

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 5/2004.

Jaipur, this the 12<sup>th</sup> day of April, 2005.

CORAM : HON'BLE MR. J. K. KAUSHIK, JUDICIAL MEMBER  
HON'BLE MR. A. K. BHANDARI, ADMN MEMBER

A. D. Ainani, S/o Shri Thakur Dass Ainani,  
Aged 61 years, R/o 22-A, Shankarpuri,  
Albatia Road, Shahganj, Agra-10, (U.P.) 282010.

.... Applicant.

By Advocate : Nand Kishore.

Vs.

1. Union of India Through General Manager,  
West Central Railway, Jabalpur.
2. Divisional Railway Manager.  
West Central Railway, Kota (Rajasthan).

... Respondents.

By Advocate : Shailesh Prakash Sharma.

**: O R D E R :**

**By J. K. Kaushik, Judicial Member .**

Shri A. D. Ainani has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, wherein he has sought the following reliefs :-

"i) By an appropriate writ/order/direction the respondents may be directed to place/interpolate the name of the applicant in the panel dated 10.5.2000 (A/1) and on the strength of the same panel, fixation may be done in scale Rs.5500-9000 from the date his junior Shri B. S. Kalwar was promoted, arrears on the above account may be paid with 12% interest.



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ii) That the respondents be further directed to treat the applicant on ad hoc when his junior was promoted on ad hoc and his pay may be fixed."

2. With the consent of Learned Counsel for both the parties, the case was heard for final disposal at admission stage, keeping in view the urgency of the matter. We have carefully perused the records and pleadings of this case. The respondents have been fair enough in making available the records relating to the selection proceedings for the post in question.

3. The indubitable facts of this case as borne out from pleading of the parties are that the applicant while working on the post of Head Booking Clerk came within the consideration zone for undertaking the selection to the post of Chief Booking Clerk in pursuance with a notification dated 24.8.99 whereby a selection for filling up 4 posts from general category and one post from Scheduled Cast was ordered to be organised. The applicant qualified in the written test and his name was placed at SI. No.1 in the list containing the result of the written test. Thereafter, he appeared for the viva voce, the result of which came to be declared vide panel dated 10.5.00 and his name did not find place in the panel, despite being senior most person. The applicant apprehended that his name was not placed in the panel for the reason that he had suffered a penalty vide NIP dated 24.7.97 whereby he was demoted to the minimum of the scale which was upheld by the Appellate Authority but was quashed and set aside by this Bench of the Tribunal vide order dated 28.5.02 which came to be passed in OA No.228/98. He submitted representation on 12.6.00 for granting him promotion

and keeping his name on the panel dated 10.5.00, making it very clear that he had secured 60% in the written test and there are no adverse remarks against him. The matter was moved further with another representation dated 7.8.00 with further reminders and the same came to be rejected vide letter dated 11.11.03 (Annexure A/2). The applicant again appeared in the selection held in the year 2002 but could not be finalised and the applicant retired from service on 31.12.02. The original application has been filed on numerous grounds including that of giving reference of the Railway Record Note 2.2.

4. As regards the variances, the respondents have filed the reply and have taken a preliminary objection that the Original Application itself is not maintainable since the applicant is challenging the panel dated 10.5.00 (Annexure A/1) in the year 2004. It has been further averred that no relief can be granted to the applicant regarding ad hoc promotion in absence of junior persons. As regards the merits of this case, it has been averred that the name of the applicant was not placed on the panel since he did not secured the requisite marks of 60% in professional ability which comprises of both the written test and interview and, therefore, his name could not be placed in the panel. The applicant was further given ad hoc promotion w.e.f. 4.9.02. There are certain repetitions in the pleadings.

5. A short rejoinder has been filed almost repeating the facts and grounds in the basic pleadings. The same is further followed by additional reply to the rejoinder and there is another pleading i.e. rejoinder to additional reply, which are not prescribed under

the rules and cannot be read as a part of the pleadings in view of Rule 32 and 33 of Rules of Practice CAT Rules 1993.

6. Learned Counsel for both the parties have reiterated the facts and grounds raised in their respective pleadings. Learned Counsel for the applicant submitted that the claim of the applicant came to be turned down only vide Annexure A/2 which is the letter dated 11.11.03 and the OA has been filed immediately thereafter within a period of about one and a half months. Thus, the same is within limitation. He has submitted that as per Para 219(g) of IREM Volume-I, the applicant has secured 60% of marks in the written test that would suffice for his placement on the panel and the only condition which he was to be meet is that he should get aggregate 60% marks. He has next contended that the applicant has not been given the benefit of Railway Record Note 2.2 wherein it has been provided that the senior persons should not be failed in the viva voce test and they should be saved from harassment. He next contended that since the applicant was undergoing penalty which came to be set aside subsequently, he was not allowed ad hoc promotion which was given to his number of juniors during the relevant time. He has also submitted that in this case also the applicant has claimed for grant of ad hoc promotion. However, when the applicant was asked as to when the ad hoc promotion was given to his juniors and as to which order has been passed in this respect, Learned Counsel for the applicant was at difficulty to answer these queries. It was also pointed out to him as to what point of time he requested for grant of ad hoc promotion to him. This question also did not yield any satisfactory reply. On the other hand, Learned Counsel for the respondents has submitted that

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the records of the selection proceedings indicate that the applicant has not secured 60% marks in the professional ability and as per rules one who does not secured 60% marks in provisional ability cannot get a birth on the panel despite having secured 60% or more marks in aggregate. In this view of the matter, the action of the respondents cannot be faulted with.

