

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 20th day of April, 2005

ORIGINAL APPLICATION No.555/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.G.R.PATWARDHAN, MEMBER (ADMV))

Kuldeep Yadav
s/o Shri Umrao Singh
r/o 12, Shastri Nagar, Ajmer,
at present employed on the
post of Head TTE,
Northern Western Railway,
Jaipur Division, Jaipur.

.. Applicant

(By Advocate: Mr. Shiv Kumar)

Versus

1. Union of India through
General Manager,
Northern-Western Railway,
Jaipur.
2. Sr. Divisional Commercial Manager
(Establishment),
Northern Western Railway,
Jaipur Division, Jaipur
3. Divisional Railway Manager,
Northern Western Railway,
Jaipur Division,
Jaipur.

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.. Respondents

(By Advocate: Mr. N.C.Goyal)

ORDER (ORAL)

The applicant has filed this Original Application, praying for the following reliefs:

- "i) That the impugned order dated 09/01/1997 (Annexure-A1) provisional panel for promotion to the post of Head TTE/Train Conductor/Head TC in the pay scale of Rs. 1400-2300 (Revised pay scale Rs. 5000-8000) may please be modified by intercalating/inserting the name of the applicant in panel at appropriate place and the respondents may be further directed to give promotion to the applicant after intercalating/inserting the name in the panel in pay scale of Rs. 5000-8000 with all consequential benefits including arrears of pay etc.
- ii) Any other order/directions/reliefs may be passed in favour of applicant which may be deemed fit just and proper under facts and circumstances of this case.
- iii) That the cost of this application may be awarded."

2. Briefly stated, facts of the case are that the applicant was initially appointed on 25.2.98 as Ticket Collector. The applicant was further promoted to the post of TTE in the pay scale of Rs. 4000-6000. On 16th October, 1995, the respondents issued notification for promotion to the posts of Head TTE in the scale of Rs. 1400-2300 revised pay scale Rs. 5000-8000. Written Test was conducted for the aforesaid posts and applicant was declared successful in the written test vide letter dated 19.3.96 (Ann.A3) whereby his name appears at Sl.No.30. However, the panel for the post of Head TTE was issued vide order dated 9.1.1997

(Ann.A1) in which the name of the applicant did not find mention. The applicant and other 3 persons earlier challenged the order dated 9.1.1997 (Ann.A1) by filing OA No.29/97 before this Tribunal on the ground that it includes candidates of the reserved category in excess of the quota meant for them, as such names of the applicants in that OA including the present applicant were not included in the panel because representation of the members belonging to reserved category was made in excess of the quota meant for them. It may be stated here that other 3 applicants in OA No. 29/97 have also filed separate OA No.390/2000 in which the claim of the applicants therein was that once their names have been interpolated in the panel dated 9.1.97 vide belated order dated 5.1.1999, which panel was prepared on the basis of supplementary examination held in respect of 7 persons including 3 applicants, it was not permissible for the official respondents to deny them promotion on the pretext that the original panel issued on 9.1.97 to be effective from 7.1.97 has expired on 6.1.99. This Tribunal disposed of these two OAs by common order dated 2.2.2001 (Ann.A5) with the following directions:-

“(i) The official respondents are directed to grant promotion to the applicants in O.A. No.390/2000 on the basis of panel dated 9.1.97 with effect from the date their immediate junior candidate in the said panel were promoted with all consequential benefits.

ii) The official respondents are also directed to re-check the quota for SC and ST candidates in terms of rules and the law laid down by the Apex Court in the cases mentioned in the preceding paragraphs and take further action accordingly."

2.1 Now the applicant has filed this OA again thereby praying modification in the panel dated 9.1.97 for promotion to the post of Head TTE/Trains Conductor/Head TC in the pay scale of Rs. 5000-8000 by inserting name of the applicant at appropriate place and respondents be further directed to give promotion to the applicant in the pay scale of Rs. 5000-8000 with all consequential benefits.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, it has been stated that the present OA is barred by principles of res-judicata as the applicant has earlier challenged the panel/order dated 9.1.97 by filing OA No. 29/97 and Contempt Petition No 27/2002. Both the OA and the Contempt Petition were decided on 2.2.2001 (Ann.A5) and 17.1.03 (Ann.A9) respectively. The directions of the Tribunal has earlier been complied with and now the applicant has challenged the order dated 9.1.97 by filing the present OA. Thus, the same is barred by principles of res-judicata. On merit, it has been stated that though the applicant has qualified the written test but could not qualify the interview. The applicant could not obtain

qualifying marks for empanelment in the panel, so his name was not included in the panel for promotion. It is further stated that as per order dated 31.7.1997, the employees who have qualified the selection test and their names were published in the panel dated 9.1.1997 were given promotion. It is further stated that in order to comply with the interim order in OA No. 29/97 following two SC/ST candidates could not be given promotion. They were not promoted as the Hon'ble Tribunal regarded their quota of promotion respectively of 15% and 7 $\frac{1}{2}$ % in excess of prescribed quota for them. The name of the employees are as follows:

