

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 21.12.2004

Original Application No.113/2003.

Banwari Lal Yogi S/o Arjun Lal Yogi, aged 43 years,
R/o Phulera, District Jaipur.

...Applicant.

v e r s u s

1. Union of India through the General Manager,
Northern Western Railway, Jaipur.
2. Divisional Railway Manager (E), Northern Western
Railway, Jaipur Division, Jaipur.

... Respondents.

Mr. Sumit Bhati proxy counsel for
Mr. S. K. Jain counsel for applicant.
Mr. V. S. Gurjar counsel for respondents.

CORAM

Hon'ble Mr. M. P. Singh, Vice Chairman.
Hon'ble Mr. M. L. Chauhan, Judicial Member.

: O R D E R :
(per Hon'ble Mr. M. L. Chauhan)

The applicant has filed this OA thereby praying
for the following reliefs :-

"(i) That by an appropriate order or direction, the impugned notification dated 14.6.2002 Annexure A/1 along with the impugned panel dated 30.01.2003 Annexure A/2 be quashed and set aside and the respondents be directed to fill up those posts of merit-cum-seniority from amongst the candidates who have passed the written examination and not by merit alone, taking the post to be for remaining quota other than 16-2/3% quota.

(ii) That the respondents be directed to hold the selection again according to the rules and the written and oral examination held along with the eligibility list dated 16.9.2002 Annex. A/4 be declared illegal and be quashed and set aside.

(iii) Any other relief which this Hon'ble

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Tribunal deems fit may also be granted to the humble applicant."

2. When the matter was listed for admission on 21.04.2003, learned counsel for the applicant submitted that he will press the OA only for quashing the orders at Annexure A/1 & A/2 and resultant direction to hold fresh selection limiting to vacancies to 16 2/3. According to learned counsel for the applicant the proposed number of 12 vacancies are incorrect and they should not exceed six in number and apart from this prayer he will ^{not} press for the remaining part of the prayer. Accordingly, notices were issued to the respondents. Thus, the sole question which requires our consideration in this case in the light of the submission made by the learned counsel for the applicant and as recorded in order dated 21.4.2003 is whether 12 vacancies which were notified to be filled in from enhanced quota of 16-2/3% from amongst matriculate Group D employees with a minimum of two years regular service as notified vide notification dated 14.06.2002 (Annexure A/1) has been correctly notified or the respondents should have advertised only 6 vacancies as contented by the applicant.

3. Briefly stated, the applicant was initially appointed as Group 'D' employee in the Railway department, prior to issuance of the Railway Board letter dated 15.11.2000 (Annexure A/3), in terms of Rule 189 of IREM Vol.I, Group 'D' employees for whom

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there was no regular avenue of promotion was entitled for promotion to the extent of 33-1/3% of the vacancy in Group 'C' categories in the lowest grade of Commercaill Clerk, Ticket Collector, etc. However, vide Railway Board letter dated 15.11.2000 (Annexure A/3) amendment was carried out in Para 189 of the IREM Vol. I 1989 with a view to increase the promotional prospect of Group 'D' staff. Accordingly, it was decided that 16-1/3% enhanced quota may be filled from amongst matriculate Group 'D' employees with a minimum of two years regular service in the concerned seniority unit and the selection against enhanced quota shall be strictly on the basis of merit and it was further clarified that existing 33-1/3% quota will continue to fill up as per existing procedure. Pursuant to such decision taken by the Railway Board, the respondents notified 12 posts of Ticket Collector in the grade of Rs.3050-4590 against 16-2/3% ranker quotas vide notification dated 14.06.2002 (Annexure A/1). Eligibility list was also issued for the Matriculate Group 'D' employees in commercial branch vide letter dated 16.09.2002 (Annexure A/4). In the said eligibility list, name of the applicant is at Sl. No.1. However, since the selection was to be based on merit basis, the name of the applicant did not find mention in the select list dated 30.01.2003 (Annexure A/2).

4. The grievance of the applicant in this case is twofold. Firstly, that the person junior to the applicant has been selected to the post of Ticket

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Collector whereas his name has been excluded arbitrarily and second grievance of the applicant is that in fact against 16-2/3% of enhanced quota only 6 vacancies of Ticket Collector in the pay scale of Rs.3050-4590/- should have been notified instead of 12 vacancies and the remaining 6 vacancies should have been filled from amongst the 33-1/3% quota of non matriculate promotion quota.

