

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

O.A. 1019/97

Date of decision: 4/3/98

Between

D. Kotiveeraiah Chowdary .. Applicant

AND

1. Union of India,

Chairman, Rail Bhavan,

Railway Board, New Delhi.

2. The General Manager,

South Central Railway,

Rail Nilayam,

Secunderabad.

3. The Selection Committee for the

posts of Asstt. Controller of Stores,

Rep. by its Chairman,

Controller of Stores,

6th Floor, Rail Nilayam,

South Central Railway,

Secunderabad.

4. S. Babu Rao

Asstt. Controller of Stores,

MSD Depot, South Central Railway,

Hubli, Karnataka State.

5. P. Venkataswamy,

ACOS Wagon Work Shops,

Rainapadu, South Central Railway,

Vijayawada.

6. A. Jagannadham,

Asstt. Controller of Stores,

Diesel Stores Depot, South Central Railway,

80

Vijayawada.

7. K.C. Vargeesh,
ACOS, Electrical Loco Shed,
S.C.Railway, Vijayawada.

8. D.S.Prahlad,
ACOS, Diesel Loco Shed,
S.C.Railway, Guntakal,
Anantapur Dist.

9. Smt.P.V.Kumar,
ACOS in the office of the
Controller of Stores, 6th Floor,
RailNilayam, S.C.Railway,
Secunderabad.

10. K. Mallaiah,
ACOS, Railway Electrification,
S.C.Railway, Vijayawada.

11. M.A.Rafik Ahmad,
ACOS MHD Depot,
S.C.Rly, Hubli,
Karnataka.

12. B.Srinivasulu,
ACOS Diesel Shed,
Gooty, SC Railway,
Anantapur Dist. .. Respondents

Counsel for the applicant : Mr. M.J.M. Naidu

Counsel for the respondents: Mr. K. Siva Reddy

Counsel for R.Nos:5 to 8, 10 & 12: Ms. Shakti

Coram:

Hon'ble Shri A.V. Haridasan, Vice-Chairman (EB)

Hon'ble Shri H. Rajendra Prasad, Member (A)

(Per Hon'ble Shri H. Rajendra Prasad, Member(A))

The applicant, Storekeeper Gr.I, was a candidate for the Group 'B' post of Asstt. Controller of Stores, through a competitive examination held in September, 1995, against 70% quota earmarked for ministerial and non ministerial employees of the Stores Department working in grade the minimum of which was Rs.1,400/- and those in the higher Group C grade posts of IV 'I' pay commission scale, provided that they had rendered not less than three years of non- fortuitous service in their grade as on 1-7-95.

The examination comprised a written paper and a viva-voce test. In order to qualify in the written examination a candidate had to secure 90 out of 150 marks, and, subject to medical suitability, was to be called thereafter for the viva-voce.

A list of 42 employees who fulfilled the basic eligibility for selection was drawn up (Annexure -1) in which the applicant figured at Sr.13. The applicant, having given his willingness, was permitted to appear at the examination and duly qualified in the written test, and was called to take the viva-voce. The name of the applicant figured at No.9 in the list of 27 candidates who were called for the viva-voce (Annexure-2).

A nine-man panel of successful candidates was formed and released on 5-2-1997 (Annexure-3). The applicant did not, however, figure among the selected candidates. This is the impugned order in this case.

2. The applicant is aggrieved by his non-selection/non-empanelment for promotion to Asstt. Controller of Stores, and prays for quashing of the impugned panel on the following grounds :

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(i) that whereas as many as 8 of the 9 available vacancies were earmarked for OC, and while only one vacancy was declared as reserved for SC, Respondents No.4, 5, 6 and 10, all of whom who belonged to ST/SC categories were empanelled: besides resulting in over-recruitment of SC/ST candidates, this imbalance in the impugned selection effectively deprived many OC candidates, including himself, of a fair opportunity of consideration;

(ii) that the said respondents (nos.4,5,6 & 10) were awarded 'notional' marks in the oral test and were thereby enabled to be unfairly selected without regard to their actual merit or performance;

(iii) that respondents No.9,10,11 and 12, who are found to have been empanelled, are junior to him; that as per the standing instructions of the Railway Board, juniors even when they happen to score more marks (upto 80) than their seniors, it would not adversely affect such seniors who would still retain their position based on their own accepted seniority, and that no junior would rank higher despite having scored more marks than his senior;

