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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 16-12-96

OA No.607/1996

Jitendra Kumar S/o Shri Mehtab Singh, aged 42 years, Goods Driver (Adhoc), scale Rs. 1350-2200 (FP) under crew control of Western Railway, Phulera, resident of Q.No.344 B, Central School Colony, Phulera.

.. Applicant

Versus

1. The Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Jaipur.

.. Respondents

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

Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman

Hon'ble Mr. O.P.Sharma, Administrative Member

ORDER

Per Hon'ble Mr. O.P.Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985 Shri Jitendra Kumar has sought a direction to the respondents to include his name in the panel dated 7-11-96 (Ann.A1) drawn up for promotion to the post of Goods Driver scale Rs. 1350-2200 (RP) at its appropriate place. He has sought a further direction that the action of the respondents in not including the name of the applicant in the panel Ann.A1, as aforesaid, may be declared illegal and they may be directed to allow the applicant to continue on the post of Goods Driver scale Rs. 1350-2200 on

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which he has been working since 1996.

2. On 20-11-96 notice was issued to respondent No.2, the Divisional Railway Manager, Western Railway, Jaipur for hearing on the prayer for interim relief to the effect that during the pendency of the OA, the respondents may be restrained from reverting the applicant from the post of Goods Driver scale Rs. 1350-2200. When the matter was heard on 4-12-96, the date fixed for hearing on the prayer for interim relief, arguments were also advanced by the counsel for the parties regarding the admissibility of the OA itself. Both the counsel for the parties then requested the Tribunal that the OA may be disposed of finally at the stage of admission. Hence this order.

3. The case of the applicant is that he was appointed in the Railways as a Cleaner in 1976. He got promotions from time to time and while working on the post of Shunter, he was called upon to appear in a psychological test for appointment on the post of Goods Driver scale Rs. 1350-2200 alongwith several others. By order dated 28-5-96 (Ann.A2) the applicant, having been found fit in the psychological test was appointed on the post of Goods Driver scale Rs. 1350-2200 alongwith several others, on adhoc basis. Appointment on this post after having cleared the psychological test is an appointment as per rules, though the post has to be filled up by a positive act of selection. After the applicant had been working on the post of Goods Driver as aforesaid, a notification dated 26-6-96 (Ann.A3) was issued for regular selection to the post of Goods Driver. The applicant was called for the written test in which he appeared in August, 1996 and the result thereof was declared vide notification dated 18-9-96 (Ann.A4). The applicant having passed the written test was called for interview (viva voce) alongwith 90 other candidates. Several candidates who had not qualified in the written test were also called for the viva voce.

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voca on the basis of their notional seniority. The viva voce was held on 28-9-96 for which the applicant also appeared. A notification dated 7-11-96 (Ann. Al) has now been issued by the respondents by which 93 candidates have been empanelled, on a provisional basis, for the post of Goods Driver, on the basis of the aforesaid selection. The applicant, not having been successful in the viva voce, has not found his name included in the aforesaid selection panel. The applicant's case is that he has been working satisfactorily on the post of Goods Driver on adhoc basis. He got a cash award of Rs. 250 in October, 1996 while working on the post of Goods Driver. When he had been appointed on adhoc basis after clearing the psychological test and had been working on the post of Goods Driver satisfactorily, he cannot be declared to be ineligible on the basis of the final selection. Further, even after accommodating all the empanelled candidates, there would still be vacancies available in the post of Goods Driver and, therefore, there would be no justification for reverting the applicant from the said post.

4. The applicant has also mentioned that while he was working on the post of Shunter a chargesheet dated 13-5-96 was issued to him alleging negligence in the discharge of his duties and after the applicant submitted his reply to the chargesheet, a penalty of withholding of one set of passes was imposed on him. There was no justification for imposition of this penalty.

5. During the arguments the learned counsel for the applicant accepted, in response to a query made from the Bench, that calling of those candidates for the purpose of viva voce who had not secured qualifying marks in the written examination, on the basis of their seniority, was not in

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violation of the rules. His argument was that even though the applicant was appointed on adhoc basis, this appointment was made after he had cleared the psychological test. The components of the selection process were i) written examination, ii) psychological test and iii) viva voce. Since he had already cleared the psychological test, he was not required to appear in the psychological test again. Vacancies would be available even after accommodating all the candidates whose names have been included in the panel at Ann. Al. He then referred to a judgment of the Hon'ble Supreme Court in R.C.Srivastava Vs. Union of India and Anr. delivered on 3rd November, 1995 in Civil Appeal arising out of SLP (C) No. 9866 of 1993. In this judgment, according to the learned counsel for the applicant, the Hon'ble Supreme Court had taken note of a Record Note circulated vide letter dated 9-12-75 issued by the Railway Board. Para 2.2 thereof which has reproduced by the Hon'ble Supreme Court in its judgment ~~readier~~ ^{leads} as under:

"2.2 Panels should be formed for selection posts in time to avoid adhoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on adhoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment."

