

O.A. NO.541/95

Date of order: 4.7.1997

Chandji Ram Meena S/o Shri Sampat Ram Meena, resident of Railway Bangla No.12-A, Road No.1, Gangpatinagar Railway Colony, Jaipur, at present employed on the post of Assistant Operating Manager II, Jaipur, Western Railway.

: Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. General Manager, Western Railway, Churchgate, Bombay.
3. Chief Operating Manager, Western Railway, Churchgate, Bombay.

: Respondents

Mr. Shiv Kumar, counsel for the applicant  
Mr. Manish Bhandari, counsel for respondents

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)  
HON'BLE SHRI FATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

PER HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)

In this application under Section 19 of the Administrative Tribunal Act, 1985 Shri Chandji Ram Meena has prayed that the order dated 28.8.1995 (Annx.A/3) by which the applicant's representation against his not being granted promotion to the Group 'B' post of Assistant Operating Manager (AOM) has been rejected may be quashed and the respondents may be directed to consider the candidature of the applicant for adhoc promotion on trial basis and thereafter empanelment to the post of Assistant Operating Manager against reserved vacancy as per the Railway Board Circular dated 31.8.1974 by treating the post as a non-safety post, with all consequential benefits. He has further prayed that the panel dated 10.2.1989 (Annx.A/1) or that dated 28.6.1990 (Annx.A/2) in which the applicants name was not included may be modified accordingly.

2. The applicant's case is that he was initially appointed as a Trains Clerk in the Western Railway in 1960 and got promotions from time to time. When he was posted as Assistant Trains Controller, a selection was

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organised for preparing a panel of candidates for promotion against 75% promotion quota to the post of Assistant Operating Manager (earlier known as Assistant Operating Superintendent) Scale Rs. 2000-3500 (FPS) in 1988-89, for 40 vacancies out of which six were reserved for SC and three for S.T. candidates. The applicant appeared in the written test and was declared successful vide communication dated 13.12.1988 (Annx.A/5). He also appeared in the Viva Voce and fared well but was not placed in the panel declared on 10.2.1989 (Annx.A/1). The applicant belongs to S.T. Community and his case ought to have been considered against one unfilled vacancy available to the ST and one available to SC candidate on the basis of law of interchangeability as per the Board's circular dated 31.8.1974, in which there is a provision for empanelling the best amongst failed candidates from the communities entitled to reservation. The post of AOM is a non-safety post as per the Railway Board Circular dated 31.5.1982 (Annx.A/6). The respondents, however, did not comply with the above instructions. The applicant represented against non-inclusion of his name in the Panel Annexure A/1 vide his representation dated 22.2.1989 (Annx.A/7).

3. As further stated by the applicant, in the same year another Notification dated 2.5.1989 was issued for selections to the post of AOM for empanelling 24 candidates, out of which four vacancies were reserved for SC candidates and two were reserved for ST candidates (Annx.A/8). The applicant also appeared in the selection and was successful in the written test. He appeared in the Viva Voce, but was not placed on the selection Panel issued on 28.6.1990 (Annx.A/9) on the basis of this selection. In this Panel no ST candidate was empanelled and two S.C. posts remained unfilled. No adhoc promotions from best amongst the failed candidates from the reserved communities were made and the instructions of the Railway Board in this regard were again not followed. The applicant submitted a detailed representation dated 20.7.1990 (Annx.A/10) and also sent a reminder regarding his non-empanelment. The applicant was, however, able to find place in the Selection Panel prepared subsequently on 20.9.1990 (Annx.A/11)

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and he has since been promoted on the post of AOM w.e.f. 7.10.1994.

4. According to the applicant, his grievance is with regard to non-inclusion of his name in the earlier Panels dated 10.2.1989 and 28.6.1990. He has been pursuing the matter of non-inclusion of his name in the said Panels persistently and has been sending reminders in this regard. However, it was only the representation/reminder dated 8.2.1995 which attracted the attention of the competent authority and which was rejected vide order dated 28.8.1995 (Annex.A/3) issued by respondent No.2, the General Manager, Western Railway, Bombay. The main reason for rejection of his representation was that all the operating posts are safety posts, while, in fact as per the instructions of the Railway Board, safety posts are only in Group 'C' and Group 'D' categories. Therefore, action of the authorities in denying him promotion and rejecting his representation is illegal. Further, since the applicant belongs to ST community and specific benefits have been provided by the Government for this community, the applicant's case has been totally ignored and orders of the higher authorities for grant of benefits to this community have been ignored.