(iv) that whereas the rules envisage the convening of a three-man selection panel - and an additional member from

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SC/ST if none of the three nominated members belongs to those communities - the Committee in the instant case consisted of four members even though there already was a member of SC on it among the original three. The induction of a fourth member from SC was resorted to with a view to affording a weighted consideration in favour of candidates belonging to those communities ;

(v) that he had an exceptionally blemishless and good record of service as borne out by certain certificates of appreciation and awards issued to him on some past occasions;

(vi) that the selection committee deliberately awarded him low marks with a view to favouring certain other candidates;

(vii) that a candidate, to be eligible for any Gr.B post, has necessarily to be a graduate as decided by way of policy by the Railway Board in their letter No.E-GP/90/2/156 dt. 20-2-1987, whereas some of the selected candidates are non-graduates.

(viii) The 25% marks fixed for viva-voce test in the instant case is contrary to the decision of Hon'ble Supreme Court in Vikram Singh and another vs. The Subordinate Services Selection Board Haryana and Ors. (1991(1)SLR 176)

3. In an additional affidavit the applicant alleges that the respondents, having come to nurse a grudge against him for having pursued certain cases in courts of law in the past, deliberately constituted

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a four-member Selection Committee with an extra SC member merely in order to deny him a proper and fair selection. Furthermore, he had been earlier denied two successive opportunities for selection to the post of ACOS while his juniors were so selected and promoted.

4. The respondents in a detailed counter affidavit submit that the applicant's name did not find place in the selected list quite simply because he failed to secure adequate number of marks in the viva-voce vis-a-vis other (successful) candidates, and that a representation submitted earlier by him in pursuance of a direction issued by this bench in OA 501/97. was duly considered and disposed of on 1-7-1997, informing him that he could not be empanelled because of his failure to secure the necessary marks in the interview. It is disclosed by the respondents that, in the instant selections, only the seniormost successful SC candidate was adjusted against the lone SC point reserved for the posts of ACOS, while the remaining 3 SC/ST candidates were selected on their own merit and seniority without any reference whatsoever to the community to which they belonged. The respondents totally deny that any 'notional' marks were awarded to any SC/ST candidate since no provision exists for award of grace or 'notional' marks to anyone in the rules governing the selections to Gr.B posts. It is also disclosed that the marks to be awarded for the Record of Service of a candidate, based on the preceding 5 years of his service, are determined by specific quantified parameters, and that no scope exists for any ambiguity on this score. This was

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duly done in the instant case as well. Mere grant of awards or of commendation certificates would not by itself confer any entitlement on any official to be promoted preferentially to a higher grade.

5. As regards the composition of the selection committee it was submitted by the respondents that, in the present instance, the Controller of Stores, - who, incidentally, was admittedly an SC officer - served on the Committee in his capacity as the Head of the Department. It was, therefore, considered advisable that one other officer belonging to SC be added to the committee to impart balance to its proceedings. In this connection it was also added that it has been a long-standing practice prevalent in the Zone, viz., to have a four-member committee in such situations. A comprehensive list of various Committees constituted over a number of successive years for the purposes of selections/promotions was produced in support of this plea.

6. As regards the educational qualification - minimum of a graduation - mentioned by the applicant, the respondent concede that such a policy decision was indeed taken by the Railway Board and communicated vide their letter No.E(GP)90/25 dt. 20-2-87. The relevant recruitment rules have not, however, been amended so far to incorporate this policy-decision and that the minimum qualification for eligibility to appear at Gr.B promotions/selections, therefore, continues unaltered till now. It was also subsequently decided by the Board (No.E (GP) 90/2/156 dt. 16-7-96) that this changed requirement, which was originally envisaged to become effective from 1-7-1996, would now come into force only after an amendment is made ..8/-

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to the relevant recruitment rules; no such amendment has been issued so far, as already indicated.

Finally, it is submitted that the representation of the applicant submitted on 18-2-97 has been duly disposed of by giving him a suitably detailed reply on 1-7-97.

