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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA 187/96 Date of Order: 22/12/2000

D.S. Malvi son of Shri Seva Ram aged about 48 years resident of Q. No. L- 584-A, Loco Colony, Kota Jn. at present employed on the post of Senior Commercial Inspector in Kota Division, Kota, Western Railway, Kota.

.... Applicant.

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.

2. The General Manager, Western Railway, Churchgate, Mumbai.

3. Divisional Railway Manager (Estt.) Western Railway, Kota Division, Kota.

.... Respondents

Mr. Shiv Kumar, Counsel for the applicant.
Mr. Hemant Gupta, Proxy counsel for
Mr. M. Rafiq, Counsel for the respondents.

CORAM:

Hon'ble Mr. S.K. Agarwal, Member (Judicial)
Hon'ble Mr. N.P. Nagrath, Member (Administrative)

ORDER

(PER HON'BLE MR. A.P. NAGRATH, MEMBER (ADMN.)

The applicant has filed this OA u/s 19 of the Administrative Tribunals Act and seeks direction to respondents to consider case of the applicant for promotion to the post of Assistant Commercial Manager (for short, ACM) and to set aside the impugned order dated 13.3.96 by which the case of the applicant has been rejected.

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2. The facts of the case, as stated by the applicant, are that he joined in Group 'D' on 28.4.68 and entered Group 'C' on regular basis on 15.5.78. He entered scale 1400-2300 w.e.f. 1.1.84, Rs. 1600-2660 w.e.f. 1.3.93 and in the scale Rs. 2000-3200 w.e.f. 3.2.95. He had applied for selection for the post of ACM to be filled by limited departmental competitive examination (for short LDCE) against notification dated 13.7.95, as laid down in the notification, all Group 'C' staff of Commercial department in grade Rs. 1400-2300 & above with a minimum of five years non-fortutious service in grade Rs. 1400-2300 & above as on 1.7.95 were eligible to apply. It was stated that applicant was also given pre-selection training vide order dated 10.1.96 but in the eligibility list issued vide office order dated 14.2.96, the applicant's name has been shown amongst doubtful candidates. Vide impugned order dated 13.3.96 (Annexure A-1), his name was deleted and he was declared in-eligible candidate for which no reasons were assigned. He had earlier appeared in the selection (LDCE) for the post of ACM in the year 1992 and 1993 and there was no reason that he should have been considered ineligible for the selection to be held in March, 1996. It has been stated that number of junior persons to the applicant according to the entry grade were being permitted to appear in the selection but the applicant had been made ineligible. This action of the respondents has been stated to be infringement of his fundamental rights and violation of Article 14 & 16 of the Constitution of India and that the action of the authorities in denying him ineligible to appear in the selection is arbitrary, illegal and unjust.

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3. The respondents have filed reply. Preliminary objection was raised on the ground that the applicant is not entitled to claim any relief as he is not eligible as per the general seniority because his immediate senior, a general employee, Sharfuddin, and immediate junior, Ashok Kumar, were not found eligible as per the seniority position obtaining in the base grade. This was as per the ratio laid down by Bombay Bench of CAT in judgement dated 5.10.93. It has been submitted that since the applicant's senior & junior were not found eligible, he has no case.

4. In the detailed reply, the respondents have submitted that eligibility criteria was five years non-fortutious service in the grade 1400-2300 & above but the applicant being an SC candidate, though otherwise had completed length of service required, was not considered eligible as his senior as per general seniority as per base grade, Shri Sharfuddin was not eligible. Since senior could not be made eligible to appear, there was no case for the junior to be made eligible. It has been stated that the applicant was permitted to appear in the selection in the year 1992 and 1993 against the vacancy reserved for SC category. In the instant case no vacancy is reserved for SC/ST candidates. The respondents in their averments have given comparision of the respective seniority of the applicant viz-a-viz Sharfuddin and Ashok Kumar who were not considered eligible for this selection. The applicant being an SC candidate got accelerated promotion to the scale against the reserved vacancies and cannot be allowed to appear for the selection where the eligibility is on the basis of base grade seniority

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rity as per the direction of Bombay Bench of this Tribunal in the order dated 17.11.87 and 9.10.93. It has been denied by the respondents that there is any violation of provisions of 14 & 16 of the constitution and that action of the respon dents is legal and valid.

5. We have heard the learned counsel for the parties and perused the entire record.

6. The learned counsel for the applicant referred to Annexure A-2 i.e. notification dated 13.7.95 which laid down eligibility ~~crxx~~ criteria for the selection and submitted that all Group 'C' employees who have put more than five years of non-fortutious service in the grade 1400-2300 and above as on 1.7.95 were eligible. The applicant was fully qualified to be considered and he was sent for pre-selectio training in terms of order dated 10.1.96 (Annexure A-4) but deleting the name of the applicant from the eligibility list vide Annexure A-1 is arbitrary and against the eligi- bility rules.

7. The learned counsel for the respondents submitted tha no doubt the eligibility of five years non-fortutious ser- vice in the grade 1400-2300 and above was the pre-conditior but this had also another condition attached that this right had to be determined on the base grade seniority of SC/ST employees. There was no reservation for SC/ST in thi selection and the eligibility was to be considered as per the base grade seniority. Since the applicant's seniors were not considered eligible, the applicant can have no grievance.

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8. We find from the notification dated 13.7.95, the selction was held was six vacancies out of which one was to be reserved for SC as per roster point and none for ST. However, as per the orders of the Bombay Bench of the CAT dated 17.11.87 and 5.10.93, reservation for both SC & ST was nil. In the programme issued for pre-selection training for SC/ ST employees dated 10.1.96, it has been stated in para 3 that calling SC/ST employees for pre-selection training will not confer upon them any right to be considered for selection at the time of written test as base grade seniority is yet to be finalised.

9. We find from the averments that applicant's whole case revolves around the fact whether he had the right to be considered eligible for the selection keeping in view the base grade seniority. The fact that base grade seniority is to be considered has also not been disputed by the applicant and in the written averments made he has claimed that as per base grade seniority he was eligible. One document has been placed as Scheduled 'A' where applicant claims seniority but this is not a part of any order or a seniority list and cannot be given any cognisance. The respondents have specifically given example of persons who are juniors and seniors with respective dates of appointment and further promotion to grade 1400-2300 etc. Based on this, it is apparent that the applicant was junior to Sharfuddin in the base grade. Since his senior i.e. Sharfuddin was found ineligible, the applicant cannot have any claim. He could claim his eligibility only if a vacancy reserved for ST which is not the case. All vacancies are in general cateoggry.

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Merely the fact that the applicant was considered eligible in the selection in the year 1992- and 1993 cannot give rise to this claim against the present selection test. At the time of presentation of this OA, the order was passed dated 27.3.96 after hearing the learned counsel for the applicant, directing the respondents to allow the applicant to appear in the aforesaid examination. The result of the applicant,, however, was not be declared till the next date. This order continues.

10. In view of the facts of the case, we dismiss this OA and direct the respondents not to declare the result of the applicant as he has no merit in his case. The respondents may proceed further to conclude the result of the selection test. No order as to costs.

(A.P. NAGRATH)
MEMBER (A)

(S.K. AGARWAL)
MEMBER (J)