7. We have considered the rival submissions put forth on behalf of both the parties. We find that this original application could be technically construed to be within limitation since the claim of the applicant has been turned down only on 11.11.2003 at Annexure A/2. On merits, we find it expedient to extract the relevant rules relating to the selection procedure as envisaged in Para 219 (g) and (h) of IREM Vol-I as under :-

**"219. Procedure to be adopted by Selection Board.**

(g) Selection should be made primarily on the basis of overall merit, but for the guidance of Selection Board the factors to be taken into account and their relative weight are laid down below:-

	Maximum Marks	Qualifying Marks
(i) Professional ability:	50	30
(ii) Record of service	15	
(iii) Personality, Address, Leadership and Academic qualifications.....	20	
(iv) Seniority	15	

Note (i) The item 'record of service' should also take into consideration the performances of the employee in essential Training Schools/ Institutes apart from the examining C R s and other relevant records.

(ii) Candidates must obtain a minimum of 30 marks in professional ability and 60% marks of the aggregate for being

placed on the panel. Where both written and oral tests are held for adjudging the professional ability, the written test should not be of less than 35 marks and the candidates must secure 60% marks in written test for the purpose of being called in viva voce test. This procedure is also applicable for filling up of general posts. Provided that 60% of the total of the marks prescribed for written examination and for seniority will also be the basis for calling candidates for viva voce test instead of 60% of the marks for the written examination.

(h) The importance of an adequate standard of professional ability and capacity to do the job must be kept in mind and a candidate who does not secure 60% marks in professional ability shall not be placed on the panel even if on the total marks secured, he qualifies for a place. Good work and a sense of public duty among the consciousness staff should be recognised by a warding mere marks both for record of service and for professional ability."

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8. We may point out that the perusal of the records of the selection proceedings undertakes that the applicant has secured 21.3 marks in written test and got 7 marks in viva voce. The written test and viva voce test jointly are the constituent of professional ability and the maximum marks for the same are 50, out of which one must secure 30 marks, meaning thereby 60% of the marks and then only his case can be considered for empanelment with further condition that he secures 60 or more percent of marks in aggregate. In the instant case, the applicant had not secured 60% marks in professional ability and he had secured only 28.3 marks, instead of 30 marks. Therefore, even though, he has secured 60% and more marks in aggregate his name has rightly not been placed on the panel and this position is very consonance with the Para 219 G & H as indicated above. In this view of the matter, the grounds of defence of the

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respondents are well founded and no fault on this count can be fastened with their action.

9. As regards the applying of record note 2.2. we find that the submissions of the Learned Counsel for the applicant are quite attractive but they are in fact deceptive inasmuch as the record note provides that certain protection is provided in respect of the persons who have been performing the duties of promotional post satisfactorily on ad hoc basis. The main reason for such protection is that these persons gain experience on the higher post since they have been physically shouldering the higher responsibility. We failed to understand as to how the said provision could be applied in the case of the applicant who has not physically worked on the higher post. Thus, the submission of the Learned Counsel for the respondents do not impress us in any manner being illogical and we have not been able to persuade ourselves to agree with the same.

10. As regards the grant of deemed ad hoc promotion to the applicant is concerned, firstly we have not been shown any rule in the matter. The Rule is only Para 228 of IREM which has also been referred to in the pleadings by the applicant himself. Para 228 provides for setting right the matters relating to the supercessions or for rectification of the administrative errors and that too with notional benefits. In any case, in the instant case we have not been furnished with requisite details and, therefore, it is not possible to make proper adjudication on the same. It is surprising that the applicant even does not know from which date and for what period he claims ad hoc promotion and perhaps he seems to be traveling in vacuum without any

certainty. After all the prayer has to be very specific and the Tribunal cannot be accepted to make some rowing inquiries and grant reliefs without any basis.

11. The upshot of the aforesaid discussion leads us to inescapable conclusion that the Original Application sans merits and the same stand dismissed accordingly but with no order as to costs.

~~Exhibit~~  
(A. K. BHANDARI)  
ADMN MEMBER

~~KAUSHIK~~  
(J. K. KAUSHIK)  
JUDICIAL MEMBER