

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 216 of 2001

Jabalpur, this the 28th day of July 2004

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

1. Bhagwan Singh aged about 47 years, S/o Shri Kishori Lal Thakur Divisional Commercial Inspector Central Railway Jabalpur, resident of 131, Kamla Nehru Nagar, Garha Road, Jabalpur(M.P.)
2. Hari Shanker Sigotiya aged about 56 years, S/o Shri Late Mool Chand Sigotiya, Divisional Commercial Inspector, Central Railway, Jabalpur, Resident of B-3, Triveni Vihar, Prem Nagar, Jabalpur(M.P.)

APPLICANTS

(By Advocate - Shri L.S. Rajput)

VERSUS

1. Secretary,
Ministry of Railways, (Railway-Board), Rail Bhawan,
New Delhi.
2. General Manager,
Central Railway,
Mumbai-CST(Maharashtra)
3. Divisional Railway Manager,
Central Railway,
Jabalpur(M.P.) 482001

RESPONDENTS

(By Advocate - Shri M.N. Banerjee)

O R D E R

By M.P. Singh, Vice Chairman -

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

"(a) Quash the impugned eligibility list (ANN.A-1) holding it to be illegal & against the rules.

(b) Direct the respondents to prepare a fresh eligibility list based on integrated seniority list(ANN.A-2) with correction if any & conduct the selection strictly as per rules.

(c) Direct the respondents to place the applicant No.2 at S.No.4 below Shri D.P. Sahu & above Shri B.L.Kori and also, applicant No.1 above Shri R.K. Saxena at S.No.6.

8(e) To direct the respondents to give pre-promotional training to the applicant failing which entire process of selection may be quashed in the interest of justice".

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2. The brief facts of the case are that the applicants are working in the grade of Rs.7450-11500 on regular basis w.e.f.1.3.1993. They are eligible for promotion to the next higher grade of Assistant Commercial Manager in the scale of Rs.7500-12000. As per Para 201(1) of the Indian Railway Establishment Manual, Vol.I, 1989, "all vacancies in Group 'B' are filled by promotion on the basis of selection of eligible Group 'C' employees and also on the basis of Limited Departmental Competitive Examination, wherever the scheme is in force". The applicants have contended that for ACM - a Group-B post of Commercial cadre, 70% vacancies are to be filled up by promotion on the basis of selection of eligible Group-C staff, and remaining 30% on the basis of LDCE. Against the 70% LGS quota, an integrated seniority list of staff of commercial Group-C, working in the grade of Rs.6500-10500 & above is drawn, which includes following categories-

- (i) Commercial Clerical/Inspectorial cadre;
- (ii) Ticket Checking cadre;
- (iii) Legal cadre (on option);
- (iv) Enquiry & Reservation Clerks;
- (v) Catering cadre; and
- (vi) Office clerical cadre of Commercial Deptt. (on option)."

2.1 On 8.12.2000, the respondents had earlier notified (10 Gen., 1-SC & 1-ST) 12 vacancies/ of ACM (Group-B) against 70% quota of LGS. The integrated eligibility list prepared by the respondents did not show the correct position of both the applicants. The applicant no.1 belongs to ST category whereas applicant no.2 belongs to SC category. However, on the representations filed by the applicants, the respondents have placed the applicants at the appropriate place in the integrated eligibility list which was published on 28.11.2002 (Annexure-A-19). On 28.11.2002 the respondents had notified only 11 vacancies (10 Gen, Nil SC, & 1 ST), as against 12 (10 Gen., 1 SC & 1 ST) notified earlier on 8.12.2000. According to the learned counsel for the applicants, the name of both the applicants ^{appear} at serial no.11 & 12 of the integrated

list. Therefore, they were otherwise eligible for being considered against the general vacancies. As per Railway Board's letter dated 15.12.1997 (R.B.E.No.174/97) "all eligible candidates from the reserved communities who are otherwise eligible and are likely to come under consideration for a post should be given special suitable pre-selection coaching by the Railway administration. The applicants have contended that the respondents have not given them the pre-promotional training, on the ground that there was no post reserved for SC candidate, and, therefore, it was not necessary to impart pre-promotional training to them. The contention of the learned counsel for the applicants is that pre-promotional training is mandatory. Moreover, earlier the vacancies notified by the respondents in the year 2000 were 12, and out of that, one was reserved for SC but as per the notification made on 28.11.2002, no post has been reserved for SC. In this regard, the learned counsel for the respondents has specifically stated that earlier the assessment of vacancies was made in 2000, and at that time keeping the existing position in view, 2 posts (one post each for SC and ST), were reserved. However, thereafter two candidates belonging to SC, under the another mode of recruitment i.e. 30% through LDCE, had been recruited in excess of their required number and, therefore, by taking over all view in the cadre of ACM (both 70% + 30% quota), SC category candidates were adequately represented.

