

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.29/97

Date of order: 2.2.2001

1. Ashok Kumar Gupta, S/o Sh.R.L.Gupta, R/o 61, Shiva Colony, Imliwala Fatak, Jaipur.
2. Jitendra Swaroop Sharma, S/o Sh.Brahm Swaroop Sharma, R/o 78, Shivaji Nagar, Civil Lines, Jaipur.
3. M.M.Gaur, S/o Sh.J.P.Gaur, R/o Road No.2, 2-3 Ganpati Nagar, Rly.Colony, Jaipur.
4. Kuldeep Kumar Yadav, S/o Sh.U.S.Yadav, R/o Road No.1, Ganpati Nagar, Rly.Colony, Jaipur.

...Applicants.

Vs.

1. Union of India through General Manager, Western Rly, Church Gate, Mumbai.
2. The Divisional Rly Manager, W.Rly, Jaipur Divn, Jaipur.
3. Sh.Prem Chand Sonwal (SC)
4. Sh.Tofan Singh Meena (ST)
5. Sh. Balbeer Singh (SC)
6. Sh. Bora Ram (SC)
7. Sh.Mohan Lal 'D' (SC)
8. Sh. Ganpat Lal 'M' (SC)
9. Sh.Rajesh Kumar 'R' (SC)
10. Sh.Bhoop Singh (SC)

All the private respondents are working as TTE/TNCR/HTTE, W.Rly, Jaipur.

...Respondents.

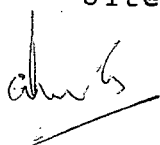
Mr.P.V.Calla - counsel for applicants.

Mr.U.D.Sharma - counsel for official respondents.

Mr.Nand Kishore - Counsel for respondents Nos.8 & 9.

O.A No.390/2000

1. Ashok Kumar Gupta, S/o Sh.R.L.Gupta, R/o 61, Shiva Colony, Imliwala Fatak, Jaipur.
2. Jitendra Swaroop Sharma, S/o Sh.Brahm Swaroop Sharma,



R/o 78, Shivaji Nagar, Civil Lines, Jaipur.

3. Man Mohan Gaur, S/o Sh.J.P.Gaur, R/o Road No.2, 2-3 Ganpati Nagar, Rly.Colony, Jaipur.

...Applicants.

Vs.

1. Union of India through General Manager (E), Western Rly, Church Gate, Mumbai.
2. The Divisional Rly Manager, W.Rly, Jaipur Divn, Jaipur.

...Respondents.

Mr.P.V.Calla - counsel for applicants.

Mr.U.D.Sharma - counsel for official respondents.

CORAM:

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

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.N.P.NAWANI, ADMINISTRATIVE MEMBER.

It is proposed to dispose of the above two O.As by this common order in view of the fact that the same applicants appear to be essentially aggrieved by the panel dated 9.1.97 (Annx.A1 in O.A No.29/97 and Annx.A3 in O.A No.390/2000).

2. In O.A No.29/97, a challenge has been raised against the said panel dated 9.1.97 on the ground that it includes candidates of reserved categories in excess of the quota maintained for them. This O.A includes applicant No.4, Shri Kuldeep Kumar Yadav, in addition to the three applicants in O.A No.390/2000. In reply, the respondents have stated that candidates belonging to SC and ST community, who are working presently on the posts in question, are lesser in number than should have been according to the prescribed percentage of reservation. It is also stated by the respondents that few of the SC & ST candidates are working as per their merit position and not as per reservation policy, therefore, the O.A is without merit.



3. In O.A No.390/2000, the applicants whose names have been interpolated in the said panel dated 9.1.97 vide order dated 5.1.99 (Annx.A5) are aggrieved by the letter dated 25.1.2000 (Annx.A1) by which General Secretary, WERU Grant Road, Mumbai, has been informed that the currency of the panel dated 9.1.97, in which the names of the applicants were interpolated by order dated 5.1.99, had expired on 6.1.99, after the lapse of 2 years and hence the question of inclusion of names of any employees in the said panel does not arise.

4. In their reply to O.A No.390/2000, the official respondents have stated that of the 7 names mentioned in para 4(3) of the OA, S/Shri Har Sharan Singh, Sameer Sharma, K.P.Gurjar, Suresh Verma, Shekhar Katara, R.S.Meena and Rakesh Jaiswal have appeared in the supplementary viva voce examination but were not placed in the panel. Further, S/Shri Dharam Pal Singh, Rakesh Kumar Jaiswal and R.S.Meena (not mentioned in the said para of the O.A) had not participated in the selection process and subsequently their representations requesting them to be allowed to appear in the supplementary examination have been referred to the Head-quarters office. The official respondents have not disputed the fact that the said panel Annx.A3 was issued and vide note No.2 underneath the said panel, three posts were kept reserved for the candidates whose case was referred to the Head-quarters office for second supplementary examination. The Head-quarter office had disapproved the second supplementary examination and consequently the names of the applicants herein were included in the panel vide order dated 5.1.99. As regards the allegation of the applicants that having interpolated their names in the panel dated 9.1.97 vide belated order dated 5.1.99, it does not lie within the purview of the official respondents to deny them promotion on the pretext that the original panel issued on 9.1.97 to be effected from 7.1.97

