

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 726 of 2003

On this the 8th day of December, 2004

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

Ashok Prasad, aged about 41 years,
S/o. late Shri Jagat Rai, R/o. 212,
Karamveer Nagar, Piplani, Bhopal. ... Applicant

(By Advocate - Shri M.K. Verma)

versus

1. Union of India, through
General Manager, West Central
Railway, Jabalpur (MP).
2. DRM West Central Railway,
Bhopal Division, Bhopal (MP).
3. A.P. Jhode, Sr. TTE, Itarsi,
C/o. DRM West Central Railway,
Bhopal Division, Bhopal (MP).
4. Raju Batham, Sr. TTE, Care of
DRM, Bhopal (MP). ... Respondents

(By Advocate - Shri M.N. Banerjee)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has claimed the following main reliefs :

"8.1 to summon the entire record pertaining to the process of promotion to the post of conductor in the pay scale of Rs. 5000-8000/-,

8.2 to direct the respondent department to promote the applicant with effect from the date his juniors have been promoted to the post of conductor,

8.3 to direct the respondent authorities to grant applicant all consequential service benefits including his seniority vis-a-vis to his juniors in the interest of justice,

8.4 to hold that action on part of respondent department of flouting Para 214 of IREM to grant benefit to respondent No. 3 & 4 is per-se illegal and had in the eyes of law,

8.5 to declare the last portion of para 214(C) (i) IREM as illegal to the extent it requires fulfillment of 2 years service at the time of actual promotion, in the interest of justice."

DR

2. The brief facts of the case are that the applicant is presently working as Senior Travelling Ticket Examiner (for short Sr. TTE). From this post the next promotion is to the post of Conductor in the pay scale of Rs. 5000-8000/-. The post of Conductor is a non-selection post and the procedure contained in Para 214 of IREM provides criteria for promotion to the non-selection post. The respondents Department just to give benefit to some members of Railway Workers Union have not cared to follow the principles laid down in para 214 of IREM and against 36 vacancies which included 28-Gen., 5-SC and 3-ST, have called upon 90 candidates, whereas as per para 214 only 36 candidates who have completed two years of regular service in the immediate lower grade were required to be called for the test to be conducted by the Department. The written test was conducted by the Department and the applicant has duly cleared the test placing himself at serial No. 10 in the merit list and keeping himself at serial No. 1 in the category of ST. At the time of declaration of the result the applicant was on leave with effect from 4.5.2003 to 20.5.2003. During the period when the applicant was on leave the respondent Department had published the result who have qualified the written on 12.5.2003 and had called those candidates/for interview to be held on 15.5.2003. The respondents have issued the promotion order on 11.6.2003. Since the applicant was not interviewed by the Department and there was a specific provision of grant of opportunities of interview to each and every person, who has cleared the test, the applicant requested the respondent authorities to grant him an opportunity to appear in interview vide his application dated 22.5.2003. The respondents have already selected 3 candidates from ST category for promotion to the next high-



er post of Conductor. Moh d. Nasir Khan was the only person out of three candidates selected of ST category who had completed two years of service in the immediate lower grade and rest of two candidates i.e. respondents Nos. 3 & 4 have not completed two years of requisite service in the immediate lower grade. The applicant was called for interview vide letter dated 14.7.2003. He answered all the questions correctly in the interview and was sure of his success in the interview, but to the utter misfortune of the applicant ^{he} was declared unsuccessful in the interview. On 11.6.2003 only one ST candidate i.e. Mohammad Nasir Khan who completed the requisite tenure of service was promoted by the respondents and have delayed the promotions in respect of other persons. When the respondent No. 4 completed the requisite tenure of service he was promoted on 19.9.2003. The third post of ST category has yet not been filled up by the Department. The third person selected by the Department is the respondent No. 3 who will be completing two years of requisite service to appear in the test in the month of January & February-2004. The respondents just to give illegal benefit against the rules to respondent No. 3 have not passed the promotion order in respect of respondent No. 3. The action of the respondents is against the law and hence, this Original Application is filed.

