

Central Administrative Tribunal
Jabalpur Bench

OA No.769/04

Indore, this the 17th day of August, 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman

Hon'ble Mr.Madan Mohan, Judicial Member

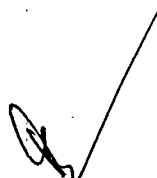
1. Alexius Soreng
S/o Pitrush Soreng
Senior SO Accounts
764-B Construction Colony
Bilaspur.
2. Bilash Dharua
S/o Shib Prasad Dharua
Senior SO Accounts
826-B Construction Colony
Bilaspur.

Applicants

(By advocate Shri G.S.Ahluwalia)

Versus

1. Union of India through
General Manager
SEC Railway
Bilaspur.
2. General Manager
South Eastern Railway
11 Garden Reach
Kolkata.
3. Financial Advisor and Chief Accounts Officer
S.E.Railway
Garden Reach
Kolkata.
4. Financial Advisor and Chief Accounts Officer
SEC Railway
Bilaspur
5. Marcel Jojo
Senior SO Accounts
FA& CA



SEC Railway
Bilaspur.

Respondents

(By advocate Shri Vivek Verma on behalf
of Shri P.S.Koshy)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicants have sought the following reliefs:

- (i) Direct the respondents to treat promotion of the applicants from the date they completed minimum three years service as Section Officer (Accounts) with all financial and service benefits as per their service rules connect to the Senior Section officer (Accounts) posts from date 1.2.2001.

2. The brief facts of the case are that the applicants who belong to Scheduled Tribe category joined the Railway service as Accounts Clerk on 1.5.87 and 29.12.89 respectively. After passing the departmental examination, they were promoted as SO (Accounts) in 1996 and then as Senior SO (Accounts) in 2004. The Senior Section Officer (Accounts) is a non-selection post which is filled up by promoting SO (Accounts) who have completed three years in accordance with Para 171 of IREM. In the provisional gradation list published on 1.1.2001, the total number of candidates promoted as Senior Section Officer (Accounts) was 499. There should have been 37 posts for ST category but only 24 employees of such category were promoted as per the list, leaving behind 13 posts vacant, which were filled up by general candidates. This matter came to light to the applicants when their promotion order as SO (Accounts) was issued on 10.2.2004 after a lapse of 7 years. The applicants in the meantime submitted representations but the authorities turned a deaf ear. In spite of the fact that vacancies were available on 1.2.99, the authorities withheld the promotion of the applicants, causing irreparable loss to the applicants. Hence this OA is filed.




3. Heard learned counsel for both parties. It is argued on behalf of the applicants that only 24 posts were filled up leaving behind 13 posts vacant which were filled up by general candidates. He further argued that the 8 employees promoted on their own merit and on seniority basis should have been excluded from the total number of ST employees promoted on 31.12.99. Learned counsel has drawn our attention to AIR 1994 SC 2408 – Vishwas Anna Sawant Vs. Municipal Corporation of Greater Bombay in which the Hon'ble Supreme Court has held that "Promotion – High Court directing that an employee be given promotion – Relief granted to him only on his initiating contempt proceedings – another employee standing in same position – Entitled to promotion when he was not declared unfit for promotion by selection committee." Our attention is further drawn towards AIR 1995 SC 1371 – R.K. Sabharwal Vs. State of Punjab in which the Apex Court has held that "Promotion – Reservations for Scheduled Casts and Backward classes – Percentage fixed for particular cadre – cannot be varied or changed simply because some of members of backward class have already been appointed/promoted against general seats." Learned counsel further argued that the respondents have not decided the representations of the applicants Annexure A7 & A8 so far.

4. In reply, learned counsel for the respondents argued that the applicants have claimed their entitlement for promotion in next higher grade against reserved quota as per the provisional gradation list published by SE Railway showing seniority position as on 1.1.2001. Vide letter-dated 8.5.2001; objections were called for to be supplied within one month. However, the applicants did not appeal during the material time or even within one year from such date. Provisional gradation list does not contain cadre strength. It shows only the basis of seniority and individual seniority position. As per office order dated 12.1.99, the total number of posts of cadre of SO (Accounts) are 594. The total number of posts is bifurcated into two categories i.e. Senior SO (Accounts) and SO (Accounts) in the ratio of 80% for SSO



and 20% for SO. Hence the total number comes to 475 (80%) and 119 (20%) respectively. Based on the total number of sanctioned posts in the category/post, the number of allowable reserved posts should be arrived at by applying the percentage of 15% for SCs and 7.5% for STs. The whole details are specifically mentioned in the return in paras 4.4 to 4.6. While calculating reserved posts for ST category, the guidelines issued by the Estt.S.No.14/96 was followed and the total posts came to 24 only for ST category. The applicants did not approach the authorities in proper time to redress their grievance

5. After hearing the learned counsel for both parties and carefully perusing the records, we find that the argument advances on behalf of the applicants is that only 24 posts were filled up leaving behind 13 posts vacant, which were filled up by general candidates. In this regard, the total number of posts comes to 499 on 1.1.2001 and 8 candidates who were promoted on their own merit and on seniority basis should have been excluded from the total number of ST employees. On the other hand, the respondents have mentioned that the total number of posts is bifurcated into two categories i.e. Senior SO (Accounts) and SO (Accounts) in the ratio of 80% for SSO and 20% for SO. Hence the total number comes to 475 (80%) and 119 (20%) respectively. Based on the total number of sanctioned posts in the category/post, the number of allowable reserved posts should be arrived at by applying the percentage of 15% for SCs and 7.5% for STs. They have also mentioned in their return that while calculating reserved posts for ST category, the guidelines issued by the Estt.S.No.14/96 was followed and the total posts came to 24 only for ST category. According to the arguments of both sides, this matter seems to be a matter of calculation of posts. According to the percentage of reservation etc. This exercise is to be done by the respondents themselves. It is seen that the representations of the applicants Annexures A7 & A8 have not been disposed of so far by the respondents.



6. Considering all facts and circumstances of the case, we direct the respondents to consider and decide the representations of the applicants Annexure A7 & A8 strictly in accordance with rules within a period of three months from the date of receipt of a copy of this order.

7. The OA is disposed of as above. No order as to costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

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

प तिलिपि चरु नितः -

(1) सचिव, उच्च न्यायालय, जयपुर

(2) आदेशक श्री/श्रीमती/शु.....के काउंसल

(3) प्रत्यक्षी श्री/श्रीमती/शु.....के काउंसल

(4) कोषपाल, कोषा, जयपुर

सूचना एवं आवश्यक कार्यवाही हेतु

उप सजिस्टार

G.S. Ahluwalia BN BSS

P.S. Kashy BN BSS

30/8/05