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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

O.A. No. 94/99
T.A. No.

199

DATE OF DECISION 07.07.2000

Govind Singh Verma

Petitioner

Mr. Shiv Kumar

Advocate for the Petitioner (s)

Versus

Union of India and ors.

Respondent

Mr. H.D.Sharma

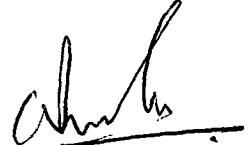
Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?


(N.P.NAWANI)
Adm. Member


(S.K.AGARWAL)
Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 07.07.2000

OA No.94/99

Goyind Singh Verma S/o Shri Fool Singh, aged about 34 years, at present employed on the post of Head Ticket Collector at Bayana, Kota Division, Western Railway.

.. Applicant

Versus

- 1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
- 2. Divisional Railway Manager (Eatab.), Western Railway, Kota Division, Kota.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

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

ORDER

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

In this application the applicant seeks quashing of the order dated 13.9.1996 (Ann.A1) and order dated 4.9.1994 (Ann.A4) and that the name of the applicant may be inserted in the panel dated 13.9.1996. In the alternative, he prays that he be given the benefit of Railway Board's circular dated 19.3.1976 and may be considered deemed to have been selected for the post of Head Ticket Collector (for short HTC) scale Rs. 1400-2300 as per the panel dated 20.9.1995 (Ann.A2).

2. Facts of the case, as stated by the applicant, in brief, are that he was initially appointed as Ticket Collector on 17.8.90 in Kota Division. He was given ad-hoc promotion to the post of HTC vide order dated 20.9.95 (Ann.A2). Selection for the post of HTC was conducted and the applicant passed the written test vide order dated 22.8.1996 (Ann.A3) and was declared eligible for interview. Interview was conducted on 4.9.96 but the applicant's name did not figure in the panel which was dated 4.9.96 (Ann.A4). The applicant, therefore, presumed that he has been failed in the interview. He was allowed to work on the post of HTC on ad-hoc basis against the reserved post vide Ann.A1. The applicant was reverted to the post of Ticket Collector vide order dated 4.10.1996 (Ann.A5)

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and was given promotion on adhoc basis to the post of HTC vide order dated 31.3.1998 (Ann.A6). The applicant has thus been working satisfactorily on the post of HTC from 20.9.1995 to 4.10.1996 and thereafter from 31.3.1998 till date. In spite of this, he has been declared failed in the interview in contravention of the circular of the Railway Board dated 19.3.1976 which has been reproduced at para 8 of the OA. It has also been mentioned that Hon'ble the Supreme Court in the case of R.C.Srivastava v. Union of India in SLP No. 9866/93 decided on 3.11.1995 has held that where person working on adhoc basis satisfactorily, they should be given benefit of record note 2.2 in the selection. On the basis of the said record note, this Bench of the Tribunal has decided the case of V.N.Sharma v. Union of India on 12.3.98 holding that provisions of Railway Board's circular dated 19.3.1976 incorporating para 2.2 of the record note have effect notwithstanding the provisions contained in para 219 of the IREM Vol.I. It has also been stated that the applicant is similarly situated person as V.N.Sharma and, therefore, should be entitled to the same benefits given by this Bench of the Tribunal vide its order dated 12.3.1998.

3. Respondents in their reply have made a preliminary objection that while the applicant is challenging the orders dated 13.9.1996 and 4.9.1996, the OA has been filed on 24.2.1999 and the OA is, therefore, badly barred by limitation. However, since the applicant claims that he is a similarly situated person, as for example V.N.Sharma who has been given the benefit of Railway Board circular dated 19.3.1976 incorporating the record note, we have decided to condone the delay and proceed to adjudicate the matter on merits. In this regard, we refer to the judgment of Hon'ble the Supreme Court in Amrit Lal Berry v. Collector of Central Excise reported in 1975 SCC (L&S) 412 and K.C.Sharma and ors. v. Union of India and ors. reported in 1998 (1) SLJ 541.