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expired on 6.1.99, the official respondents have not given any other reasons except that the Head-quarter office had, after examining the entire matter in detail, declined to extend the currency of the panel. The applicants have also alleged that their names were interpolated in the panel dated 9.1.97 at Nos.22-A, 23-A, 23-B respectively, whereas the official at Sl.No.23 was admittedly lower in the panel than Shri Ashok Kumar, applicant No.1 and likewise the officials shown from Sl.No.24 to 29 were also lower in merit as compared to the applicants but notwithstanding this, the employees Sl.No.23 to 29 have already been promoted long back and the applicants, selected and placed on higher ranking, are denied such promotion. In reply to this, the official respondents have stated that the names of the applicants had been interpolated in the panel dated 9.1.97 as per their merit position. It has also been contended on behalf of the applicants that as per notification dated 14/16.10.95 (Annx.A2), a panel of 34 Head Travelling Ticket Examiner/Train Conductor/ Head Ticket Collector was to be prepared and since in the first instance 29 promotions were given on the basis of panel dated 9.1.97, 5 vacancies were still available. Three vacancies were kept reserved for those candidates whose names were sent for second supplementary examination <sup>which was not ultimately permitted.</sup> Thus the applicants can be promoted on those three available vacancies. In reply, the official respondents have stated that existence of vacancies have no relevance, as the applicants were not entitled for promotion after expiry of the currency of the panel. It is further stated that the applicants cannot have any grievance in the matter, specially against letter dated 21.1.2000 which has been addressed to the Secretary, WERU and not to the applicants.

5. We have heard the learned counsel for the parties and

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have perused the record.

6. On careful consideration of rival contentions, we are of the opinion that two issues are really thrown up for our consideration in these O.As. First, whether it was reasonable and logical for respondents to have denied the applicants in O.A No.390/2000 the opportunity of promotion after inclusion of their names in the panel dated 9.1.97. Second, whether the said panel was illegal in as far as it contained names of reserved category employees in excess of their prescribed quotas.

7. As far as the question of inclusion of the names of the applicants in O.A No.390/2000 in the panel dated 9.1.97 is concerned, we find that it is undisputed that the applicants had cleared the required selection process. In fact it appears that their names were not included in the panel because the respondents had initially kept three vacancies for certain candidates for whom a supplementary examination was being planned and when it was not agreed to by the Head-quarter, the respondents themselves had interpolated the names of these three applicants in the panel dated 9.1.97 vide their order dated 5.1.99. We also find that the notification for the selection process had clearly indicated that there were 34 vacancies of which 25 vacancies were for the general category candidates, out of which 3 vacancies were kept vacant for the candidates in respect of whom permission for supplementary examination was being sought <sup>and was not ultimately given. ch</sup>. Thus there were vacancies available for the applicants. The applicants had, therefore acquired a right to be promoted as per the panel. Such a right has been denied by the respondents, on the ground of expiry of the life of the panel. In fact, the respondents went ahead and interpolated the names of the applicants in the said panel, albeit after a long delay. However, this delay was of their

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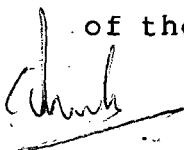
own doing; the applicants can, in no way, be held responsible for such a delay. This being so, the action of the respondents in taking a stand thereafter that the names of the applicants cannot be considered for promotion as the panel had expired on 6.1.99 cannot be sustained in law. The interpolation of the names of the applicants, therefore, deserves to be maintained and the applicants deserve to be promoted on the basis of the said panel from the date their juniors in the panel were promoted.

8. As regards the question of exceeding or otherwise the reservation quota for SC & ST category employees, the respondents should re-check the quota keeping in view the relevant rules regarding the rosters as also the law laid down by Hon'ble the Supreme Court in its various judgments, including the recent judgment in Ajit Singh II, which has been further clarified in the case of Jatinder Pal Singh & Ors. Vs. UOI & Ors, AIR 2000 SCC 609 and M.G.Badappanavar & Anr. Vs. State of Karnataka & Ors 2000(5) SLR 801.

9. The O.As are, accordingly disposed of with following directions:

- (i) The official respondents are directed to grant promotions to the applicants in O.A No.390/2000 on the basis of panel dated 9.1.97 with effect from the date their immediate junior candidates in the said panel were promoted with all consequential benefits.
- (ii) The official respondents are also directed to re-check the quota for SC & ST candidates in terms of rules and the law laid down by the Apex Court <sup>in all</sup> the cases mentioned in the preceding paragraph and take further action accordingly.

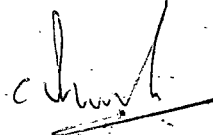
The first direction may be implemented within 2 months of the receipt of a copy of this order.



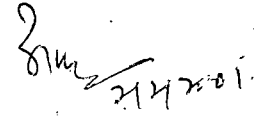
10. The O.As disposed of accordingly.

11. Since O.A No.29/97 has been disposed of, M.A No.417/2000 has become infructuous.

12. There will be no order as to costs.

  
(N.P.Nawani)

Member (A).

  
(A.K.Mishra)

Member (J).