

① ②

**Central Administrative Tribunal
Jabalpur Bench**

OA No.503/05

Jabalpur this the 28th day of April 2006.

C O R A M

Hon'ble Dr.G.C.Srivastava, Vice Chairman

Hon'ble Smt.Meera Chhibber, Judicial Member

Amar Deo Singh

S/o Shri Kuldeep Singh

Railway Service Technician Grade I

Itarsi.

R/o Railway Quarters No.MAP

119, Bangla

Itarsi (M.P.).

Applicant.

(By advocate Shri Nilesh Kotecha)

Versus

1. Union of India through
Railway Board
Ministry of Railways
New Delhi.
2. General Manager
West Central Railway
Jabalpur Zone
Jabalpur.
3. Divisional Railway Manager
(Personnel) Bhopal (M.P.)
4. Senior Divisional Mechanical
Engineer, West Central Railway,
Bhopal (M.P.).

Respondents.

By advocate Shri M.N.Banerjee)



ORDER**By Smt. Meera Chhibber, Judicial Member**

By this OA, the applicant has challenged the order-dated 19.4.2005 (Annexure A4) whereby some persons have been placed on select panel but the applicant's name did not figure in it. He has sought a direction to the respondents to hold the exam again and select the petitioner as he belongs to the general category and he had performed in the examination of JE-Grade II very well.

2. It is stated by the applicant that he joined the respondent department as Khalasi in the year 1983 and by way of subsequent promotions, he became Technician Grade I on 30.6.2004. Respondents issued a notification on 29.10.2004 for filling up 5 posts of Junior Engineer Grade II in the pay scale of Rs.5000-8000 in the departmental quota of 25%. The persons working in Carriage and Wagon Department as S.C.M./Mist./Senior Technician Grade I & II were eligible. The minimum qualification was matriculation. Since the applicant was eligible, he applied for the same and did very well in the examination.

3. The grievance of the applicant is that though in the notification 5 posts were advertised, 3 posts were required to be filled by general category - one from Scheduled caste and one from Scheduled Tribe, but as per the declared panel, 2 posts have been filled from amongst SC candidates, which is not only contrary to the basic notification but also contrary to the Constitutional mandate as they could not have given the post meant for general category to the Scheduled Caste over and above their reserved number of posts.

4. Respondents have opposed the OA. They have submitted that the applicant participated in the written test held on 29.1.2005 but he could not pass the examination. Therefore he has no right to challenge the select panel. Even then they explained that one Dharendra Nath (SC) was the senior most candidate who applied with reference to the



notification dated 20.10.2004 and secured more than 60% marks in the selection and cleared the selection on general standard. Therefore, he was not selected by giving the benefit of SC but he has been selected on the basis of his performance on the same standard as that of general category. They have thus submitted that there is no merit in the OA, same may, therefore, be dismissed.

5. We have heard both the counsel and perused the pleadings as well. Since the counsel for the applicant strenuously argued that no records have been produced nor the result was declared by the respondents, we in order to satisfy ourselves had directed the counsel for the respondents to produce the original records by 27.4.2006. Respondents have produced the records on 26.4.06 which shows applicant couldn't even clear in the written examination as he got less than 60% marks which were the minimum marks for passing in the written test whereas Dhirendra Nath had secured more than 60% marks and was at the top in the seniority list. It is thus clear that he was selected in normal course by competing with general candidates without getting any relaxation though he belongs to SC category. At this juncture, it would be relevant to refer to Railway Board's letter dated 20th June 2003 which clarified the doubts raised by some of the Zonal Railways on the question of reservation in promotion of SC/ST candidates promoted on their own merit. In the said letter it was clarified that "in selection posts, SC/ST candidates who are selected by applying the general standard and whose names in the select list/panel appear within the number of unreserved vacancies are to be treated as selected on their own merit". It is with reference to this letter that the respondents have explained as to why Sh. Dhir^endra Nath who is otherwise an SC candidate was promoted against the general vacancy. They have categorically stated that the said Dhirendra Nath had secured more than 60% marks in the selection, meaning thereby that he had qualified the test by competing with the general candidates on his own merit, which fact is proved by the records also. Therefore, it cannot be said that the post meant for UR has been filled by the SC

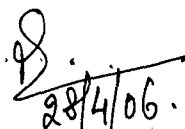


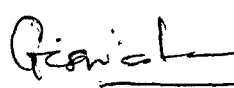
(4)

candidate illegally. Since he was promoted without getting any benefit of relaxation as SC and was senior most in the seniority list, he was promoted against UR post in a normal manner and didn't consume reserved point. On the other hand, it is seen from the records that the applicant had failed in the written examination. Since applicant had not even qualified in the written test, he has no locus to challenge the promotion of Sh. Dharendra Nath, who is a selected candidate. Even otherwise it is settled law that no adverse orders can be passed against any person at his back. In this case, though applicant has sought quashing of the select panel but he has not even impleaded those persons as respondents, who are likely to be affected, in case the relief as sought was to be granted. Therefore, this OA is liable to be dismissed on this ground also.

6. In view of above discussion, we are satisfied that the applicant cannot claim the relief as prayed by him as he was not even able to clear the examination which was a pre-condition for promotion to the post of Junior Engineer.

7. In view of the above findings, this OA has no merit. The same is accordingly dismissed. No costs.


28/4/06.
(Smt. Meera Chhibber)
Judicial Member


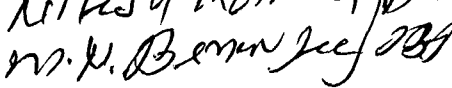

(Dr. G.C. Srivastava)
Vice Chairman


aa.

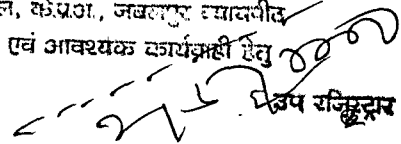
पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पटिलिपि जल्ले दिस:-

- (1) सचिव, उच्च न्यायालय, जल्ले दिस:-
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यर्प श्री/श्रीमती/कु.....के काउंसल
- (4) न्यायालय, के.प्र.अ., जबलपुर न्यायाधीश सूचना एवं आवश्यक कार्यवाही हेतु


Nitesh Kotecha

M. K. Berman


2-5-06


अध्यक्ष न्यायालय