

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH:
HYDERABAD

O.A.NO.207 OF 1997.

DATE OF DECISION: 30.7.99

BETWEEN:

T.Venkat.

....Applicant

And

1. General Manager, South Central Railway,
Railnilayam, Secunderabad.

2. Chief Commercial Manager, S.C.Railway,
Rail Nilayam, Secunderabad.

3. Chief Personal Manager, S.C.Railway,
Rail Nilayam, Secunderabad.

.....Respondents

COUNSEL FOR THE APPLICANT :: Mr. G.Vidyasagar

COUNSEL FOR THE RESPONDENTS: Mr. V.Rajeshwar Rao

CORAM:

THE HON'BLE SRI H.RAJENDRA PRASAD, MEMBER (ADMN)

THE HON'BLE SRI B.S.JAI PRAMESHWAR, MEMBER (JUDL)

: ORDER :

(PER HON'BLE SRI H.RAJENDRA PRASAD, MEMBER (ADMN)) *Q/21*

Heard Mr.G.Vidyasagar, learned Counsel for the Applicant and

Mr.V.Rajeshwar Rao, learned Standing Counsel for the Respondents.

Q/21

- ii) the Applicant, having been working in the Passenger Reservation System for more than four years, was fully eligible for selection in terms of the Railway Board circular dated 15th February, 1993; and
- iii) the rejection of his candidature on the ground that he had not been holding a post in the scale Rs.1,400-2,300 for two years is impermissible.

6. During the hearing of the case on 18-11-1998, the learned Counsel for the Applicant raised the following additional questions:

- 1) In the reply filed by them before the Regional Labour Commissioner on 11-10-1995 (Annexure-6 page 21 to the O.A.No.1 of 1997) the Respondents had stated in precise terms as under:

"Vide Railway Board's Letter No.E(NG)/I/87/PM.16/3, dated 15-2-1993, ECRCs working on console are to be recruited from among volunteer graduates and ECRCs having completed minimum two years of service in the grade of Rs.1,200-2,040 (RSRP) through a positive act of selection. As such the selection is open to the candidates from all other departments also who are graduates. The specific minimum service of two years has been stipulated as all the ECRCs are not necessarily graduates."

A specific grade of Rs.1,200-2,040 (RSRP) had thus been mentioned based on which statement, among others, the final settlement was arrived at, as seen at Annexure-9 to the O.A. (Page 30). However, in the Notification issued on 24-10-1996, for the formation of a panel for promotion to the post of Console and Data Base Operators (Annexure-10, Page 31), a scale of pay of Rs.1,600-2,660 was stipulated as one of the conditions of eligibility. This was contrary to and totally at variance with the undertaking earlier given by the authorities to the Labour Commissioner and also because a Circular of the Railway Board had been pointedly cited in their remarks to the said Commissioner.

28/10/98

3. The representations submitted by the Applicant on 28th January, 1995, having evoked no response from the authorities, he, along with some similarly-situated employees, approached the Regional Labour Commissioner for intervention and conciliation. In their remarks offered to the Regional Labour Commissioner, on 11th October, 1995 (Page 17, Annexure-III), the Respondents stated as under:

"Vide Railway Board's Letter No.E(NG) 1/87/PM 16/3 dated 15-2-1993, ECRCs working in Console are to be recruited from among volunteer graduates and ECRCs having completed minimum two years of service in the grade Rs.1200-2040 (RSRP) through a positive act of selection. As such the selection is open to the candidates from all other departments also who are graduates. The specific condition that the ECRCs should have minimum service of two years has been stipulated as all the ECRCs are not necessarily graduates."

The Conciliation proceedings ended in a settlement arrived at by the parties whereby the authorities agreed to the creation of 3 and 6 posts of Data Base Operators and Console Operators, respectively, in the scale of Rs.1,600-2,660 (RSRP).

5. A notification dated 24th October, 1996 (Annexure V) was issued by the Respondents prescribing three conditions of eligibility for the intending volunteer candidates : (a) scale of Rs.1,600-2,660 or one grade below; (b) a minimum of two years of service in the post presently held if the candidates were in a lower grade than Rs.1,600-2,660; and (c) a degree from a recognised University.

5. The Applicant contends that -

i) The console operators being an ex-cadre post in the scale of Rs.1,600-2,660, the prescription of regarding the very same scale as one of the essential conditions of eligibility is incorrect;

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9 (a) The Respondents in their counter-affidavit deny all claims of the Applicant regarding his technical expertise, and state that he was at no point of time entrusted with any task of creating or designing of the environment relating to reservation activities, or its execution, as claimed by him, but was merely performing reservation related activities like preparing train-reservations and attending to day-to-day reservation-related problems. Nor was he given any technical training to enable him to impart training to operating staff. The responsibility of development and maintenance of soft/hardware was entrusted to independent agencies and the Applicant had no role to play in any of the related technical activity. The existing staff, of which the Applicant was a member, was utilised only to operate the user-friendly software developed by the independent agencies entrusted with the development, installation and maintenance of the hard/software.

(b) The impugned notification at Annexure-V merely embodies the eligibility criteria as prescribed by the Board in their Circular (Annexure.A-2 to the OA). Since the Applicant had not completed two years of service in his present grade he was not found eligible to sit for the examination. There has been no deviation from the guidelines or criteria laid down by the Board.

(c) As regards the reply filed before the Regional Labour Commissioner in the conciliation proceedings (Annexure IV) it is stated by the Respondents that the commitment given by them was with regard to creation of 3 posts of Data Base Operators and 6 posts Console Operators in the pay scale of Rs.1,600 to 2,660, and to finalise the selections for filling up those posts within a specified time-limit. Neither the method of selection or eligibility criteria were really the concern of or the subject matter before the Labour Commissioner.