3. Heard the learned counsel for the applicant and perused the records carefully.

4. The learned counsel for the applicant argued that the post of Conductor is a non-selection post and according to para 214 of IRM certain procedure was required to be followed by the respondents. These procedures include i)



the staff in the immediate lower grade with a minimum of two years service in that grade was only required to be considered and ii) as per para 214(C) (ii) the number of eligible staff called for consideration should have been in equal number of existing vacancies plus those anticipated during next four months due to normal wastage i.e. retirement, superannuation, death & voluntary retirement. These procedures were not followed by the respondents. The respondents against 36 vacancies have called 90 candidates, which is against the rules. The applicant proceeded on leave from 4.5.2003 to 20.5.2003. Earlier to it he was declared successful in the written test but the respondents conducted the interview during this period of leave of the applicant and hence the applicant was not interviewed. He moved an application for his interview which was considered later on/but he was declared unsuccessful in the interview though he has answered all the questions correctly. Hence, the applicant is entitled for all the reliefs claimed.

5. In reply the learned counsel for the respondents argued that the post of Conductor is a selection post and for which para 215 of the IREM applies. Even according to the arguments of the applicant if para 214 is accepted then in para 214(C) (i) it is mentioned that the condition of two years service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration. In its clause ii) it is further mentioned that "the number of eligible staff called for consideration should be equal to the number of existing vacancies plus those anticipated during the next four months due to normal wastage (i.e. retirement/superannuation), likely acceptance of request for voluntary retirement, staff approved to go on deputation to other units, staff already empanelled for



the ex-cadre posts, creation of additional posts already sanctioned by the competent authority, and staff likely to go out on transfer to other Railways/Division. Hence, the respondents have called 90 candidates for 36 vacancies. The learned counsel for the respondents has also drawn our attention towards para 215 of IREM wherein it is provided that the condition of two years service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration. The eligible staff upto 3 times the number of staff to be empanelled will be called for written and/or viva-voce test. The applicant was given opportunity to appear in the interview. As he was absent on the first date fixed for interview, he was called on an another date but he could not succeed in the interview. It is wrong to say that he answered all the questions correctly. The respondents Nos. 3 & 4 also faced the selection and by virtue of their good performance in written as well as in viva-voce test they were empanelled for the alleged post. Hence, the respondents have not committed any irregularity or illegality while conducting the selection.

6. After hearing the learned counsel for the both the parties and on careful perusal of the records, we find that the condition of two years service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration, as is provided in para 214 & 215 both. Para 214(c) (ii) provides as such :

"The number of eligible staff called for consideration should be equal to the number of existing vacancies plus those anticipated during the next four months due to normal wastage (i.e. retirement/superannuation), likely acceptance of request for voluntary retirement, staff approved to go on deputation to other units, staff already empanelled for the ex-cadre posts, creation of additional posts already sanctioned by the competent authority and staff likely to go out on

transfer to other Railways/Divisions."

The post of Conductor is a selection post and the respondents have not committed any irregularity or illegality in considering the promotions of the respondents No. 3 & 4 and in calling 90 candidates against 36 vacancies. All the action taken by the respondents were within the rules framed in IREM. As regards Para 214(c) (i) of IREM the applicant has sought relief to declare the last portion of this para as illegal to the extent it requires fulfillment of 2 years service at the time of actual promotion. This relief cannot be granted to the applicant because the applicant has not made out a case of discrimination. The applicant was also given the opportunity to appear in the interview by the respondents but he could not qualify the same. Merely contending that the applicant has answered all questions correctly cannot be accepted because he was not able to show us any malafide against the respondents regarding the result of the viva-voce test.

7. Considering all the facts and circumstances of the case, we are of the opinion that the applicant has failed to prove his case and the Original Application is liable to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman