

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 30/3/2001

OA 237/94

Tara Chand Garg s/o Shri G.P.Garg r/o 1-Gh-12, Bholi Bhatta Colony, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Chairman, Railway Board, Rail Bhawan, New Delhi.
3. Chief Works Manager, W/Rly, Ajmer.
4. Dy.Chief Mech.Engineer (Carriage), W/Rly, Ajmer.
5. Shri Narayan Lal, Chargeman-A, Shop Floor Carriage Workshop No.26, W/Rly, Ajmer.
6. Shri Ramsnehi, Chargeman-A, Shop Floor Carriage Workshop No.26, Western Railway, Ajmer.
7. Shri Banwari Lal, Chargeman-A, Shop Floor Carriage Workshop No.26, Western Railway, Ajmer.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.Shiv Kumar

For the Respondents ... Mr.T.P.Sharma

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the order dated 5.5.94 (Ann.A/2) as his name does not find place in the list of

candidates declared successful in the written examination held on 25.4.94 for promotion to the post of Junior Shop Superintendent grade Rs.2000-3200. He has challenged a part of Rule 215 of the Indian Railway Establishment Manual (for short, IREM) as being ultra vires. He has prayed for declaring the impugned order dated 9.3.94 (Ann.A/1) as illegal and for quashing the same.

2. Case of the applicant is that while working as Chargeman-A w.e.f. 17.7.89 he was promoted on ad hoc basis to the post of Junior Shop Superintendent vide order dated 5.11.93. Vide impugned letter dated 9.3.94, date of written examination was fixed for selection to the post of Junior Shop Superintendent for filling up six vacancies. Nine candidates, including the applicant, were considered to be eligible to appear in the written test which was held on 24.4.94. Result of the said written test was declared vide letter dated 6.5.94 alerting five candidates to appear in the viva-voce test. Name of the applicant does not find place in that letter. It has been submitted by the applicant that the respondents conducted the selection in the year 1994 by including the vacancies which occurred in the year 1990 onwards. Clubbing of the vacancies resulted into enlarging the zone of eligibility. The eligibility for promotion, as per the applicant, should be seen at the time of occurrence of vacancies as has been held by the Full Bench of Kerala High Court in Varghese and Others V/s State of Kerala and Others (1981 (2) SLR 252 (Ker) F.B.). This resulted into including the names of respondents No.5 to 7 in the zone of conideration, which is stated to be ex-facie illegal.

3. It has further been contended by the applicant that some of the candidates called in the written test were not even eligible as on the date of the test they had not completed two years of qualifying service, which is a pre-requisite for being considered for promotion to the next grade. On this ground, selection of respondents No.5 to 7 is not according to the rules and not sustainable in law. Thus, a part of Rule 215 of IREM, which provides that; "condition of two years' service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration", is unreasonable, illegal and ultra vires of Articles 14 and 16 of the Constitution. The mischief of the aforesaid rule is that one may not be eligible for promotion but still can be considered and yet seniority. This would act adverse to the legal right of the seniors. Therefore, applicant's plea is that the aforesaid portion of Rule 215 of IREM deserves to be struck down being violative of Articles 14 and 16 of the Constitution.

4. In the reply, the respondents have stated that it is a known fact that it is not always possible to hold selections in time because of various administrative reasons. Whenever selections are conducted, the employees falling in the zone of consideration with respect to the vacancies or posts to be filled at that time have necessarily <sup>to</sup> be considered. The promotions are given only in accordance with the rules and such <sup>merely appearing in</sup> selections does not create any right in any employee. It has been stated that the applicant appeared in the written test but failed to qualify and ~~said~~ that he has no right to challenge the selection and also the zone of consideration after having appeared in the written test, in view of the law laid down

by the Full Bench in Jethanand and Suresh Chand's cases. It has been submitted by the respondents that the provisions of Rule 215 of IREM are perfectly in conformity with law and justified because condition of two years experience at the time of actual promotion has been kept for sound reasons so that the employee has adequate experience of the lower post. However, it would be totally unjustified that even at the time of conducting examination such experience should be possessed. Whenever selections are conducted, all employees in the zone of consideration are called but at the time of actual granting promotion the condition of fulfilling the qualification of experience of two years is duly considered. Since the applicant did not qualify in the written examination, action of respondents, which is as per rules, has not caused any prejudice to him, as alleged.