4. The respondents in their reply have not disputed the existence of Railway Board's circular dated 19.3.1976 containing para 2.2 of the record note but have stated that the applicant had not passed the written test on merit and was declared qualified under the relaxed standards of 10% marks and was called for viva-voce against the reserved vacancies. It has further been stated that the applicant was not declared

Sharma

failed in the interview but had secured less than 50% marks in the professional ability, which was the mandatory requirement. It is contended on behalf of the respondents that in view of the above facts, the said Railway Board's circular as well as the judgment of the Apex Court is not applicable in this case. It has also been contended that of the 15 posts of HTC/HTTE for which selection was held, 6 posts were reserved for Scheduled Caste candidates and as detailed in para 9 of the reply, the applicant was at Sl.No.10 of the eligibility list and even if he is given the benefit of the Railway Board's circular and considered qualified, he will be only the seventh qualified candidate and cannot, therefore, be included in the panel of 6 reserved vacancies for Scheduled Caste candidates as only the 6 persons senior to him can be accommodated in the panel and, therefore, there is no justification for inclusion of applicant's name in the panel and setting aside of Annexure-A1 by which the applicant had to be reverted. Finally, it has also been contended by the respondents that the Railway Board's letter dated 9.8.1982 (Ann.R1) has clarified the position vis-a-vis the circular dated 25.1.1976 containing extract of the Record Note and indicated that it was to serve only as broad guidelines and was not to bypass or supercede in any manner, the normal rules of selection as contained in IREM or other orders.

5. We have heard the learned counsel for the parties and have carefully perused the material on record.

6. Taking the last contention of the respondents first, we observe that while the so called "clarificatory" letter has been issued on 9.8.1982, the benefit of the circular has been extended to the applicants in a large number of cases by various Benches of this Tribunal even after 9.8.1982 and even the judgment of the Apex Court in SLP No.9866/93 decided on 3.11.1995 has come after that date, upholding the validity of the circular of 19.3.1976. In view of the above discussions, we find no reasons at all to not follow the settled legal position and hold that the applicant was entitled to the benefit of the circular dated 19.3.1976 and, therefore entitled to find a place in the provisional panel notified vide order dated 4.9.1996 (Ann.A4). As far as ad-hoc promotion of the applicant to the post of HTC vide order dated 20.9.1995 and subsequent reversion on 4.10.1996 is concerned, we find no

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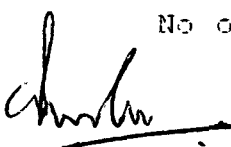
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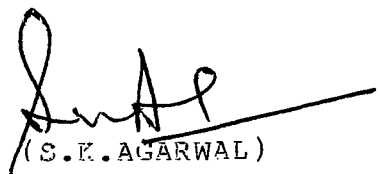
justification to interfere with the process of ad-hoc promotion and reversion, when duly selected candidates become available. Interim direction given on 1.3.1999 will accordingly no longer be operative but this will not preclude the respondents in continuing the applicant on the post of HTC on ad-hoc basis, if a vacancy happens to be available.

7. We do take note of the statement of the respondents that the applicant had qualified in the written examination under the relaxed standards being a Scheduled Caste (for short SC) candidate and that among the SC candidates, he could, at best, be placed at Sl.No.10. Sl.Nos. 3,6 and 7 had not qualified and, therefore, the applicant could be placed at the seventh place in the panel as far as it relates to SC community. We accept this position and hope that the applicant being first in the waiting list for SC vacancies, will be offered the post of HTC/HTTE whenever a reserved vacancy for SC becomes available during the validity of the panel. It also follows that we cannot interfere with the order dated 13.9.1996 (Ann.A1).

8. In the totality of the circumstances, the OA is partly allowed and we direct the respondents to place the applicant in the provisional panel dated 4.9.1996 (Ann.A4) at the appropriate place, treating him as having qualified in the entire selection process and considering him for promotion to the post of HTC/HTTE as and when SC vacancy becomes available within the quota available for SC candidates during the validity of the said panel.

No order as to costs.


(N.P.NAWANI)
Adm. Member


(S.K.AGARWAL)
Judl. Member