7. We have examined the facts and averments carefully. From the record of selection produced for our perusal we notice that all the nine candidates who were finally selected, except one, had scored higher marks than the applicant in the written test. As regards the viva-voce we did not find any visible bias or marked divergence in the pattern of awarding marks to the applicant by any of the members of the Committee belonging to OC or to SC, nor did we find any evidence of any undeserved 'notional' marks being awarded to any candidate, regardless of the community to which he belonged. The allegations of the applicant in this regard are evidently the result of an unsubstantiated and unsustainable suspicion.

8. The decision of Hon. Apex Court cited by the applicant with regard to the marks to be fixed for viva-voce, (Vikram Singh and another vs. The Subordinate Services Selection Board, Haryana, 1991 (1) SLR 176) is inapplicable to the facts of the present case for two reasons: firstly, 25 marks fixed for viva-voce in the instant selections is against a total of 200 marks which works out to 12.5% recommended by Hon'ble Apex Court; secondly, the case decided by Hon. Supreme Court related to a direct recruitment process, and a visible and

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unexplained imbalance had been noticed in that case in the matter of the marks fixed for the written and viva-voce tests. The present case is one relating to selection among departmental candidates and allotting 25 marks for viva-voce segment of the Examination is not considered unfair or impermissible on any count.

9. In the light of the decision of the Railway Board, the requirement of graduation as minimum educational qualification cannot be said to have come into force for the purposes of the Examination under reference in this case.

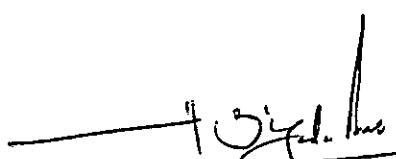
10. The constitution of the Selection Committee too cannot be held to be incorrect, given the fact that the same pattern and composition is being adhered to in a number of other selections. If an additional member belonging to particular community is added to the committee for acceptable reasons, that by itself would not vitiate the selections when the conduct of the Committee and its proceedings are otherwise beyond any shadow of reproach or suspicion and have not caused any manner of prejudice to the applicant, as erroneously believed by him. We find that in the present case the Committee did act quite fairly and impartially and no partisan attitude, as alleged by the applicant, was evident from the record of its proceedings.

11. We also accept the explanation given by the respondents as regards the fortuitous preponderance of SC/ST officials (2 of each category) in the select list. From the record produced before us we have no ground to conclude that the 3 of the 4 SC/ST candidates did not succeed on their own merit and seniority. Here too, no irregularity

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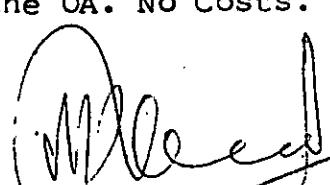
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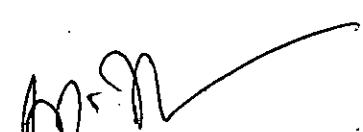
12. Thus, viewed from any angle, the applicant has not succeeded in establishing his claim, nor has he been able to adduce any unassailable or acceptable ground in support of his case. We do not find any merit in the case and accordingly dismiss the OA. No Costs.


(H. RAJENDRA PRASAD)
Member (A)

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MD


(A.V. HARIDASAN)
Vice-Chairman (EB)


Deputy Registrar

O.A.1019/97.

To

1. The Chairman,
Railway Board, Railbhawan,
New Delhi.
2. The General Manager, SC Rly,
Railnilayam, Secunderabad.
3. The Chairman, Selection Committee
for the Posts of Asstt.Controller of Stores,
Controller of Stores,
6th Floor, Railnilayam, SC Rly, Secunderabad.
4. One copy to Mr. J.M.Naidu, Advocate, CAT.Hyd.
5. One copy to Mr.K.Siva Reddy, SC for Rlys, CAT.Hyd.
6. One copy to Mr.G.Parameswar Rao, Advocate, CAT.Hyd.
7. One copy to DR(A) CAT.Hyd.
8. One spare copy.

One copy to HTRP. M(A) CAT Hyd.
pvm.

29/3/98

I Court

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE A V Hari Dasa^r
VICE-CHAIRMAN (Endubabu Basu)

AND

THE HON'BLE MR.H.RAJENDRA PRASAD: M(A)

DATED: 4-3-1998

ORDER/JUDGMENT:

M.A./K.A./C.A.NO.

O.A.NO.

10/9/97
in

T.A.NO.

O.W.R

Admitted and Interim directions
Issued.

Allowed

Disposed of with direction

Dismissed.

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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