5. Respondents in the reply have stated that vide Railway Board letter dated 10.10.2000 and letter dated 15.11.2002 the existing quota of 33-1/3% ^{was enhanced} to 50% in reference to promotion of Group 'D' employees. Such promotion quota was enhanced on the recommendation of Joint Sub Committee in which it was ~~decided~~ ^u that the enhanced quota of 16-2/3% may be filled from amongst Matriculate Group 'D' employees with minimum of two years regular service in the concerned seniority unit and that the selection against the enhanced quota may be entirely competitive and on the basis of merit. It is further stated that the Board has considered the matter and have accepted the recommendation of the Joint Sub Committee. The standard of selection consisting of a written test and interview will be commensurate with the qualification of Matriculation and the panel will be formed strictly on the basis of merit. However, the existing 33-1/3% quota will continue to be filled up as per existing procedure. These facts are fortified in view of Annexure A/3. It is further stated that the post of Ticket Collector in the grade of Rs.3050-4590/- there

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exists 71 posts in all. Keeping in view the percentage of vacancies reserved for different categories, the vacancies has to be earmarked in the following manner :-

	<u>No. Of Posts</u>
Total Cadre TC 3050-4590 (RPS)	71
50% direct quota	35
16-2/3% Matriculate quota (Ranker)	12
33-1/3% Non Matriculate quota (Ranker)	<u>24</u>
Total	<u>71</u>

Thus according to the respondents the action taken by the respondents in advertising the post vide Annexure A/1⁶ in consonance with the letter^{and} spirit of the relevant provisions providing for promotional prospectus for Group 'D' staff. The applicant has failed to point out any illegality in the action of the respondents. Further it has been stated that the applicant is precluded from challenging the vacancies as notified vide Annexure A/1 in view of the law laid down by the Apex Court in the case of Om Prakash Shukla vs. Akhilesh Kumar Shukla, whereby it has been held that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise. Respondents have also placed reliance on the decision of the Apex Court in the case of Sunita Agarwal vs. State of Haryana 2000 (Vol.I) SCC 561 which is also to the similar ^{effect}

6. The applicant despite repeated opportunities has not filed rejoinder. When the matter was listed for hearing on 25.11.2004 learned counsel for the applicant pleaded no instructions on behalf of the applicant in this case. Accordingly, this Tribunal directed the Registry to issue notice to the applicant to make alternative arrangement on the next date of hearing. It was further made clear that in case none appears on behalf of the applicant on the next date, the matter will be decided accordingly. Accordingly, notice was issued to the applicant. However, none has appeared on behalf of the applicant. Today when the matter was listed, accordingly, learned counsel for the respondents was heard and after hearing him and perusing the record, the matter was decided on merit.

7. As already stated above, the applicant has confined this OA only to the extent of quashing the order Annexure A/1 and A/2 on the basis that the number of 12 vacancies as notified vide Annexure A/1 has been incorrectly notified against 16-2/3% of Matriculate quota whereas it should not exceeded 6 in number. In other words, the case of the applicant is confined only to the extent that as against 12 persons whose name find mentioned in the panel/select list Annexure A/2 only 6 persons ^{it could be} have been selected as Ticket Collector whereas remaining 6 vacancies should have been released to 33-1/3% of non Mariculate quota where the select panel has to be made solely on the basis of seniority and since the applicant is the senior most person in the Ranker quota, he will be

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entitled for promotion against the remaining 6 vacancies. Since the applicant is not challenging his non placement in the Panel Annexure A/2 on the ground that despite being senior his name has been wrongly excluded in the select list against enhanced quota of 16-2/3% where the selection has to be made on merit basis amongst Matriculate Group 'D' employees with minimum of two years regular service in the concerned seniority unit, As such, no finding is required to be given on this point.

8. In order to appreciate the contention raised by the applicant in this case, it will be useful to reproduce Railway Board Letter dated 15.11.2000 whereby the ~~provision~~ provision contained in Para 189 of IREM Vol.I 1989 was amended which is in the following terms :-

"No.EP 925/0Vol.II

Date 15.11.2000

To
all DRMs/CWMS & Units Incharge
C/-Genl. Secy., WREU-GTR/WRMS-BC
C/-GS-All India SC/ST
Rly.Employees.Assn.Mumbai
C/-GS-All India OBC Rly Empl. Assn. Mumbai.

Sub : Promotional prospects of Group 'D' staff with no regular avenues of promotion to specified Group 'D' posts.

A copy of Railway Board's letter No.E(nG)I-96/CFP/27 dated 10.10.2000 (R.B.E.) No.176/2000), is enclosed for information guidance and necessary action.

Encl : as above

- sd -
(S. M. MEENA)
for General manager (E)

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Copy of Railway Board's letter No.E(NG)I-96/CFP/27 dtd.10.10.2000 (R.B.E. No.176/2000), addressed to the General Managers, All Indian Railways and Others.

Sub : Promotional prospects of Group 'D' staff with no regular avenues of promotion to specified Group 'D' posts.

In terms of Para 189 of IREM (Vol.1, 1989 Edition), 33-1/3% of the posts in the lowest grade of 'Commercial Clerks, Ticket Collectors, Office Clerks etc. are to be earmarked for promotion of Railway servants in Group 'D' categories for whom no regular avenue of promotion exist, the Group 'C' categories being suitably linked with specified Group 'D' categories on the basis of broad affinity of work.