 8/3/17

The Applicants contend that the correct scale to be prescribed was Rs.1,400-2,300 and one grade below that, viz., Rs.1,200-2,040. There is no 3rd grade of scale in existence for the ECRCs.

A further question which arose in the case was that the Applicants were subjected to an aptitude test consisting of a written examination, as also a viva-voce test. While there cannot be any objection to a viva-voce test being held, the conduct of written-test was unwarranted, since no such test had been prescribed by the Board, and particularly since no syllabus for the same had been finalised or publicised for such (written) Test in advance. Furthermore, it was learnt that Northern Railway, in a similar situation, did not subject the ECRs, who had already been performing Console Operator duties, to such a written Test but had restricted such Aptitude Test only to outside graduate volunteers from other Wings/Departments in the Zonal Railway. Thus a uniform policy was not followed for the same ^{Selection} between two Railways.

7. The Applicant prays for a declaration that the qualifications and eligibility conditions laid down in Annexure-V to the OA are contrary to the Railway Board's Circular at Annexure-II; to consequently set aside the list of ineligible candidates, insofar as it pertains to himself, vide Annexure-VII; and to direct the Respondents to permit him to appear for the aptitude test.

8. By an interim order this Tribunal directed the Respondents to allow the Applicant to appear at the selections scheduled to be held on 2-3-1997; it was stipulated that the results of his selection test should not be declared until further orders. Further that, if any appointments were made in respect of other candidates, the same would be subject to the result of the OA. The Applicant was therefore duly allowed to take the test.



13. Turning to the question of the practice adopted in the Northern Railway, it is seen that the said Railway vide its communication No.220E/86/CO/TT.II/Section/EIC, dated 27-10-1995, had duly conducted an aptitude test as well as viva-voce test during July, October, 1995. It is seen therefrom that 11 ECRCs who were in the scale of either Rs.1,600-2,660, or 1,400-2,300, were subjected to aptitude test as well as viva-voce. Such being the facts, the plea of the Applicant in this regard that the ECRCs of Northern Railway had not been subjected to any aptitude test is not found to be factually correct.

14. Since the eligibility criterion in respect of the pay scale, or two years service in the immediate lower grade, as laid down by the Railway Board, have not been satisfied by the Applicant, we are unable to accept his plea in this regard. We cannot hold that he was eligible for promotion since he did not obviously fulfil the prescribed eligibility criteria. There is no variation between the conditions stipulated by the Railway Board, the practice adopted in Northeastern Railway, and the criteria in the present instance. We agree too that a statement made before the Regional Labour Commissioner, if it was factually erroneous, cannot be binding on the authorities, and ~~no other method~~ ^{or of selection} mode [^] could override the instructions of the Railway Board.

15. The Applicants argue that an aptitude test need not necessarily be taken in the form of written-test. This argument is unacceptable. We are of the opinion that a written-test, far from being redundant or impermissible, is actually a far more reliable instrument of selection than an orally-conducted test. Moreover, if a written-test is the usual mode of promotions to comparable posts ^{in most} Departments of the Railways, we do not see how and why a departure needs to be made only in respect of this particular selection. True, the Railway Board Circular does not prescribe a written-test; by the same token, the Circular does not also prohibit the holding of a written-test. We do not find any merit in this argument.



- (d) It is stated that the Applicant had not produced any documentary proof in support of their contention that Northern Railway had dispensed with the Aptitude Test and filled the vacancies of Console/Data Base Operators merely on the basis of a viva-voce test.

10. The respondents therefore assert that no merit is found in the OA and the same deserves to be dismissed.

11. We have examined the facts. The main contention relating to the eligibility of candidates for Console Operators are found incorporated in Para 2 (1) of Annexure-II. There is a reference in it to ECRCs who are in the same grade or have rendered minimum two years of service in the immediate lower grade in their own cadre. This obviously meant that a candidate, to be eligible for selection, had to be either in the scale of Rs.1,600-2,660/-, or if he was in the lower grade of Rs.1,400-2,300/- (as is the case with the present applicant) he had to have a minimum of two years service in this grade. In the same para a reference is to filling of the posts of Console Operators on selection basis. This same basis is found repeated in para 2 (2). It is emphasised again that only such employees would be considered who were in the same grade (of Rs.1,600-2,660), or in the alternative, those who had rendered a minimum of two years service in the immediate lower grade in their own cadre.

The notification at Annexure-V incorporates precisely these conditions and nothing more.

12. It is stated that the requirement of graduation as one of the eligibility conditions was subsequently dispensed with vide the Board's letter No.E(NG)I-95/PM 16/4 dated 12-4-1997.



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16. One other argument is that when the promotional post carried a pay-scale of Rs.1,600-2,660, there was no justification for prescribing the ^{same} scale as one of the criteria for determining ^{the} eligibility of intending candidates. We do not find any merit in this argument either. When a whole new set of ex-cadre posts were being created under a new computerised-reservation facility, it was only logical that the field of selection be thrown open to all officials in other departments who were in the same pay-scale in order to make the selections more broad-based. And as long as the officials in lower scale were also allowed, subject to an additional condition of length of service, the competition becomes fair and equitable.

17. In view of the findings as recorded above we are unable to accept to any of the prayers contained in the OA. The same is disallowed as lacking any merit.

IN THE CENTRAL ADMN. TRIBUNAL:
HYDERABAD BENCH: AT HYDERABAD

M.A.NO. OF 1997

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//Direction Petition//



M/s G.Vidyesagar
K.Udayasree
P.Sudheer Rao
Advocates

COUNSEL FOR APPLICANT