5. Heard the learned counsel for the parties.

6. Learned counsel for the applicant submitted that validity of the part of Rule 215 of IREM was challenged in OA 247/92 before the Jodhpur Bench of this Tribunal and the Tribunal vide order dated 26.9.94 had declared the selection of one Shri Ashok Kumar Sharma, a private respondent in that case, as illegal on the ground that he had not completed two years of service when he was called to appear in the selection. He contended that calling ineligible candidates caused prejudice to the right of the applicant. He also mentioned that the judgement of the Jodhpur Bench in OA 247/92 was challenged by the respondents by way of SLP before the Hon'ble Supreme Court of India. Hon'ble Supreme Court vide order dated 10.7.95 stayed the operation of the judgement/order dated 26.9.94 in OA 247/92 but finally the

SLP was dismissed vide Hon'ble Apex Court's order dated 6.11.95 passed in Special Leave to Appeal (Civil) No.14094/95.

7. We have carefully perused the records as also the order dated 26.9.94 passed in OA 247/92.

8. In so far as clubbing of the vacancies for various years is concerned, we accept the view of the department that there can be vagaries of the working which resulted into inability of the department to hold selection in time. There is no rule which enjoins a duty under law on the department that vacancies of different years have to be reckoned separately for determining the zone of consideration. The Judgement of Kerala High Court in the case of Varghese and Others V/s State of Kerala and Others, referred by the applicant will not help him as in that case the eligibility is determined definitely with respect to the date of occurrence of vacancy. This is not the position in the matter under adjudication. We find no infirmity in the action of the respondents in clubbing the vacancies.

9. Coming to the question of validity of the part of Rule 215 of IREM to the extent it makes even those eligible for being called for selection who have not completed two years of qualifying service on the date of selection. We have gone through the observations and judgement of Jodhpur Bench of the Tribunal passed in OA 247/92. It has been ~~held by the Tribunal~~ in that case that the person must fulfil the requisite qualification for promotion at least on the date of selection i.e. on the date of placing the name in the panel. The name of a person cannot be placed in the

panel unless he fulfills the requisite qualification of two years. Keeping this in view, promotion of Shri Ashok Kumar Sharma, in that case, was declared as illegal. In view of the law laid down by the Jodhpur bench and SLP against that order having been dismissed, we are of the view that portion of the Rule of IREM, which states that; "the condition of two years service should stand fulfilled at the time of actual promotion and not necessarily at the time of consideration," as not being in conformity with the requirement of eligibility. Therefore, placing of the names of the private respondents on the panel needs to be examined in the light of this principle.

10. Shri Narayan Lal and Shri Ramsnehi, private respondents no. 5 and 6, would have completed two years experience on 14.5.94 and Shri Banwari Lal, respondent no. 7 on 5.11.95. The result of written test was declared on 6.5.94. The date on which the final panel was approved has not been brought on record. However, by the principle laid down by the Jodhpur bench, we consider it appropriate to direct that only those of the private respondents should be considered eligible to be placed on the panel who had completed two years qualifying service by that date i.e. the date of formation of the panel. If any of the private respondents had not completed two years qualifying service on the date of formation of panel, his selection is liable to be held illegal. Since the date of formation of panel was not made known to us at the time of hearing or in written averments, it is for the respondents to ascertain as to which of the private respondents had or had not completed two years qualifying service on the material date.

11. In view of the foregoing, we partly allow the OA and hold that part of Rule 215 of IREM, which lays down; "that the

condition of two years should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration" as contradictory to the basic requirement of eligibility and to that extent illegal. We also hold that promotion of such of the private respondents, who had not completed two years of qualifying service as on the date of formatiion of panel, as illegal and names of such persons should be deleted from the panel. Respondents shall undertake this exercise and take necessary follow action within a period of three months from the date of this order.

12. The OA stands disposed of accordingly with no order as to costs.

*hmp*

(A.P. NAGRATH)

MEMBER (A)

*S.K. Agarwal*

(S.K. AGARWAL)

MEMBER (J)