

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Order: 24/12/2000

OA 188/96

Nand Kishore Meena son of Shri Jeevan Ram Meena aged about 33 years resident of Quarter No. 666-A, New Railway Colony, Kota at present employed on the post of Office Supdt. (Operating Branch) D.R.M. Office, 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. The 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. A.P. Nagrath, Member (Administrative)

ORDER

(PER HON'BLE 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.

2. The facts of the case, as stated by the applicant, are that he joined in Western Railway, Group 'C' on 14.6.83. 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. 29.11.95. 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-continuous 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 appear 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 aneligible to appear in the selection is arbitrary, illegal and unjust.

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, Liyakat Ali and immediate junior, K.K. Dixit, 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-continuous service in the grade 1400-2300 & above but the applicant being a 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 Liyakat Ali was not eligible. Since senior could not be eligible to appear, there was no case for the ~~junior~~ 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 comparison of the respective seniority of the applicant viz-a-viz Liyakat Ali and Parmanand Israni who were not considered eligible for this selection. The applicant being an ST candidate got accelerated promotion to the scale against the reserved ~~vacancies~~ vacancies and cannot be allowed to appear for the selection where the eligibility is on the basis of base grade seniority 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

lation of provisions of 14 & 16 of Constitution and that action of the respondents 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 criteria for the selection and submitted that all Group 'C' employees who have put more than five year of non-fortutious service in the grade 1400-2300 and above as on 1.7.95 were eligible. The applicant fully qualified to be considered and he was sent pre-selection 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 eligibility rules.

7. The learned counsel for the respondents submitted that no doubt the eligibility of five years non-fortutious service in the grade 1400-2300 & above was the pre-condition 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 of SC/ST in this 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.

8. We find from the notifications dated 13.7.95, ~~no post~~ ~~Ke reserved for SC~~, the selection was held for six vacancies as per the roster point out of which one reserved for SC 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 Liyakat Ali in the grade. Since his senior i.e. Liyakat Ali was found ineligible, the applicant cannot have any claim. He could claim his eligibility only if a vacancy only if a vacancy was reserved for ST which is not the case. All vacancies are in general category. 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 to 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 declare the result of the applicant as he has not 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)
(A.P. NAGRATH)
MEMBER (A)

(S.K. AGARWAL)
(S.K. AGARWAL)
MEMBER (J)