SC - Sh. Ganpat Lal

Sh. Rajesh Kumar

ST - Sh. Seduram Meena

Sh. Toofan Singh Meena

The name of the applicant was not there in the panel dated 9.1.97 as he could not qualify the selection test. The respondents have also indicated the panel position which was prevailing prior to the decision rendered by this Tribunal in OA no.29/97 and 390/2000 and the panel position after implementation of the judgment dated 2.2.2001.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

5.1 We are of the view that the applicant is not entitled to any relief for more than one reason. Firstly, it is not disputed that the applicant has earlier filed OA No.29/97. The challenge in that OA was regarding panel dated 9.1.97, whereby name of the applicant does not find mention, on the ground that name of the applicant and other persons were not included in the panel because representation of the members belonging to the reserved category was made in excess of the quota prescribed for them. As already stated above, this Tribunal while disposing of the OA vide order dated 2.2.2001 has directed the respondents to re-check the quota for SC/ST candidates in terms of rules and law laid down by the Apex Court and take further action accordingly. It is further clear from the material placed on record that, pursuant to the direction issued by this Tribunal vide order dated 2.2.2001 (Ann.A5) the applicants in OA No. 390/2000 who were also applicant in OA No.29/97 were promoted vide order dated 23.2.2001 except the present applicant in whose favour there was no direction that he be also given promotion from the date his immediate junior candidate in the said panel was promoted with consequential benefits. It is further borne out from the record that on the basis of the judgment dated 2.2.2001 rendered by this Tribunal fresh exercise was

undertaken by the respondents. The provisional seniority list in the grade of Rs. 4000-6000 was published and made final after considering objections of the affected parties. On the basis of the seniority list so prepared, certain persons belonging to reserved category were demoted which resulted in filing of two OA Nos. 617/2001 and 438/2000. In these OAs the challenge was that the vacancy of SC/ST has not been correctly worked out in terms of the judgment in OA No.29/97, besides the point that they be treated as regularized from retrospective date on the basis of panel dated 9.1.97 when the promotion was granted to general category candidates but the applicants could not be promoted/their services not regularized because of the interim direction issued by this Tribunal on 17.1.97 in OA No.29/97. This Tribunal after going through the material placed on record disposed of these OAs vide order dated 13.9.2002. Thus, the contention of the applicant that the respondents have not carried out the directions issued in OA No.29/97 vide order dated 2.2.2001 and has not re-checked quota meant for SC/ST candidates and taken further action regarding promotion, cannot be accepted.

5.2 That apart, this issue is irrelevant for the purpose of disposal of this OA. The respondents have categorically stated that name of the applicant cannot be interpolated in the panel dated 9.1.97 as he could not obtain qualifying marks for empanelment in the

panel for promotion. Thus, the question whether vacancy for ST/SC candidate has not been worked out correctly in terms of the judgment of this Tribunal dated 2.2.2001 passed in OA No.29/97, is of no consequence so long as the applicant has not obtained the qualifying marks for his empanelment to the post of Head TTE in the scale of Rs. 5000-8000. As already stated above, the case of the applicant in this OA is confined only to his inclusion in the panel dated 9.1.97 which is based only on the ground that his name could not be inserted in the said panel because excess reservation was made applicable to the reserved category and not on the ground that though he has passed the written test, he could not have been failed in the interview. In case the applicant was aggrieved by his non-inclusion in the panel dated 9.1.97 on the ground that he has not passed the selection test, it was open for the applicant either to amend this OA thereby making challenge on this ground or he could have withdrawn this OA with liberty reserved to him to file substantive OA. The applicant has not availed any of the modes available to him under law. Thus, even if the contention of the applicant is accepted that in earlier OA, whereby challenging the same panel viz. panel dated 9.1.97, he was not aware that his name has been excluded on the ground that he has not qualified the selection test and as such he could not raise this ground in earlier OA and the challenge in the earlier

OA was made on the bona-fide belief that his name could not be included in the panel dated 9.1.97 because promotion was made in favour of the reserved category in excess of the quota and as such this OA does not constitute res-judicata, we are of the firm view that so long as the applicant does not challenge his non-selection and empanelment for the post of Head TTE/Trains Conductor/Head TC in the scale of Rs. 5000-8000 on any permissible ground, this Tribunal cannot go into that question. As stated above, this is not the case of the applicant in this OA. This OA is confined only on the ground that his name in the panel dated 9.1.97 could not be included because of excessive reservation to the members belonging to the reserved category and in case the vacancy position of the SC/ST for the aforesaid category is determined in the light of the decision rendered by this Tribunal in OA No.29/97, the applicant is entitled for promotion and his inclusion in the panel dated 9.1.97 at appropriate place.

5.3 For the foregoing reasons, we are of the view that the applicant is not entitled to any relief especially when the applicant has not challenged his non-inclusion in the panel dated 9.1.97 on the ground that he has been wrongly failed in the interview though he has passed the written test and ~~has also~~ ^{fairly} in the interview.

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

— S.R.
(G.R.PATWARDHAN)

Member (A)

— M.L.C.
(M.L.CHAUHAN)

Member (J)