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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 04.08.2000

OA No.93/96

R.S.Toshniwal S/o Shri Iswar Singh, presently posted as Chief Law Assistant, Railway Claims Tribunal, Bani Park, Jaipur.

.. Applicant

Versus

1. Union of India through the Chairman, Railway Board, Ex-officio Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. General Manager, Western Railway, Churchgate, Mumbai.

.. Respondents

Mr. P.P.Mathur, Proxy counsel to Mr. R.N.Mathur, counsel for the applicant.

Mr. Manish Bhandari, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. H.P.Hawani, Administrative Member

ORDER

Per Hon'ble Mr. H.P.Hawani, Administrative Member

In this OA, the applicant seeks declaration that the order dated 1.3.1995 (Ann.A1) is illegal and void and that the respondents be directed to include/interpolate his name in the panel of 1984 in terms of Railway Board's letter dated 15.11.1983 with all consequential benefits.

2. The facts as stated by the applicant are that he is holding the post of Chief Law Assistant (For short, CLA) with respondents and belongs to the category of Schedule Caste; <sup>that</sup> the applicant was not included in the list of successful candidates notified on 3.8.1984 (sic, 12.9.1984, Ann.A2); that

*Ans*

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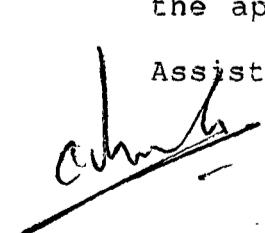
being aggrieved, he filed Writ Petition in the High Court of Bombay, later transferred and registered as TA No. 11/90; that the said TA was decided on 25.11.1992 and respondents were directed to call the applicant for the viva-voce test ~~and if~~ <sup>but</sup> the applicant was asked vide order dated 22.2.1993, received on 26.2.1993 and thus given just 4 days for preparation and attending the interview; that vide letter dated 11.3.1993 the applicant was declared unsuccessful for being placed on the panel of Assistant Commercial Superintendent (for short ACS); that feeling aggrieved by order dated 11.3.1993, the applicant had to again approach the Tribunal through OA No. 287/93 citing Railway Board's letter dated 15.11.1983 which prescribing that lower limit of qualifying marks should be 3/5th of the qualifying marks prescribed for general category candidates in initial papers/viva-voce excluding the marks of record of service based on confidential reports (CRs for short); that the OA No. 287/93 was decided on 30.11.1994 with the observation/direction that if after the declaration of the panel, some vacancies still remain, the claim of the applicant against them should be considered in accordance with his merit in selection; that respondent No.1 has again passed the order dated 1.3.1995 stating that the name of the applicant cannot be included in the panel of ACM (LDCE) declared in 1984 as even though the applicant secured qualifying marks with relaxed standard required for SC/ST candidates in terms of Railway Board's letter dted 15.11.1983, he did not secure the prescribed marks on the record of service and that securing minimum qualifying marks on the record of service based on CRs of the relevant years is a condition set out in the said letter dated 15.11.1983 to be considered for empanelment; that the applicant made a representation dated 15.3.1995 (Ann.A3) but no reply was received; that when notification was issued



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in 1982, for 10 vacancies of ACS of which 2 were reserved for SC and ST candidates; that the applicant filed Writ Petition No. 1857/84 before the High Court of Bombay against non-inclusion of his name in list of successful candidates for written test and the High Court gave the direction for keeping one post for the applicant and consequently the panel dated 12.9.1984 carried in para 2 that the panel is liable to be altered depending upon the result of W.P.No. 1857 of 1984 filed by the applicant; that before issuing the order dated 1.3.1995 the applicant was called in the chamber of Senior Divisional Commercial Manager, Jaipur on 17.2.1995 and asked to appear in the written test to be held on 18.2.1995 at 10 AM at Churchgate, Bombay on which the applicant showed his inability vide letter dated 17.2.1995 (but 15.3.1995 as mentioned in Ann.A3 enclosed by the applicant); that the applicant was again asked by the Presenting Office, Railway Claims Tribunal, Jaipur being the immediate officer (Ann.A4 dated 28.2.1995) asking him to appear in the written test and the applicant again showed his willingness; that vide note dated 2.3.1995 of Dy.CPO (Gen.) CCG marked to CCG-CCO (Ann.A5) alongwith order dated 1.3.1995, the applicant was asked to appear in written test to be held on 13.3.1995 but the order dated 1.3.1995 has been passed hastily denying him to appear in the written test.

