

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of order : 24.11.2002

O.A. No. 578/94

Mr. Madan Gopal Dangayech, son of late Shri L.P. Dangayech, aged 60 years, retired Senior Section Officer (Accounts), Dy. CAO (S&C), Western Railway, Jaipur, resident of 881, Baba Harish Chandra Marg, Bhuratika, Panchgali, Chandpole Bazar, Jaipur.

... Applicant.

v e r s u s

1. Union of India through General Manager, Western Railway, Church Gate, Bombay.
2. Financial Advisor & Chief Accounts Officer, Western Railway, Church Gate, Bombay.

... Respondents.

Mr. S.K. Jain, Counsel for the applicant.

Mr. Manish Bhandari, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice P.S. Paikote, Vice Chairman

Hon'ble Mr. N.P. Nawani, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Paikote)

This O.A. is filed for quashing of the impugned order dated 30.09.93 (Annexure A/1) with a further direction to the respondents to include the name of the applicant in the panel of Assistant Accounts Officer (Class II) vide Annexure A/3 dated 08.03.89, by enlarging the same, with all consequential benefits, including the revised pension etc.

2. The applicant stated that he was first appointed as Stenographer in the year 1961 and after enjoying further promotions, he reached the stage of Senior Section Officer (Accounts) in the scale of Rs. 2000-3200 with effect from 01.04.87, ^{continued as such} till he attained

the age of superannuation on 20.09.92. But the grievance of the applicant is that on the basis of the notification dated 15.07.88 vide Annexure A/2, a written test was conducted for the purpose of promotion to the post of Assistant Accounts Officer Class-II [AAO, for short] but he was not promoted. His contention is that he should have been promoted on the basis of the written test held in pursuance of Annexure A/2 dated 15.07.88, when his name was found in the panel. His further case is that he should have been promoted by enlarging the panel dated 8.3.89 vide Annexure A/3. Therefore, his non-promotion to the post of AAO was illegal and accordingly, order Annexure A/1 is liable to be quashed. The learned counsel for the applicant strenuously contended that the 3 posts alleged to have been reserved for Scheduled Caste/Scheduled Tribe, should have been dereserved and the applicant should have been appointed.

3. By filing counter, the respondents have denied the case of the applicant. They have stated that as per the notification vide Annexure A/2, there were in all 29 vacancies for the purpose of promotion to the post of AAO, and ultimately, a panel of 26 candidates were prepared out of 29 vacancies. The other 3 vacancies were meant for Scheduled Caste/Scheduled Tribe candidates. Since Scheduled Caste/Scheduled Tribe candidates were not available, those cases were referred to the Railway Board as per its guidelines under letter dated 22.02.77 vide Annexure R/1 and another letter dated 30.09.93 vide Annexure R/2 and the third letter dated 15.07.88, and the power of deservation of posts was only with the Railway Board, and not with any other authority. They further stated that even though the applicant's name was there in the panel at sl. No. 55, but the panel of 26 candidates stood exhausted at sl. No. 26, and therefore, another 28 candidates above him were still in that panel, and even if the 3 posts meant for Scheduled Caste/Scheduled Tribe were dereserved, the applicant could not get it. Therefore, there are no merits in this application. They further stated that raising the same plea, the applicant earlier filed an O.A. No. 09/92, and vide the judgement/order dated 27.07.93, this Tribunal directed the respondents to convene a review DPC within a period of 2 months to consider the case of the applicant for promotion by taking that the adverse entry against the applicant was not in existence, since the same was already expunged in the year 1989. This Tribunal also stated that the subsequent events and entries made in the service

records can also be considered. Thereafter, the impugned order at Annexure A/1 was passed. Vide impugned order, the applicant has been informed that the entries made in the service records were considered and even the adverse entries made in the service records were excluded, ~~from~~ but the position did not change. So far as dereservation of the 3 posts is concerned, it was stated that the matter has been forwarded to the Railway Board, and nothing was heard from them. Accordingly, the panel of 26 candidates was finalised and declared. Therefore, applicant's position remained as it was, and his representation was accordingly ^{rejected}. The respondents have further stated that the impugned order does not call for any interference, since the applicant was considered as per his panel position, and ultimately, he could not be recommended for promotion by the review DPC, that was called as per the direction of this Tribunal in OA No. 09/92 dated 27.07.93. Therefore, the learned counsel for the respondents prays for dismissal of the O.A.

