restricting the age. Even though the circular was issued by the Railway Board, the Zonal Railways give necessary back-ground materials to the Board to take a decision in this connection for restricting age. Just because the memorandum was issued by the Railway board it does not mean that the local official will be ignorant of the



facts in this connection. The Zonal Railways are the live wire in deciding the issue by the Railway board. They supply necessary data and materials to the Railway Board to educate the Railway Board as to how the problem should be solved. Hence, we are not in agreement with the submission of the learned counsel for the respondents that the local railway official will not be able to enlighten us in regard to the GDC Examination. However as the learned counsel for the respondents categorically submitted that no useful purpose will be achieved by calling the official of the zonal railway, we did not insist on that and proceeded to dispose of the case on the basis of the materials available on records. As stated earlier the reply is very cryptic in regard to the restriction of age for appearing for the GDC Examination included in the notification dated 16-1-95.

11. The learned counsel for the respondents put forward two main reasons for restriction. They ^{are} analysed as below:

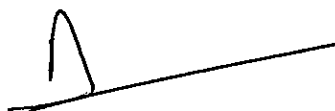
The first contention of the learned counsel for the respondents is that the candidates who appear against the 33-1/3% quota are insider of the department i.e., they belong to the same department and hence they are better equipped to sit for the examination irrespective of age. As the present selection is conducted for all the surplus staff from other departments also other than the commercial department they may not be equipped to that extent to sit for the examination and discharge the duties. Hence the restriction in age became necessary.

12. We considered the above submission. The applicant is interested for considering his case for the post of Ticket Collector. This category comes under the non-technical popular categories. Even presuming that for this category only Class-IV staff of the commercial department can apply against the 33-1/3% quota then a Parcel Porter who works in the Parcel office doing the duties of loading and unloading etc. is eligible to be

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considered. That Parcel Porter may not have any knowlege in regard to the duties to be performed by a Ticket Collector. The duties to be performed by the Ticket Collector may not be the same as the duties to be performed by a Parcel office clerk. The parcel porters work in the parcel office and hence their knowledge in regard to the duties of Ticket Collector may not be adequate. Further, a competitive examination is being conducted and those who pass the competitive examination only are considered for posting as Ticket Collector. Even those who passed the examination and empanelled have to further undergo a period of training as stipulated in para-127 of the recruitment rule. Hence an official belonging to a department other than the commercial department, in our opinion, may not lag behind in performing the duties of Ticket Collector due to his passing the competitive examination and also coming out successfully in the training. Further, it is stated very clearly in the preamble of the Railway Board circular that the need for conducting the GDC Examination is to work out all the surplus staff due to closure of Stream Traction and also other Yard activities. If so, it is evident that the main purpose of GDC Examination is to work out the surplus thereby sustaining the financial status of the railway organisation. The relevant preamble portion of the Board's letter had already been extracted above. If the age restriction is prescribed then the senior official in other departments like Fitters, Chargeman and Yard staff may not be able to sit for this GDC Examination as many of them will be over 40 years. The Railway in order to work out the surplus staff may have to post them in other departments on administrative grounds. If they are posted in other departments on administrative grounds then the length of service in the cadre from which they are made surplus will be the deciding factor for deciding the seniority in



the redeployed cadre. This cause disputes in the seniority unit in the redeployed cadre. The above redeployment also creates industrial ^{relation} problems. But in case even the senior employees who are aged above 40 years, who can pass the written examination and also qualify in the training if posted as Ticket Collector and other non-technical popular categories, that posting will not create any problem as the seniority is decided on the basis of the entry into the service. This is one of the main factors which has to be considered before taking a decision in regard to the restriction of age. Apparently, it appears that such a view point was not considered. Moreover, a senior employee from the other department is aware of the railway working to a great extent and they may not fail the railways by not discharging the duties when they are posted as Ticket Collector, Commercial Clerk etc. This point also is a relevant point to be borne in mind while fixing restriction in age.

13. The second contention of the learned counsel for the respondents is that this is a policy decision and hence interference from the Tribunal may not be called for.



