

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 1149 of 2004

Indore, this the 17th day of Nov. 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

M.L. Golan & 4 Ors. Applicants

(By Advocate – Shri S. Paul)

Versus

Union of India & 2 Ors. Respondents

(By Advocate – Shri M.N. Banerjee)

ORDER

By Madan Mohan, Judicial Member –

By filing this Original Application the applicants have claimed the following main reliefs :

“(ii) set aside the order dated 27.7.2004 Annexure A-1,

(iii) upon holding that the decision of not seeking de-reservation dated 27.7.2004 is bad in law, command the respondents to send an appropriate proposal for de-reservation of the posts in question within a stipulated time with a further direction to the respondents to consider and grant it within a time framed which is deemed fit by this Hon'ble Tribunal. In the event, the applicants are found to be suitable, they be directed to be promoted from the date the other selected candidates of the panel were promoted alongwith all consequential benefits.”

2. The brief facts of the case are that the applicants are presently working in the grade of Rs. 7450-1150/- in the Civil Engineering Department. All the applicants were eligible to be considered for promotion to the post of Assistant Engineer which is a Group-B post and carries the pay scale of Rs. 7500-12000/-. All the applicants were eligible to be considered for promotion to the post of Assistant Engineer pursuant



to the notification issued by the respondent dated 26.12.2002. The applicants name find place in the list of eligible candidates and accordingly they were permitted to appear in the written test on 1.2.2003 and 8.2.2003. The result of the written test was published on 27.2.2003 whereby 65 candidates were declared successful in the said examination. All the applicants passed the written examination. They were further subjected to viva voce test conducted on 1/2/3.7.2003. A panel for promotion to Group-B post in Civil Engineering Department was published on 15.7.2003, whereby 21 candidates were brought into the said panel. This panel shows that 7 SC and 1 ST candidates are empanelled in the general category list of 21 candidates. One post of general category, 6 posts of SC and 6 posts of ST are kept vacant due to non-availability of reserved category candidates in the reserved category. Thus, out of total vacancy of 34, 22 general vacancies are filled up and 6 SC and 6 ST are lying vacant. All the applicants belonged to the general category. The safety category post cannot be kept vacant and are required to be filled up forthwith. The Railway Board issued circular to this effect dated 9.1.2004 whereby the need to de-reserve the reserved category vacancies in the event of non-availability of reserved category candidates for whatever reasons is reiterated to ensure the safety of train operation and achievements of safety and targets. The remaining vacancies of SC & ST i.e. 6 SC and 6 ST should have been de-reserved immediately and should have been filled up through general category candidates who have passed the written test and viva voce. The applicants submitted representation on 6.8.2003 but it could not fetch any result. They have filed OA No. 274/2004 in this Tribunal and the Tribunal vide order dated 26.5.2004 (Annexure A-6) has directed the respondents to consider and decide the representation of the applicants. However, the respondents did not decide the representation of the applicants and issued the promotion orders. The applicants again filed another OA No. 538/2004 but by that time the impugned order dated 27.7.2004 (Annexure A-1) was passed by the respondents and hence, the subsequent OA was decided as infructuous.



The prayer of the applicant for de-reservation was rejected solely on the ground that CPO did not find it absolutely necessary. This finding is not based on correct facts and material on record and is based on his whims and fancies. Feeling aggrieved with the action of the respondents the present Original application is filed.

3. Head the learned counsel for the parties and carefully perused the pleadings and records.

4. It is argued on behalf of the applicants that they succeeded in the written test and viva voce test for promotion to the post of Assistant Engineer which is a Group-B post. The respondents have promoted only 21 candidates and the rest vacancies out of 34 are remaining vacant. The posts of reserved categories are kept vacant due to non-availability of reserved category candidates. According to the various circulars and instructions issued by the Railway Board, the safety category post cannot be kept vacant and are required to be filled up forthwith. The learned counsel for the applicants has drawn our attention towards Annexure A-4 dated 9.1.2004 in which it is clearly mentioned that there is a ban on de-reservation of reserved vacancies. However, since the reserved vacancies in safety category cannot be kept vacant due to safety of train operations, achievement of production target etc. the procedures laid down vide Board's letter dated 11.5.1999 may be followed. He has also drawn our attention towards Annexure A-5. The applicants submitted representation but the respondents did not decide the same. They filed OA No. 274/2004, whereby the Tribunal directed the respondents to decide the representation of the applicant vide order dated 26.5.2004. But instead of deciding the representation they have issued promotion orders and the applicants again filed an OA No. 538/2004. During the pendency of this OA the respondents issued the order dated 27.7.2004 (Annexure A-1). Hence, the subsequent OA No. 538/2004 rendered infructuous on passing of the impugned order dated 27.7.2004. The respondents have not



followed the circulars/policies/instructions issued by the Railway Board from time to time. Hence, this order is apparently illegal and untenable and this OA deserves to be allowed.