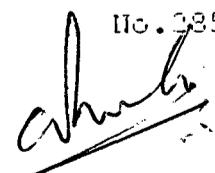
3. The applicant contends that the order dated 1.3.1995 has been passed with malafide, bias and prejudice due to his approaching Tribunal twice; that the CRs can be replaced/changed at any time; that since the adverse remarks have not been communicated no prejudice can be drawn against the applicant; that since the applicant was promoted from Law Assistant to Chief Law Assistant's post in 1984, adverse



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remarks if any stand washed away; that before the Tribunal passed its order dated 30.11.1994 after hearing both the parties but no objection was taken by the respondents regarding the remarks in the CRs and, therefore, either remarks have been waived off or it has not to be considered by the Selection Board; that the plain meaning of the service records refers to service book and hence CR of an employee cannot be considered for the criteria for promotion; that the person junior to the applicant who secured less work in comparision was included in the panel and, therefore, the applicant is also entitled to have his name included in the panel of 1984 and promotion to ACS from 1984; <sup>that</sup> the Tribunal had observed that if the 10th vacancy exists, the claim of the applicant should have been considered accordingly to the selection in merit; that respondents have notified the vacancy of ACM vide letter dated 13.7.1995 extending it upto 25.9.1995 and asking for willingness to help the juniors of the applicant; that since 1984 so many juniors have been promoted on ad-hoc basis but no such benefit has been given to the applicant, not even on 6 months trial basis as given to other SC employees and that respondent No.1 has no power to delete or add any name in the panel as only Railway Board has that power and, therefore, decision taken is null and void.

4. Respondents in their reply have denied the case made out by the applicant. It has been clarified that the order of the Tribunal dated 25.11.1992 in TA No. 11/90 had directed that the applicant should be called for interview within 3 months and, therefore, the applicant had necessary notice and cannot complain that he was afforded no time for preparation. They have also denied that against the background of OA No. 285/95 the applicant was wrongly declared unsuccessful in



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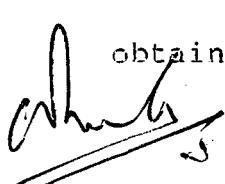
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the interview and all the reasons have been given in Ann. Al on the basis of which the applicant was found unsuitable. They have also annexed Ann. Rl which prescribes examination <sup>CRs of</sup> ~~of~~ <sup>5</sup> years (and not 3 years as claimed by the applicant) for preparation of panel for promotion from Group C to B. It has also been stated on behalf of the respondents that it is wrong for the applicant to say that he did not have time to prepare for written test because he was called for the written test as per schedule and after publication of the seniority list on 12.12.1994 containing the name of the applicant also. It has been asserted by the respondents that the case of the applicant was considered in accordance with the rules and only when he was not found eligible that his representation was decided. It has also been stressed that it is absolutely incorrect and false to say that the respondents have acted malafidely or with a predetermined mind and the OA, therefore, deserves to be dismissed.

5. The applicant has also filed a rejoinder which has been taken on record and perused by us.

6. We have heard the learned counsel for the parties and have carefully gone through the material on record.

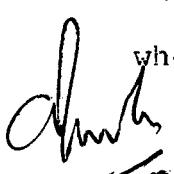
7. It has been stated in the order of the General Manager dated 1.3.1995 that the applicant secured qualifying marks with relaxed standards required for SC/ST candidates but he did not secure the prescribed qualifying marks in the record of service based on CRs relating to the relevant years according to the conditions set out in the Railway Board's letter dated 15.11.1983 for being considered for empanelment. Therefore, the controversy now gets limited to only marks obtained against the item "record of service". The applicant



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has annexed extracts from the Railway Establishment Manual, ~~Annex~~ at Ann.A6 and A7 in which out of a total of 100 marks, only 15 marks have been assigned for "record of service". Further, while it has been mentioned that a candidate must obtain a minimum of 30% marks in professional ability and 60% marks in aggregate for being placed in the panel, no such minimum qualifying marks have been mentioned against the "record of service". The SC/ST candidates who secured 50% marks in professional ability and 50% marks in aggregate (excluding seniority) are also deemed to have qualified for a place in the panel in case of selection post, where safety aspect is not involved.

8. Item No. 7 of this Annexure refers to service records and goes on to say that this (service records) refers to most important documents in employees service life. It consist of (a) a service folder (b) leave account and (c) personal case file. There is no mention of CRs in this paragraph. It further appears from the Ann.A1 that the applicant did not get the prescribed qualifying marks for record of service based on confidential reports relating to the relevant year. The Railway Board's circular dated 15.11.1993 has not been produced before us. Even if it is assumed that record of service also consist of evaluation of CRs, nothing has been produced before us to establish that the applicant had been given any adverse remarks during the relevant period. There is no mention of communication of any adverse remarks, a representation made against these and if so, the final order on the representation. If there were no adverse remarks and extracts as enclosed by the applicant at Ann.A6 and A7 were applicable, it does not become clear whether the candidate would obtain such a small number of



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marks out of 15 set up for record of service that he would not be able to get even 50% aggregate marks and would have, therefore, been disqualified in the overall selection process. In the absence of requisite material before us, it is not possible for us to give a clear finding in this regard.

9. In view of this, we dispose of this OA with a direction to respondent No.2 to reconsider the case of the applicant keeping in view the rules applicable; the marks set apart for 'record of service'; the minimum qualifying marks in respect of record of service, if any; marks, if any, for CRs ~~with~~ in the record of service and the aggregate marks obtained by the applicant in the overall selection process. This exercise may be done as expeditiously as possible but not later than six months from the date of receipt of a copy of this order.

A copy of Ann.A6 and A7 may also be enclosed with the copy of this order.

Parties to bear their own costs.

.P.NAWANI)

Am. Member

  
(S.K. AGARWAL)

Judl. Member