14. The instructions in regard to the GDC Examination has been issued by Railway Board by an Executive circular dated 20-8-93. Any executive circular can be reversed or modified if the situation warrants so. It is not a circular issued under the provisions of the Article 309 of the Constitution. Many of the executive circulars followed are modified if there is need to do so. Even the policy decision can be examined minutely by a judicial forum if it is challenged in the judicial forum, as certain provisions in the decision may be unwarranted. Hence, we do consider that consideration in regard to the restriction of age by this Tribunal is within the boundaries of law and can be reviewed. Further the policy decision in this connection is not taken on the basis of a circular issued by the Govt. of India.



It is a circular issued for the purpose of working out the surplus staff in the Indian Railways. When there is no age restriction given for the candidates appearing against 33-1/3% quota, we do not see any justification or reason to restrict the age in the case of GDCE selection. Just because the GDCE selection is meant for 25% of the vacancies of the Direct Recruitment it does not mean that the imposition of age restriction is necessary and cannot be questioned.

15. The whole restriction has to be reviewed from the angle of working off the surplus staff and also consider the eligibility of surplus staff ~~who~~ are likely to sit for the examination. We are satisfied for the reasons stated above that the age restriction of 40/45 years for the employees for appearing for the examination is not warranted and has to be relaxed if not eliminated fully.

16. After the OA is reserved for judgement, the learned counsel for the respondents submitted an avenue chart for promotion to Traffic Controllers. It is not understood how this chart is going to substantiate the case of the respondents. Probably the 15% quota and the 10% quota are limited to graduates who are not over 40 years of age for considering them for the post of Traffic Controller. Traffic Controller category is a specialised category and it has no semblance whatsoever to the duties performed by non-technical popular category of staff, such as Train Clerk, Ticket Collector, Commercial Clerk etc. The age has been restricted there for the departmental candidates who appeared for that examination. There is no GDCE selection there and that rule is applicable to all those who apply. Hence we do not think that this avenue chart justifies the case of the respondents in restricting the age of the applicant herein for appearing for the post of Ticket Collector as per circular dated 16-1-95.

17. The submission of this avenue chart now once again strengthen our early views that the railway officials could have submitted some more points in this connection on the basis of their field experience had they been called. Unfortunately, the learned counsel for the respondents shut the door for a senior railway officer to appear before us to assist in resolving the issue involved this case.

18. In view of what is stated above, we set aside the age limit prescribed in the notification dated 16-1-95. All those who applied for the GDCE selection in response to the notification dated 16-1-95 should be permitted to appear for the examination irrespective of the age.


19. In the interim order itself it has been clearly stated that the selection that is going to be made in pursuance of the notification dated 16-1-95 is subject to the result in this OA and necessary instructions in regard to seniority will be issued in case the applicant succeeds.

20. Hence, we issue following directions:-

(a) As we have already decided that the restriction of age is not called for and the same has been set aside, the applicant should be subjected to a supplementary examination if he is otherwise eligible for appearing for the examination as per the notification dated 16-1-95.

(b) If he comes out successful in that supplementary selection, then his name should be included in the panel at the appropriate place as per the integrated seniority list and he should be sent for training.


(c) If he complet^es all the formalities in accordance with law then he should be posted as Ticket Collector on par with




his juniors in the integrated seniority list who were selected and posted as Ticket Collector.

21. The case of others who responded to the notification dated 16-1-95 and are similarly placed as the applicant herein their cases should also be considered as per the directions given above.

22. The OA is ordered accordingly. No costs.


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


(R. RANGARAJAN)
MEMBER (ADMN.)

Dated : The 31st March, 1998.

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Copy to:

1. The General Manager, South Central Railway,
Railnilayam, Secunderabad.
2. The Addl. Railway Manager, South Central Railway,
Vijayawada.
3. The Senior Divisional Personnel Officer,
South Central Railway, Vijayawada.
4. One copy to Mr. Pratap Narayan Sanghi, Advocate, CAT, Hyderabad.
5. One copy to Mr. N. R. Devraj, Sr. CGSC, CAT, Hyderabad.
6. One copy to D. R. (A), CAT, Hyderabad.
7. One duplicate copy.

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17/4/98
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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M (J)

DATED: 31/3/98

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in

O.A.NO. 656/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

