

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 10.8.2001

OA 283/2000

Mohan Lal Sharma, Chief Booking Clerk, Sawai Madhopur, Western Railway, Kota Division, Kota.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Sr.Divisional Commercial Manager (Estt), Western Railway, Kota Division, Kota.

... Respondents

CORAM:

HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

For the -Applicant ... Mr.Shiv Kumar

For the Respondents ... Mr.T.P.Sharma

O R D E R

PER HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

In this application u/s 19 of the Administrative Tribunals Act, 1985, applicant Mohan Lal Sharma has prayed for declaring the impugned order dated 10.5.2000 (Ann.A/1) as illegal and arbitrary and for a direction to the respondents to modify the said impugned order by interpolating his name at an appropriate place by giving him the benefit of directions contained in the Circular dated 19.3.76 and accordingly he may be given promotion at par with his juniors.

2. Applicant's case is that he was initially appointed as Junior Clerk on 7.10.66. He was promoted as Head Booking Clerk scale Rs.1400-2300 on 12.5.86 and was further given ad hoc promotion on the post of Chief Booking Clerk scale

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Rs.1600-2660 from 7.8.96. The applicant was reverted from the post of Chief Booking Clerk for one month and was again promoted on ad hoc basis to the said post vide order dated 23.4.97. The respondent department had conducted a selection for the post of Chief Booking Clerk. The applicant was also eligible to appear in the said selection and he, therefore, appeared in the written test, wherein he was declared successful. The applicant was also called for interview. However, his name did not find place in the panel dated 10.5.2000 (Ann.A/1). Contention of the applicant is that he had been working on the post of Chief Booking Clerk on ad hoc basis for sufficiently long time and in terms of Railway Board's circular dated 19.3.76 he should not have been failed in the interview. Hence this application.

3. In the counter the contentions of the applicant have been denied by the respondents. It has been pointed out by the respondents that the applicant did not secure qualifying marks for placement on the panel. It has also been pointed out that the applicant has suffered many penalties during the last five years of his service and, therefore, he was not considered fit for promotion to the post of Chief Booking Clerk on the basis of his service record. It has, therefore, been averred by the respondents that the applicant has no claim and the OA is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the records of the case carefully.

5. Learned counsel for the applicant has cited the judgement dated 3.11.95 of Hon'ble the Supreme Court in R.C. Srivastava v. Union of India and Another, as also the order of this Bench dated 12.3.98, passed in OA 455/96 in V.N. Sharma v. Union of India and Others in support of his contention that <sup>applicant</sup> is entitled to be declared successful in

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the selection for the post of Chief Booking Clerk. We have gone through these judgements. It has been clearly pointed out in these judgements that the applicants therein did not secure 60% marks in the professional ability judged on the basis of viva-voce and, therefore, it was observed that the applicants therein were wrongly denied selection on the basis of the marks given to them in the viva-voce test.

6. In the instant case, it has been alleged by the applicant that he has been declared failed in the selection because he has been failed in the interview and, therefore, benefit of the circular dated 19.3.76 be extended to him. On the other hand, it has been contended by the respondents that the applicant's service record for the last five years was not upto the mark and, therefore, he was not considered fit for promotion. In this connection, we consider it appropriate to reproduce below the Railway Board's circular dated 19.3.76 :-

"Railway Board circular No.831-N/63/2 N(E-IV) dated March 19, 1976;

Sub:- Record note of the meeting of the Deputy Minister that Railways of the Railway Board with the Headquarters of the Personnel Department of the Railway administration held in New Delhi on 27.11.95.

A copy of an extract from the record note circulated vide board's letter No.75-E(SCT)15/48, dt.9.12.75 as received vide their office letter No.E(HGI-75) PMI/264, dt.25th January, 1976 is reproduced below :-

"2.2 panels should be formed for selection posts in time to avoid ad hoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on ad hoc basis and

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satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the final of consideration should be saved from harassment. According to record note 2.2 applicant can not be declared failed in *viva voce*."

7. It is clear from the above that persons who have been working on promotional post on ad hoc basis satisfactorily should not be declared unsuitable in the interview. However, it is the case of the respondents that the applicant has not been found suitable on the basis of interview instead he has not been found suitable on the basis of *his* service record. At this stage, we consider it appropriate to reproduce below para 219(g) of the Indian Railway Establishment Manual Vol.I, dealing with the procedure for conducting selection :-

"219(g) Selection should be made primarily on the basis of overall merit, but for the guidance of Selection Board the factors to be taken into account and their relative weight are laid down below :-

E(NG) I-69/PM 1-126 dt. 18.9.69

	Maximum Marks	Qualifying Marks
i) Professional ability	50	30
ii) Personality, address, Leadership and academic qualification	20	—
iii) A record of service	15	—
iv) Seniority	15	—

*(Signature)*

NOTE (i) The item 'record of service' should also take into consideration the performances of the employee in essential Training Schools/Institutes apart from the examining CRs and other relevant records.

E(NG) I-72/PM 1/192 dt. 27.6.73

(ii) Candidates must obtain a minimum of 30 marks in professional ability and 60% marks of the aggregate for being placed on the panel. Where both written and oral tests are held for adjudging the professional ability, the written test should not be of less than 35 marks and the candidates must secure 60% marks in written test for the purpose of being called in viva-voce test. This procedure is also applicable for filling up of general posts. Provided that 60% of the total of the marks prescribed for written examination and for seniority will also be the basis for calling candidates for viva-voce test instead of 60% of the marks for the written examination."

Q. In the selection process, the professional ability consists of written test carrying 35 marks and viva-voce carrying 15 marks. Thus, in total, professional ability carries 50 marks. To be successful in a selection, a candidate has to secure 60% marks in professional ability and 60% in the aggregate. It has been contended by the respondents that the applicant's name could not be placed on the panel or the applicant was declared unsuccessful on the basis of <sup>his</sup> service record. We consider it appropriate to extract below the punishments awarded to the applicant during the last five years :-

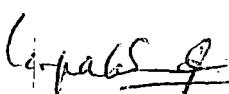
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- i) 21.3.94 - Withholding of increment for six months.
- ii) 21.9.94 - Reduction to the post of Assistant Booking Clerk for a period of two years.
- iii) 11.1.95 - Withholding of increment for one year.
- iv) 14.7.98 - Stoppage of increment for two years.

q. The selection in question was conducted in March-April, 2000 and the panel was declared on 10.5.2000. Confidential reports and service record for the last five years, prior to the year in which selection was held, were required to be considered for the selection and it is seen from the details extracted above that the applicant had been facing one penalty or other from 1994 to 2000, the last penalty being stoppage of increments for two years imposed on 14.7.98. Thus, the service record of the applicant was not at all satisfactory for the period under evaluation. This gives credence to the statement of the respondents that the applicant could not be declared successful because of his poor record of service. The applicant is labouring under the impression that he has been failed in the selection because of the interview. This, to us, appears only to be an apprehension and, therefore, we are of the view that the Railway Board's circular dated 19.3.76 would not be applicable in the instant case.

10. In the light of the above discussion, we do not find any merit in this OA and the same deserves to be dismissed.

11. The OA is accordingly dismissed with no order as to costs.

  
(GOPAL SINGH)

MEMBER (A)

  
(B.S. RAIKOTE)

VICE CHAIRMAN