

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 22.10.02

OA 125/99 with MA 284/99 .

Chaturbhuji, Section Engineer O/o Dy.Chief Mechanical Engineer  
(C&W), W/Rly, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, W/Rly. Churchgate,  
Mumbai.
2. Chief Works Manager, W/Rly, Ajmer.
3. Dy.Chief Mechanical Engineer (C&W), W/Rly, Ajmer.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the Applicant

... Mr.P.V.Calla

For the Respondents

... Mr.S.S.Hasan

ORDER

PER MR.A.P.NAGRATH

A selection for the post of Section Engineer scale Rs.6500-10500 was notified on 20.11.98. This was to fill up two general vacancies and two vacancies reserved for SC candidates. There was no vacancy reserved for ST. In the final panel issued on 3.3.99 two persons were declared successful and both are general candidates. Applicant is not there in the list of successful candidates. His name had earlier appeared in the list of three candidates who had qualified the written examination. Prayer of the applicant in this OA is that the respondents be directed to declare him as duly selected on the post of Section Engineer and to restrain them from passing any order of reversion against him.

2. At the time of being called for the selection, the applicant was holding the post of Section Engineer in scale Rs.6500-10500 on ad hoc basis. Since his name does not appear in the final panel for regular promotion, he apprehends that he may be reverted by the respondents. By interim orders dated 18.3.99, passed by this Tribunal, the respondents had been directed to maintain status-quo as of that date in respect of the applicant. These interim orders



have continued since then.

3. Heard the learned counsel on either side and also perused the records.


4. From the grounds taken by the applicant for the relief sought, we find that he has based his case primarily on the plank of his having been holding the post already on ad hoc basis. Since he had passed in the written examination, he has taken a plea that he cannot be failed in the viva-voce and thus should not be reverted from the post which he is holding on ad hoc basis. This ground of the applicant seems to be without basis. Though he has made an assertion that he cannot be failed in Viva-voce, we do not see anything on the record or from the reply of the respondents that he has in fact been failed in the viva-voce test. There is no mention at all to that effect by the respondents. It has only been stated that he has not been selected. It is not the case of the applicant that the two persons who find place in the final panel are not senior to him. Obviously, if the panel is of two candidates and both are senior, the applicant cannot thereby conclude that he is not there in the panel because he was failed in the viva-voce. A panel is prepared from amongst successful candidates in the order of seniority and only includes as many names as the vacancies advertised. In this case, only two vacancies were indicated for general candidates in the notification. The applicant is one of the general candidates and two persons placed in the final panel also are general candidates. Thus, the ground taken by the applicant that he has been failed in viva-voce does not merit any consideration as it has no basis.

5. Shri P.V.Calla, learned counsel for the applicant, however stated that the final panel should have been of three candidates and not of two. He drew our attention to the averments of the applicant in the OA stating that the applicant had protested against the notification of only two general vacancies. He is stated to have specifically pointed out in his representation dated 1.12.98 (Ann.A/4) that the vacancies had not been worked out correctly. He had also mentioned in the representation that S/Shri Arjun Singh and Gauri Shanker, belonging to SC, were already occupying two posts in the scale Rs.6500-10500. The cadre

being of 14 posts, only two posts could be reserved for SC candidates. These two reserved posts had been duly filled up by the two above named. Thus, all the four posts, which were to be filled up by the selection were required to be manned by only general candidates. For this reason, Shri Calla asserted that the applicant being the third successful person in the written test had a legal right to be placed on the panel. To support his contention that S/Shri Arjun Singh and Gauri Shanker had been occupying the post of Section Engineer against reserved vacancies, Shri Calla produced before us a document dated 19.3.2001, which is a seniority list of the cadre of Junior Engineers, Section Engineers & Senior Section Engineers. This seniority list has been reframed in compliance with the ratio of the judgement of the Apex Court dated 18.8.2000. He contended that it was wrong on the part of the respondents to again declare the two posts as reserved for SC as that would go beyond the permissible quota. According to the learned counsel, the entire panel was vitiated because of wrong working out of the vacancies and the proceedings of such a panel need to be declared illegal and quashed. In the alternative, he made out a case that the applicant be also brought on the panel.