2. A Joint Sub-Committee constituted under the DC/JCM consisting of representatives of official side and both the to go into the question of promotion prospects of Group 'D' staff has recommended that the existing Group 'D' promotion quota of 33-1/3% covered under para 189 of IREM be increased to 50%. The Joint Sub-Committee has also recommended that the enhanced quota of 16-2/3% may be filled from amongst Matriculate Group 'D' employees with a minimum of two years regular service in the concerned seniority unit and that the selection against the enhanced quota may be entirely competitive and on the basis of merit.

3. The Board have considered the matter and have accepted the recommendation of the Sub-Committee. The standard of selection consisting of a written test and interview will be commensurate with the qualification of Matriculation and the panel will be formed strictly on the basis of merit. However, the existing 33-1/3% quota will continue to be filled up as per existing procedure.

Necessary amendments to the IREM will follow.

Please acknowledge receipt."

Thus, from the portion as quoted above, it is clear that in addition to existing 33-1/3% quota which

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was available to Group 'D' employees for further promotion to vacancies in lower grade of Group 'C' categories namely Commercial Clerk, Ticket Collectors, Train Clerk, etc. enhanced quota of 16-2/3% was also provided by way of promotion from amongst Matriculate Group 'D' employees with a minimum of two years regular service in the concerned seniority unit and the selection against this quota was to be made entirely by a competitive and merit basis. It is not in dispute that the total cadre strength of Ticket Collector is 71. As per amended procedure, 50% of the post in Ticket Collectors was to be filled by direct quota namely 35 posts and remaining 36 posts was to be filled from Ranker quota which was divided into two categories, namely 33-1/3% from non Matriculate quota as was being done in terms of provisions contained in Para 189 of IREM Vol.I and whereas remaining 16-2/3% quota which was made available to the promotees ^{as subsequently} were to be filled up from amongst such Matriculate Group 'D' employees who possess minimum of two years regular service in the concerned seniority unit and such promotion was to be made on merit basis and not on seniority basis.

9. The contention put forth by the applicant in this OA is that out of 36 remaining vacancies which are admittedly made ^{available} for Ranker quota, only 6 vacancies should be earmarked to Matriculate quota of 16-2/3% whereas remaining 30 vacancies should be filled in from non matriculate quota of 33-1/3% ^{in substance} ~~of~~ plea the applicant ^{was} ~~pleaded~~ in the OA is


that 16-2/3% of 36 vacancies comes to 6. As such, respondents have committed an illegality by passing Annexure A/1. We do not agree with the submission made by the applicant- in this regard, what is provided in the relevant Para and instructions of the Railway Board dated 10.10.2000 is that in Ranker quota percentage of vacancies has to be calculated in the following two manners; namely (i) 16-2/3% of Matriculate quota and (ii) 33-1/3% of non matriculate quota. This percentage has to be calculated not on the basis of post meant for promotees quota/ranker quota but percentage has to be calculated while taking into account over all cadre strength of Ticket Collectors which consists of 71 posts. If the number of vacancies are calculated in that manner, the respondents have not committed any illegality whereby 12 posts has been earmarked in the Ranker quota to Matriculate Group 'D' employees against 16-2/3% quota and 24 posts to non Matriculate Group 'D' employees.

10. The matter can be looked into from another angle. If the contention of the applicant is accepted that it is only from 36 posts in the Ranker quota out of which percentages has to be calculated, then by ear-marking 30 posts to non matriculate quota will definately exceed 33-1/3% quota which was meant for non matriculate Group 'D' employees. In that eventuality, the percentage of vacancies for non matriculate Group D employees will come to 83-1/3% as against 33-1/3% quota. Thus, we are of the view that 12 vacancies of Ticket Collectors notified by the respondents by notification dated 14.06.2002 (Annexure

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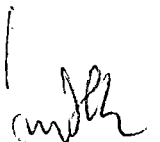
A/1) in terms of Railway Board Letter dated 15.11.2000 has been correctly worked out. Further it is also clear from Railway Board Letter dated 15.11.2000 that such posts was to be filled from amongst Matriculate Group 'D' employees with a minimum of two years regular service entirely on the basis of merit and not on the basis of seniority. As such the applicant whose name does not find mentioned in the impugned panel Annexure A/2 cannot made any grievance about his selection solely on the basis of seniority. That apart, the applicant has not challenged the validity of the selection made vide Annexure A/2 on the basis that it has not been made strictly on the basis of merit and less meritorious candidate has been selected.

11. Accordingly, the OA is berift of merit and the same is dismissed with no order as to costs.



(M. L. CHAUHAN)

MEMBER (J)



(M. P. SINGH)

VICE CHAIRMAN