5. In reply the learned counsel for respondents argued that 21 employees were found suitable & placed on panel published on 15.7.2003. Subsequently, due to finalization of pending DAR case of Shri R.K. Raj he has been placed on panel vide letter dated 23.3.2004 as he was found suitable in the aforesaid selection but could not be empanelled due to pending DAR case. Thus in all total 22 candidates have been found suitable in the said selection against general posts and revised panel of 22 candidates was published vide letter dated 23.3.2004. Out of the said empanelled 22 candidates against general posts there were 13 general, 8 SC and 1 ST candidates. The vacancies of 6 SCs and 6 STs remained unfilled due to non-availability of further suitable SC/ST candidates in the said selection. It is further submitted by the respondents that there is no relaxation permissible for the said posts, being safety posts. The competent authority has correctly decided not to refer the matter to Board for de-reservation as in his view, it is not required to do so and there was no exigency of service to refer for de-reservation. The applicants cannot demand to use the discretion in their favour and the said decision cannot be questioned by the applicants in this OA. Our attention is drawn towards the OM dated 11.5.1999 issued by the Railway Board in this regard Annexure R-1. There was no justification to send the proposal to Board as required to process for de-reservation as, above steps were not exhausted and also the selection against LDCE quota for 14 vacancies were also initiated vide notification dated 20.1.2003 which was finalized vide panel dated 30.7.2004. In the said selection 11 candidates i.e. 9 general, 2 SC and nil ST were empanelled against 10 general, 2 SC and 2 ST vacancies. Subsequently another selection against LGS quota was initiated vide notification dated 1.12.2004 for 24 posts including 19 general, 2 SC and 3 ST and the same has also been finalized vide panel



dated 4.7.2005 and 18.7.2005, wherein 16 general candidates have been empanelled and no SC/ST candidates were found suitable for empanelment. A fresh notification dated 10.6.2005 for 10 posts i.e. 8 General, 1 SC & 1 ST against LDCE quota has also been initiated which is under process. There was no reasonable justification to fill up the vacancies of SC/ST by general candidates by de-reserving the same, so the competent authority has rightly used his discretionary powers by not recommending the case to Board for de-reservation. Hence, the action of the respondents is perfectly legal and in accordance with the rules and law and the OA deserves to be dismissed.


6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, we find that according to the OM dated 11.5.1999 (Annexure R-1) it is clarified that in cases where de-reservation is considered absolutely necessary and justified on the ground of safety of train operations, achievement of production target etc., proposals for de-reservation may be submitted to Board for consideration. Such proposal will be considered by the Board on merit as per extant procedure. We have also perused the letter dated 6.1.2004 (Annexure A-4) filed on behalf of the applicant in which it is mentioned that presently there is a ban on de-reservation of vacancies. However, since the reserved vacancies in safety category cannot be kept vacant due to safety of train operations, achievement of production targets etc, the procedures laid down vide Board's letter dated 11.5.1999 may be followed. In this letter dated 6.1.2004 (Annexure A-4) reference of the RBE letter dated 11.5.1999 (Annexure R-1) is clearly mentioned. It is also mentioned that the authorities concerned shall send the proposals for de-reservation to the Board if it is considered apparently necessary and justified. Hence, the Tribunal or Court cannot direct the respondents in this regard as it is their internal matter to decide whether the posts belong to safety category or not. We have perused the impugned order dated 27.7.2004 (Annexure A-1) and find that it is a very detailed and speaking order and the directions

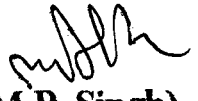


given by the Tribunal are also considered. It is mentioned in paragraph 8 that "[I] find that, the competent authority has to use discretionary powers for recommending the case to Board for de-reservation as stated in para 7.2 above, where ever feel absolutely necessary. After considering all the aspects of the case with regard to recommending the case to the Railway Board for de-reservation of post of AENs the competent authority has decided not to recommend the proposal to Railway Board". The said impugned order cannot be said to have been passed beyond the jurisdiction and powers. It is passed in accordance with the rules and instructions of the Railway Board.

7. Considering all the facts and circumstances of the case we are of the considered view that the applicants have failed to prove their case and this OA is liable to be dismissed. Accordingly, the same is dismissed. No costs.

8. The Registry is directed to supply the copy of memo of parties to the concerned parties while issuing the certified copies of this order.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

"SA"

पृष्ठान्तर्गत सं. ओ/व्या..... जयपुर, दि.....
प्रतिनिधि...
(1) सचिव, जयपुर...
(2) अध्यक्ष, जयपुर...
(3) प्रमुख, जयपुर...
(4) बंगलाल, जयपुर...
सूचना एवं आवश्यक कार्यवाही हेतु

उप-निर्देश

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