

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 28/8/2001

OA No.559/1996

Badri Lal Meena s/o Shri Bajrang Lal Meena, Asstt. Draftsman under
DRM, Western Railway Kota r/o Cutting Yard Road, Shastri Colony, Kota.

Jn.

..Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager (E), Western Railway, Kota.
3. Sanjay Gupta, Divisional Engineer (Track) in the office of DRM, W/Rly, Kota.
4. Nand Kishore, Divisional Personnel Officer in the office of DRM, W/Rly, Kota.
5. Arvind Kumar Pandey, Adhoc Sr. Draftsman, DRM Office, Western Railway, Kota.
6. Kori Krishna Swarup, Jr. Draftsman/ Estimator in the office of DRM. W/Rly, Kota.
7. R.S.Sharma, Jr. D/Man, Estimator, in the office of DRM, W/Rly, Kota.
8. Shrilal Berwa, Jr. D/Man, Estimator in the Office of DRM, Western Railway, Kota.
9. Rakesh Kumar Saraswat, Jr. D/Man, Estimator in the office of DRM Western Railway, Kota.

.. Respondents

Mr. V.P.Mishra, counsel for the applicant

Mr. T.P.Sharma, counsel for the respondents

CORAM:

Hon'ble Mr.A.K.Mishra, Judicial Member

Hon'ble Mr.A.P.Negrath, Administrative Member

ORDER



Per Hon'ble Mr. A.P.Nagrath, Administrative Member

The applicant has assailed the selection for the post of Senior Draftsman (for short Sr.D/Man) scale Rs. 1400-2300 and his prayer is that the impugned selection culminating in issuance of the panel dated 23.9.1996 (Ann.A7) be quashed and the applicant be subjected to fresh selection and given benefit of promotion from the date of the impugned panel.

2. Facts of the case, as per the applicant, are that he was initially appointed to the post of Tracer scale Rs. 950-1540 which was subsequently replaced by the post of Junior Draftsman scale Rs. 1200-2040. He submits that from the very inception of his career the applicant has been posted in Drawing Branch. He further submits that the respondents issued a notification for holding the selection for the post of Sr. Draftsmen/Sr. Estimator scale Rs. 1400-2300 by letter dated 1.7.96 for 5 vacancies, which later on by another letter dated 7.8.96 was modified and number of vacancies were increased to 9. Out of these vacancies, two were reserved to SC and one for the ST candidates. Alongwith the said notification the syllabus was also issued wherein the course prescribed mostly pertains to estimating branch. As per the applicant, he and others took objection and represented against the said syllabus. The respondents did not pay any heed and conducted the written test on 31.8.1996. The result of the said written test was declared vide letter dated 2.9.96 indicating that 3 candidates had passed in the written examination and other 8 candidates were made eligible to appear in the viva-voce test on the basis of notional marks for seniority. Final panel was declared vide letter dated 23.9.96 (Ann.A7) and only 5 candidates were declared successful. The applicant is aggrieved with the panel so declared as he did not find his name in that panel.

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3. The applicant has challenged the selection on various grounds including that the question paper was so designed to favour the estimating branch of which respondent No.3 was the officer in-charge. The applicant has assailed the action of the respondents of clubbing the vacancies of different years by holding the selection belatedly. His contention is that in the selection process juniors have been made eligible to appear and have been declared successful. The applicant alleges that despite there being a shortfall in the ST quota, he has not been empanelled while the instructions provide that best amongst failures should be promoted on trial basis for 6 months. He has also raised the plea of not having him imparted pre-selection training, which is stated by him to be mandatory. The applicant contends that because of these violations of rules, the selection process was vitiated and deserves to be quashed.

4. In the reply, the respondents have stated that the staff working in drawing section and estimating section belong to the same cadre and there is no different category of Draftsman and Estimator. It is stated that the syllabus notified was not a new one but the same was existing from the year 1989. Thus, it is denied by the respondents that the syllabus was designed only to suit the persons working in the estimating section. The applicant did not secure the qualifying marks in the written examination but was called to appear in the interview by adding notional marks of seniority. He did not secure pass marks in the final selection and was thus not placed on the panel. It is the plea of the respondents that while there are instructions to impart pre-selection training to SC/ST candidates, but these are not mandatory instructions and these instructions are only in respect of the safety category posts. The post of Sr. D/Man does not belong to safety category. The stand of the respondents is that vacancies have been worked out correctly and only those in the zone of eligibility,

as per the number of vacancies, were called to appear in the written examination. The selection procedure consist of both written test as also the viva-voce and the candidates, to be placed on the panel, have to secure qualifying marks in the professional ability i.e. the written test and viva-voce test. The applicant belongs to ST category he could not obtain qualifying marks for being placed in the panel against the post reserved for ST. The respondents' contention is that the prescribed procedure has been followed in this selection and there is no merit in this application.