5. The respondents in the reply have taken a preliminary objection as to the maintainability of the OA on the ground that the applicant's prayer is for modification of the Panel issued on 10.2.1989 and even the representation which has been rejected vide Annexure A/3 was dated 9.2.1995. Thus, the applicant's OA is barred by limitation. They have further stated in the reply that the applicant qualified in the written examination, but failed in the Viva Voce, therefore, his name could not be placed in the Panel as per the provisions contained in the Rules. The post of AOM is a Group 'B' post and it falls within the safety category for the reason that the operating department of the Railways is required to look after the transportation part of the Railway System i.e. safe running of trains and, therefore, no relaxation is available to the SC & ST candidates in the matter of selection to this post. The Railway Board have issued

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instructions vide their circular dated 15.11.1983 stating that no relaxation is available in regard to filling up of safety category post. They have also denied that safety category posts are restricted to Group 'C' and Group 'D' categories only.

6. The applicant has also filed a rejoinder in which he has also analysed the provisions of the Rules regarding selection and has added that the record of service of the applicant is good in as much as no adverse communication regarding his ACRs has ever been sent to him. He has prayed therein that the respondents be directed to produce the record of selection for the year 1988-89 and they may also be directed to produce the ACRs of the applicant for the period of five years from 1984 to 1988 which would reveal that there is nothing adverse against the applicant.

7. The learned counsel for the applicant stated during his oral arguments that it was not obligatory on the applicant to also secure 60% marks in the Viva Voce for securing a place in the panel. It is on the basis of the aggregate of the marks obtained in the various categories that he has to be considered for placement in the panel. He prayed that the records of selection may be summoned and the Tribunal may satisfy itself that the applicant was not unfairly excluded from a place in the selection panel. The learned counsel for the respondents on the other hand maintained that the applicant had to separately secure 15 marks out of 25 in the Viva Voce and only if he passed the Viva Voce with 15 marks out of 25, further steps like examination of service record of the applicant be considered. Since the applicant had not secured the minimum pass marks in the Viva Voce, there was no question of examination of his ACRs or the records of service. Since the applicant had not figured in the Selection Panels, there was no question of his being given appointment on the post of ACM.

8. We have heard the learned counsel for the parties and have perused the material on record.

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14

9. The ACR folder of the applicant was directed to be produced before the Tribunal vide order dated 6.5.1997, but in view of the arguments advanced before us and the position that has emerged as a result thereof, it has not been considered necessary by us to examine the ACR folder.

10. An examination of para 204.1 of the Indian Railway Establishment Manual Vol.I, Revised Edition 1989, which is one of the Rules governing promotion of subordinate staff to Group 'B' posts, shows that the applicant had to secure minimum 30 marks out of 50 in the category of Professional ability. The applicant was called for Viva Voce after he passed in Professional ability. Apparently, therefore, the applicant had passed the test of Professional ability as per the prescribed standard. The question is with regard to Viva Voce. It has been provided in the aforesaid Rule 204.1 that there shall be 25 maximum marks for Personality, Address, Leadership & Academic qualifications, out of which the candidate has to secure 15 qualifying marks. Rule 204.6 provides that Personality, Address and quality of leadership should be assessed at the Viva Voce test. Therefore, it was in the Viva Voce test held to assess these qualities that he has to secure 15 marks out of 25. Unless an employee secured the minimum prescribed marks in the first category of Professional Ability, he could not be called for the second test namely Viva Voce and if he failed in the Viva Voce, the third stage i.e. the examination of his service records could not be reached. The very fact that minimum qualifying marks have been prescribed for the Viva Voce also means that he has to pass the Viva Voce test separately before he could be considered for the third category and for empanelment. There is nothing in the rules to suggest that it is on the basis of the aggregate marks that a candidate has to be considered for empanelment, ignoring the marks obtained in the individual categories. Since the applicant did not pass the Viva Voce, he could not find place in the selection panel. All other issues raised by the applicant in his application are, therefore, not relevant. However, as regards the

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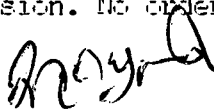
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applicant's claim that he is entitled to be placed in the panel as the best amongst the failed candidates on the basis of his belonging to ST community, this claim is not maintainable because the post of Operating Manager is a safety post.

11. We have examined the OA on merits and find no force in it. Therefore, we have not considered it necessary to deal with the question whether the application is time barred on the ground that the applicant has challenged the panels prepared in 1989 and 1990.

12. In the circumstances, the OA is dismissed at the stage of admission. No order as to costs.



(FATAN FAFASH)

MEMBER (J)



(O.P. SHAFMA)

MEMBER (A)