The Hon'ble Supreme Court noted that what the Record Note provides is that a person who has been working on the post for which selection is being held, on adhoc basis, and whose work is quite satisfactory, should not be declared unsuitable in the interview. In the case before their Lordships of the Hon'ble Supreme Court, the appellant had been declared unsuitable although he had passed the written examination and although it was not the case of the respondents Union of India etc. that

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the appellant's work was not satisfactory. The learned counsel for the applicant stated that the ratio of this judgment would squarely apply in the present case. Since the applicant has been working satisfactorily on the post of Goods Driver though on adhoc basis and has passed the written examination, he should not be declared as failed in the selection merely on the basis of result of the viva voce. He has, therefore, prayed that the applicant's name should be included in the panel of the selected candidates for the post of Goods Driver scale Rs. 1350-2200 (RP).

6. We have heard the learned counsel for the parties and have gone through the material on record including the judgment cited by the learned counsel for the applicant.

7. In view of the position accepted by the learned counsel for the applicant that candidates who had not qualified in the written examination could still be called for interview on the basis of their seniority position, no irregularity in the process of selection can be said to have committed by the respondents, even as per the averments of the applicant. The applicant himself does not dispute that the post of Goods Driver is to be filled up on the basis of positive selection. Apparently, the applicant did not qualify in the viva voce test and, therefore, his name was not included in the selection panel Ann. Al. Question now is whether the applicant's appointment on the post of Goods Driver, after his having cleared the psychological test, entitles him to be included in the selection panel or entitled him to continue on this post, even though he has not been included in the selection panel, when his performances has been satisfactory. We have carefully considered the judgment of the Hon'ble Supreme Court cited before us. In that case the question involved was promotion of the appellant, an Assistant Station Master, to the post of Law Assistant on which post he had been working on adhoc basis. The post was to be filled up by a regular selection and although

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the appellant had qualified in the written examination, he did not secure the requisite qualifying marks in the *viva voce* and, therefore, was not selected. There is a crucial difference between the facts of the case which was before the Hon'ble Supreme Court and those of the case before us. There, the question involved was promotion of the appellant to the post of Law Assistant whereas in the present case the promotion involved is to the post of Goods Driver. The post of Goods Driver is a safety category post and there are instructions of the Railway Board to the effect that no relaxation with regard to the prescribed qualifications, period of service and other criteria can be granted while filling up the safety category posts. This position would also be apparent from the Railway Board's instructions dated 31-5-1982, relevant portion of which is reproduced below:

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"Copy of Conf. E(NG)I-75-PMI-44 dt. 31-5-1982 from Jt. Director, Estt., Rly. Board, New Delhi addressed to 11 GMs of Indian Rlys. and CLW, DLW and ICF & others.

Subject:- Filling up non-gazetted posts on Rlys.
Classification of posts as Safety categories.

The Ministry of Railways have reviewed the posts already notified as safety categories posts under Board's letter of even No. dated 6-6-80 and 21-1-81 and have decided to classify the posts as enumerated in the enclosed Annexure 'A' as safety categories in supersession of the above letters. Accordingly no relaxation be allowed in the prescribed qualifications, period of service and other criteria while filling up these posts. The guidelines adopted for notifying the posts as Safety Categories are as under:-

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(The above is a reproduction from an Annexure filed by the respondents in OA No. 589/92 Nand Lal Meena Vs. Union of India and Ors., which was decided by the Tribunal on 26.11.96).

8. The above circular clearly indicates that no relaxation in the qualifications, criteria etc. for filling up Safety Category posts can be granted. The learned counsel for the applicant did not dispute that the post of Goods Driver is a safety category post. On the other hand, the post of Law Assistant is apparently not a safety category post. The question whether the Record Note referred to in the judgment of the Hon'ble Supreme Court would be applicable to safety category posts also was neither raised before the Hon'ble Supreme Court nor was it dealt with by it. In the face of categorical instructions from the Railway Board that no relaxation in qualifications for filling up safety category posts can be granted, the applicant cannot said to be eligible for inclusion in the selection panel by granting him benefit of the Record Note referred to in the judgment of the Hon'ble Supreme Court. Therefore, the applicant's prayer for inclusion in the panel Ann.Al is rejected and the panel Ann.Al cannot be declared to be illegal as prayed by the applicant.

9. The applicant's further prayer is that after filling up the posts of Goods Driver on the basis of selection panel Ann.Al, there would still remain vacancies of Goods Driver and, therefore, the applicant can be allowed to continue on the posts of Goods Driver on adhoc basis as he has been continuing so far, particularly when his work is found to be satisfactory and he has been given a cash award. No order

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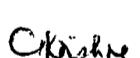
reverting the applicant from the said post has been produced before us by the applicant. Anyhow, we cannot issue any direction in this regard to the respondents. However, if the respondents find the work of the applicant satisfactory, it is up to them to decide whether the applicant should be allowed to continue on the post of Goods Driver on adhoc basis till such time as all the vacancies are filled up on the basis of regular process of selection.

10. It is, however, noteworthy that even though the posts of Goods Driver are safety category posts, these have been filled up by the respondents by appointing persons on adhoc basis without their having cleared the entire selection process and only on the basis of psychological test. This is not a desirable situation from the point of view of the Administration and the safety of passengers, personnel and the property of the Railways. It is desirable that the Administration holds selections for safety category posts speedily and ensure that all posts in these categories are filled up by persons who are qualified in all respects and are duly selected.

11. With the above observations, the OA is dismissed at the stage of admission. No order as to costs.


(O.P. Sharma)

Administrative Member


(Gopal Krishna)
Vice Chairman