

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Jaipur, this the 25th day of February 2005.

OA No.516/2003.

CORAM : HON'BLE SHRI V. K. MAJOTRA, VICE CHAIRMAN.
HON'BLE SHRI M. L. CHAUHAN, JUDICIAL MEMBER.

Rudra Kishore Saini
S/o Shri Giriraj Kishore Saini,
aged 33 years,
R/o Behind Atta Mandir,
Alwar (Rajasthan).

...Applicant.

By Advocate : Shri Chiranjit Lal Saini.

Vs.

- 1.Union of India through
Secretary,
Ministry of Railway,
Government of India,
New Delhi.
- 2.Railway Recruitment Board,
S.C.O. 78-79,
Sector 8-C,
Chandigarh-160009 through Chairman.

... Respondents.

By Advocate : Shri Hawa Singh proxy counsel for
Shri V. S. Gurjar.

:ORDER :

By V. K. Majotra, Vice Chairman.

Applications were invited by Chief Security Commissioner /RPF of Zonal Railways in the year 2000 for recruitment of 25 Inspector (Prosecution) Gr.II/RPF. Later on, Ministry of Railways decided to increase the vacancies to 77. The written examination was conducted by the Railway Recruitment Board, Chandigarh on 27.04.2003. The physical measurement test of candidates who appeared in the written



examination was conducted on 28.4.2003 and 29.4.2003. Applicant had applied as an OBC category candidate. He has alleged that respondents failed to apply the reservation formula. Respondents considered the 20 vacancies only, which were reserved for OBC. It is alleged that respondents did not apply the reservation formula correctly, inasmuch, as the candidates belonging to OBC category who had obtained higher marks were not selected against vacancies for general category and as such, some of the OBC candidates including the applicant could not find place in the merit list of OBC category and could not be recruited against the advertised posts. Applicant has sought that respondents should be directed to reconsider the candidature of OBC candidates who attained the general merit standard and adjusting them against the vacancies for general candidates, applicant should be considered for consequential available vacancy reserved for OBC category. Applicant also sought quashing of Annexure A/5 dated 23.9.2003, whereby he has been informed that the instructions on the subject have been correctly followed in the selection in question and as per instructions in force all the reserved community candidates who qualified in the general merit, without availing any relaxation admissible to reserved community candidates, are not adjusted against reserved vacancies.

2. Learned Counsel for the applicant placed reliance on the following ; Ritesh R.Sah Vs. Dr. Y. L. Yamul & Ors., (1996) 3 SCC 253; State of Bihar & Ors. vs. M. Neethi Chandra & Ors. (1996) 6 SCC 36 and 2005 (1) SC SLJ 81, Anurag Patel v. U. P. Public Service Commn. & Ors.. He contended that a reserved class candidate who secured appointment in general category post on account of merit cannot be considered to be appointed on the basis of reserved category. In the present case,

U

Learned Counsel stated that if the meritorious OBC candidates ~~had~~ been adjusted against unreserved vacancies on the basis of their own merits, other OBC candidates like the applicant could have made the ~~ground~~ ^{grade B} for recruitment against the posts reserved for OBC category.

3. Learned Counsel for the respondents pointed out that although initially the number of vacancies was only 25, ~~it~~ was increased to 77 later on. As per rules in force, candidates equal to two and a half times to the vacancies were called for interview. The break up of 77 vacancies was as under :-

"Un-reserve (UR) = 41 SC = 10 ST = 06 OBC = 20
TOTAL = 77"

On the basis of performance in physical measurement test, 183 candidates were found eligible to be called for interview. The break up is as follows :-

"UR = 104 (This included 14 OBCs & 04 SCs)

SC = 25 (Over & above 4 SC candidates against UR vacancies)
ST = 02 (Other ST candidates did not qualify)
OBC = 52 (Over & above 14 OBC candidates against UR vacancies)

TOTAL=183"

He contended that as per existing instructions, namely Ministry of Railway Circular NO.98-E (SCT) I/25/8 dated 23.11.98, those SC/ST/OBC candidates, who qualify in General merit, without availing any relaxation such as age limit etc. are to be adjusted against unreserved vacancies. Accordingly, such candidates coming in unreserved merit were counted against reserved posts. However, such SC/ST/OBC candidates who were in general merit but were availing age relaxation were counted against reserved vacancies.