4. Though number of contentions were raised in this O.A., which were similar to the one raised in the order passed by this Tribunal earlier in O.A. No. 09/92, but those contentions were negatived. But the O.A. is allowed in part only regarding the consideration of the adverse remarks by the DPC on the ground that the said remarks could not be considered, since it was expunged in the year 1989. We think it appropriate to extract the relevant portion of the said order as under:-

"4. The case of the applicant is that he has retired and he should be given promotion from the date his juniors were promoted. The applicant also submitted that there were 29 posts. However, the panel was issued for the 26 posts and subsequently new posts came into existence and the persons who were found suitable had continued in the panel for two years. As far as the applicant is concerned, his name does not find place in the panel. So the argument that his name should be considered for two years even for the post which was considered at the subsequent stage is not relevant.

5. We have heard the rival contentions of the parties.

6. As far as other points are concerned, we do not find force in the case of the applicant except the point that the adverse entry was expunged in the year 1989. Adverse entry was an important factor which might have led to the non-selection of the applicant for the promotional post.

7. In the result, we accept the O.A. in part; direct the respondents to convene the review D.P.C. within a period of two months to consider the case of the applicant for promotion taking into consideration that the adverse entry which was in existence has been expunged on 2.8.89. This subsequent event is necessary for the calling of the Review DPC and we accordingly, we direct the same. The DPC shall consider the past as well as the present and even the

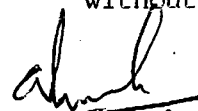
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subsequent events if anything adverse or favourable finds place in favour of the applicant. The DFC will decide the matter according to the rules."

5. From the above judgement, it is clear that all those contentions of the applicant were negatived except the one relating to the adverse entry during the year 1987, and this Tribunal finding fault with with the department in taking that adverse entry, which has been expunged in the year 1989, directed the respondents to convene a review DFC to consider the case of the applicant afresh by excluding that adverse entry. Vide Annexure A/1, it is clear that a review DFC was convened and again the applicant's case was considered by excluding the adverse entry expunged in the year 1989, and found that the applicant's position did not change. The fact that calling applications for 29 posts for the purpose of promotion to the post of AAO, is not in dispute. It is also not in dispute that out of 29 posts, the panel was prepared only for 26 candidates. The other 3 posts were reserved for Scheduled Caste/Scheduled Tribe candidates, and since the Scheduled Caste/Scheduled Tribe candidates were not available, those vacancies were referred to the Board as per circulars and guidelines vide Annexures R/1 to R/3. From the reading of the circulars, we find that the reserved posts remained vacant should necessarily refer to the Railway Board for necessary action, including the one regarding dereservation. The fact also remains that it is not the case of the applicant that the Railway Board dereserved those posts. From this, it follows that the panel of 26 candidates out of 29 stood. But the name of the applicant in the panel is at sl. No. 55. Therefore, ^{re call} as contended by the respondents even assuming that those 3 posts were ^{re call} deserved, and 3 general candidates were required to be promoted, then also the applicant could not come within the zone of consideration, since he is at sl. No. 55, and 28 persons were over and above him. Again, for the sake of arguments, those 3 posts meant for Scheduled Caste/Scheduled Tribe got to be dereserved, then also the applicant's name could not find place in the panel, since the panel stood exhausted upto sl. No. 26 and he is at sl. No. 55 and there were 28 other candidates over and above. We, therefore, find from all angles that there are no merits in this application.

6. For the above reasons, we pass the order as under:-

Application is dismissed. But in the circumstances,
without costs."


(N.P. NAWANI)
Adm. Member


(JUSTICE B.S. RAINA)
Vice Chairman