6. Shri S.S.Hasan, learned counsel for the respondents, while reiterating the stand of the respondents in the OA, vehemently emphasised that S/Shri Arjun Singh and Gauri Shanker were occupying the post of Section Engineer scale Rs.6500-10500 because of their own merit and their position in general seniority. Thus, the reserved posts still remained available and were correctly notified in the selection. Since no SC candidate could qualify in the selection, none was brought on the panel. However, S/Shri Rajesh Kumar and Sualal, both SC candidates, are officiating on the post of Section Engineer on ad hoc basis.

7. Undisputedly, the cadre consists of 14 posts only. As per post-based roster, two posts could be kept reserved for SC candidates and one for ST. There is no cotroversy in respect of ST post. The point to be considered is whether two vacanceis could be reserved for SC in this selection. The respondents have taken a plea that both Shri Arjun Singh and Gauri Shanker had come to occupy the post in the scale of Rs.6500-10500 on their own merit and seniority. However, when we look at the seniority list



dated 19.3.2001, we find that both these persons have been shown to be occupying the post against SC quota. This contradicts the stand of the respondents that these two persons have occupied the position by their merit and seniority. In fact, we had asked the respondents to state categorically that these two persons had never received the benefit of reservation while occupying the post of Junior Engineer Grade-II, Junoir Engineer Grade-I and Section Engineer. No such categorical statement has been made and only a general mention has been made in the reply that these two persons are in the grade of Rs.6500-10500 by virtue of their own merit and seniority. This statement contradicts the position indicated in the seniority list dated 19.3.2001. We find the version of the applicant acceptable that these two persons are holding the post of Section Engineer only by virtue of reservation roster. Having said that, the question now comes up whether any direction could be given to the respondents to consider empanelment of the applicant. It is not the case of the applicant that any of his junior has been promoted. He himself is holding the post on ad hoc basis. The plea advanced by the learned counsel on his behalf that the panel be quashed because of wrong working out of the vacancies is totally unacceptable. There is no illegality in the panel even if it is considered that number of vacancies have not been worked out correctly. No SC candidate has been empanelled and none junior to the applicant also has been empanelled. There is no ground made out at all by the applicant for his being placed in the impugned panel. If any selection is taken up next time, the applicant would have ample opportunity of availing that chance.

8. Shri Calla strongly urged that the respondents are going to revert the applicant while retaining his juniors in the same grade. The basis for his apprehension is that the respondents have filed an MA No.284/99 seeking vacation of stay, though that MA till date remains undisposed of. Now we are deciding the matter finally, this MA has become infructuous and stands disposed of as such.


9. Regarding the plea of the applicant that he be not reverted from the post he is holding on ad hoc basis, we consider it only fair and just that so long as his juniors continue to occupy the




post of Section Engineer scale Rs.6500-10500, the applicant shall not be picked up for reversion. He is admittedly senior to S/Shri Sualal and Brij Lal Meena, who have been occupying the post of Section Engineer, as admitted by the learned counsel for the respondents before us. For so long as they are occupying that position, the respondents can have no case for reverting the applicant.

10. We, therefore, disposed of this OA with the order as follows;

"Under the facts and circumstances of this case, no directions can be given to the respondents to declare the applicant as duly selected on the post of Section Engineer. However, the respondents are directed not to revert the applicant from the post of Section Engineer scale Rs.6500-10500, which he is occupying on ad hoc basis, for so long as his juniors S/Shri Sualal and Brij Lal Meena, or any other junior, continue to hold that position on ad hoc basis and if he is otherwise considered fit. Of course, the respondents are at liberty to conduct further selection for filling up vacancies in this cadre on regular basis. The parties are left to bear their own costs."

  
(A.P.NAGRATH)  
MEMBER (A)

  
(G.L.GUPTA)  
VICE CHAIRMAN