5. We have heard the learned counsel for the parties and referred to the record.

6. The learned counsel for the applicant, while reiterating the stand taken in the averments made in the application, placed reliance on (1998) 7 ATC 372 (SC), S.N.Sharma v. Union of India in support of his stand that vacancies should have been worked out year-wise and zone of eligibility decided accordoingly. He also referred to 2000 (2) ATJ 395 Ranjit Singh Gathala v. Union of India and ors. wherein it was held that clubbing of vacancies was not permissible. In (1992) 28 ATC 388 (CAT- Bombay) it was held that individual member in the Selection Board was to assign marks and averging of marks was required to be done to determine the performance of the candidates. The learned counsel stated that respondents have acted in violation of law so laid down in the above referred cases and thus the entire selection process was vitiated. It was the contention of the learned counsel that the question paper was so designed as to favour the persons working in the Estimating Section, he alleged bias against respondent No.3 who was incharge of the Estimating Section. The learned counsel raised a plea that the applicant belonging to ST community was entitled to be considered under the relaxed standards or

even on the basis of best among the failed candidates and, thus he was entitled to be placed on the panel, even from the best among the failed candidates on trial basis.

7. The learned counsel for the respondents contested the stand of the learned counsel on the opposite side in regard to the contention that the applicant could not have been failed in the interview because the applicant had not secured the qualifying marks, but was called to appear in the viva-voce by virtue of notional marks in the seniority. Since the applicant had failed in the written examination, he cannot seek protection of the rule. The learned counsel also submitted that the applicant had not even obtained enough marks for being considered against the post reserved for ST.

8. We have carefully perused the averments of the applicant and reply of the respondents as also the arguments on either side. The grounds taken by the learned counsel on behalf of the applicant that vacancies of different years could not have been clubbed and that year-wise vacancies should have been worked out is not supported by the departmental rules for selection. The case referred to by the learned counsel i.e. Ranjit Singh Gathala v. Union of India related to induction into IAS and the case of S.N.Sharma v. Union of India relates to induction in to Class-II post. In those cases, the Government of India instructions provide for working of the vacancies year-wise and conducting DPCs/Selections to appoint the candidates against year-wise vacancies. In the case before us, there are no such rules that vacancies in the case of promotion have to be determined year-wise and selection held on that basis. As and when the selection is held the vacancies anticipated in the prescribed period are taken into consideration to determine the zone of eligibility. In this selection, we do not find any irregularity in so far as working out of

the vacancies is concerned. It is not the case of the applicant that he had challenged the number of vacancies notified by the respondents before appearing in the written test. The rules and procedure concerning the selection are covered by the departmental instructions and rules and no comparison can be drawn with the procedure followed in other Departments or other services.

9. More stress has been placed by the learned counsel for the applicant on the design of syllabus and question paper to contend that the same was so framed so as to help the Estimators in whom respondent No.3 was interested. The respondents have already stated that the said syllabus was in force since 1989. In any case, we also have considered the instructions referred to by the learned counsel for the applicant himself as to the basis on which the syllabus is designed. Instructions include, inter-alia, that what is required to be kept in mind is requirement of the post for which the selection is being held. The selection was held for the post of Sr.Draftsman/Sr. Estimator and obviously, the syllabus has to include questions so as to adjudge the suitability of the candidates to handle the task of the Sr.Draftsman/Sr. Estimator. It is for the departmental authorities to decide the manner and method of setting up of question papers and based on the syllabus notified, it is expected that the candidates appearing in the selection will equip themselves to handle the questions so long as they are not outside the syllabus. We do not find any force in the contention of the learned counsel for the applicant that the question paper was designed to favour the Estimators. The very fact that only 5 candidates could ultimately be successful and 4 posts remained unfilled is indicative that sufficient number of persons did not display the requisite professional competence. It is not the case of the applicant that all Estimators passed and that all Draftsman failed. Thus, we do not find any merit in the arguments.

advanced by the learned counsel for the applicant that the question paper was so designed to suit some and not all.

10. The respondents have placed before us the selection proceedings for our perusal. We find from the same and also as admitted by the applicant in his averments that the applicant was called in the interview by taking into account the notional marks of seniority, meaning thereby that he had not secured qualifying marks in the written test. The selection proceedings indicate that the applicant did not secure pass marks in the written test and by addition of marks obtained in the interview and marks of the written test and record of service etc., he could not achieve the qualifying standard. We do not find any illegality in the action of the respondents in not placing the applicant on the panel. We also find that applicant had not secured adequate marks even considering the relaxed standards. The contention of the learned counsel was that in such a situation, he should, atleast, have been considered as a candidate best among the failures. This plea had been taken by the applicant in the averments in his application and this has not been specifically countered by the respondents. If the departmental rules provided, at the relevant time, when the selection was held, that if against any reserved vacancy no candidate qualifies in the selection process, then the best among the failed candidates should be promoted for a period of 6 months, as stated by the learned counsel for the applicant, during which his suitability could be adjudged then there is a case in favour of the applicant for being considered against such a promotion.

11. In view of the facts and circumstances as above, we do not find any illegality in the panel. However, we partly allow this application by directing the respondents to consider the cases of 3 ST candidates under the rule of best amongst the failures, if such a rule



was in existence at the relevant point of time when the selection was conducted, and extend the benefit of the rule to the candidate considered as best among the 3 candidates.

12. The OA stands disposed of accordingly with no order as to costs.

Ans
28/8/2001
(A.P.NAGRATH)

Adm. Member

Ans
28/8/2001
(A.K.MISHRA)

Judl. Member