Un

In the result of 73 candidates, the category (community) wise break-up is as follows :-

UR = 41 (This included two OBC candidates)

SC = 10

ST = 02 (others did not qualify)

OBC=20 (Over and above two candidates adjusted against UR vacancies)

In the first 41 candidates of common merit list, there were six OBC candidates - Five of them were overaged from UR standards. As they have availed age relaxation they have not been adjusted against UR vacancies but have been adjusted against OBC vacancies. One OBC candidate, who has not availed any age relaxation etc., has been adjusted against UR vacancy. By going down further in common-merit list, the position of UR (Unreserved) vacancies as follow :-

In the first 46 candidates, there are seven OBC candidates. Five of them are overaged from UR (unreserved) standards and two did not avail any relaxation. Therefore, as per rules, five have been adjusted against OBC vacancies and two have been adjusted against UR (unreserved) vacancies. Community-wise break-up of selected candidates is, therefore, as follows :-

General = 39, SC=10, ST02, OBC=22 Total = 73.

In the end, Learned counsel maintained that the applicant having appeared in the examination cannot turn around and agitate against the same when he did not succeed in the examination.

4. We have considered the respective contentions of the parties and also perused the material on record.

5. The contention made on behalf of the respondents that having appeared in the selection and failed, applicant cannot turn around to challenge the selection that reservation policy was not correctly followed in the selection in question. Whether or not Reservation policy was properly followed in the selection, is a post-examination-event which could not have been anticipated by the applicant, as such, objection of the respondents does not cut any ice and is over ruled.

6. In the matter of admission to the medical college, the Hon'ble Supreme Court held in the case of Ritesh R. Sah (supra) as follows :-

“.... In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission in to the different colleges which have been kept for reserved category candidates (sic) should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.”

The same question was considered by the Hon'ble Supreme Court in the case of Neethi Chandra & Ors. (supra), wherein it was held as follows :-

“.... However, to the extend the meritorious among them are denied the choice of college and subject which they could secure under the rule of reservation, the circular

cannot be sustained. The circular, therefore, can be given effect only if the reserved category candidate qualifying on merit with general candidates consents to being considered as a general candidate on merit-cum-choice basis for allotment of college/institution and subject."

Both the above cases were considered in the matter of Anurag Patel (supra) and it was held that " a reserved class candidate who secured appointment in general category posts on account of merit cannot be considered to be appointed on the basis of reserved category. But while making such appointment the provisions should be so made that it will not work out to the disadvantage of such a candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. On facts of the case High Court rightly directed reallocation of posts according to the merit prepared in the select list."

7. On the basis of the above rules, there is no gainsaying the fact that a reserved class candidate who secures appointment in general category posts on account of merit cannot be considered to be appointed on the basis of reserved category. However, it has to be seen that such a candidate has competed along with the general candidates on the same terms and conditions. If he has competent of availing himself of certain relaxation such as age, despite his qualification in general merit, he has to be adjusted against reserved vacancies and not against general vacancies. Annexure A/5 dated 23.9.2003 states that as per instructions in force, all the reserved community candidates who are qualified in the general merit without availing any relaxation admissible to reserved community candidates are not adjusted against reserved vacancies. Such instructions are stated to be included in Ministry of Railways Circular No. 98-E (SCT) I/25/8 dated 23.11.98. These instructions have not been controverted on

behalf of the applicant. Respondents have in their counter reply, explained how the successful 73 candidates were adjusted against various vacancies reserved for different categories of candidates. 41 candidates adjusted against unreserved vacancies included 2 OBC candidates on the basis of their merit and also that they had not availed of any concession in respect of terms and conditions of recruitment. 20 OBC candidates were adjusted against OBC vacancies in addition to 2 OBC candidates adjusted against UR vacancies. Six OBC candidates were among 41 candidates of common merit list. 5 of these were over aged from UR standards. As they had availed age relaxation, they were adjusted against UR vacancies and were adjusted against OBC vacancies. These facts again have not been controverted on behalf of the applicant. The rulings cited on behalf of the applicant would be applicable if reserved category candidates had competed with general category candidates on all ~~for~~ ^{fourth} i.e. without availing any relaxation in terms and conditions of recruitment. As soon as any relaxation is availed of by a reserved category candidate, despite his merit in the general merit list, he would be adjusted against a reserved vacancy. Respondents claimed to have strictly followed the instructions on the subject and particularly Ministry of Railways Circular dated 23.11.1998. Applicant has not been able to refute the facts and procedures followed by the respondents as also the implementation of instructions contained in Ministry of Railways Circular dated 23.11.98.

8. In result, in the light of the reasons stated above, we do not find any merit in the claims of the applicant. The OA is, therefore, dismissed. However, without any costs.


(M. L. CHAUHAN)
MEMBER (J)


(V. K. MAJOTRA)
VICE CHAIRMAN
25.2.05