3. The learned counsel for the applicants has also stated that as per the instructions issued by the Railways, candidates only/3 times the number of vacancies, are required to be included in the zone of consideration. In this case there were 11 vacancies and only 33 persons should have been included in the zone of consideration. However, the respondents have included 37 persons in the zone of consideration for 11 posts. In this regard, the respondents have stated that as per letter dated 10.9.1986 (copy filed

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along with the respondents reply dated 19.12.2003)" "the field of consideration for the Group 'B' selection should continue to be determined on a sliding scale as indicated in Board's letter No. E(GP)E1/1/18 dated 9.4.81". The said letter dated 10.9.1986 also stipulates that if the field constituted, includes employees who had failed twice in the earlier selections, a corresponding number of additional employees should be called for the selection. It is because of this letter, more than three times the number of persons were included in the zone. However, the learned counsel for the applicants has stated that the instructions contained in the letter dated 10.9.1986 have been superseded by the Railway Board vide instructions issued in 1989. According to the learned counsel for the applicants, the respondents have called 36 candidates (33 general + 3 ST) but by another letter dated 18.12.2002 (Annexure-A-25) they have further increased the number by adding 2 more names. Thus, the figure of 33 candidates is also not correct. The learned counsel for the applicants further submitted that the Railway Board's letter dated 10.9.1986, referred to above, is not in force after amendment of rules. The relevant Para 203.4 of the IREM, Vol.I, 1989 reads as under-

"203.4 Zone of consideration.- The number of employees to be called for the selection will be in accordance with the sliding scale in the order of seniority as shown below-

1. Vacancy - 5 employees.
2. Vacancies-8 employees.
3. Vacancies-10 employees
4. Vacancies and above - employees equal to three times the number of vacancies".

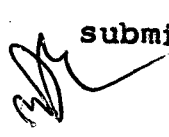
4. As regards pre-promotional training, the learned counsel for the applicants has stated that it is mandatory requirement and he has relied upon the judgment of Tribunal dated 5.8.2002 in OA No.638/2000 wherein the respondents had

This action of the respondents was cancelled the entire selection/upheld by this Tribunal in




bunch of cases (O.A.Nos.638/2000, 613/2000 & 262/2001). The learned counsel for the applicant has also contended that the reservation for SC & ST is required to be made separately in different modes of selection i.e. against 70% LGS quota and 30% IDCE quota. According to him, there is no such rule which provides that reservation of SC & ST should be determined with number of total strength of the cadre, even if there are different modes of recruitment. The learned counsel on our query as to whether such a provision exists in the brochure on reservation for SC & ST issued by the Department of Personnel & Training, has stated that no such provision exists. However, on the other hand, the learned counsel for the respondents submits that there is such a provision which is included in the instructions contained in brochure on reservation for SC & ST.

5. We have considered the rival contentions of both the learned counsel. The applicant has assailed the selection mainly on three grounds - (i) that the size of the consideration zone has been exceeded more than three times which is prescribed in Para 203.4 of the IREM. The learned counsel for the applicant has stated that the increase in the size of consideration zone on the basis of letter dated 10.9.1986 is no more in force as ^{instructions have} these been superseded by amendment in Para 203.4 of the IREM, 1989. The second ground taken by the applicant is about the pre-promotional training. He has stated that the pre-promotional training for SC/ST is mandatory requirement. He has relied upon the judgment of this Tribunal in O.As.638/2000, 613/2000 & 262/2001. The third ground taken by the applicants is with regard to non-reservation of vacancies for SC candidate. The learned counsel for the applicants has stated that in earlier notifications published in the year 2000 there were 12 vacancies (10 - gen, 1 - SC & 1 - ST). In the later notification of 2002 no vacancy was reserved for SC. He has submitted that the plea taken by the respondents that



after publication of the notification in 2000, two candidates belonging to SC category had joined under the 30% LDCE quota and therefore, there was no vacancy earmarked for SC in the notification of 2002, is not acceptable. He has stated that the reservation is to be made according to the different mode of recruitment i.e. the reservation is to be made separately against the 70% LGS quota and 30% LDCE quota. He submits that the contention of the respondents that reservation is to be made on the basis of total strength of the cadre, is not correct. We find that both the applicants have represented against their position in the integrated eligibility list. It was only in 2002 that the request of both the applicants was accepted and they were placed at appropriate place in the integrated eligibility list. Thereafter, a selection has been made in January 2003 on the basis of notification issued in October 2002. The respondents have notified 10 vacancies for general candidates and one for ST. The position of the applicant no.2, who belongs to SC, in the seniority list is at serial no.11. He has, therefore, competed against the general vacancies, as there were no vacancies reserved for SC candidates. As regards applicant no.1, who belongs to ST, he was given pre-promotional training. It was only in the case of applicant no.2 who belongs to SC no pre-promotional training was given. The contention of the learned counsel for the applicants that pre-promotional training is mandatory even if they compete for general vacancies is not correct. The judgment of the Tribunal relied upon by the applicants has been reversed by the Hon'ble High Court of Madhya Pradesh in Writ Petition No.5085 of 2002, Tajendra Singh & Ors. Vs. Union of India & Others decided on 7.5.2003 and the Hon'ble High Court has held as under -

"21. If such training is imparted with the sole avowed purpose to fill up the quota seats, if general candidates have competed in the examination and selection has been done in a fair manner there is no justification to cancel their appointments on the ground that SC & ST candidates were not given the




pre-promotional training which is to be given ^{to} SC & ST candidates as far as their quota posts are concerned. If they are found fit and meet the standard and come at par with the general categories they can be selected in the general category but to say that SC & ST employees have not been given pre-promotional training would vitiate the whole selection process is totally unacceptable. It is not mandatory to effect the selection process of the general categories after pre-promotional training. It surely ^{does} affect the selection for the posts meant for quota categories as that may not be filled up by the SC & ST categories who may not be able to compete the general categories.... We are only inclined to hold that the conclusion arrived at by the Tribunal that the terms and conditions of the circular are mandatory in nature is not correct as far as the general categories are concerned.

22. In view of the aforesaid analysis we are inclined to quash the order of the Tribunal and direct that the general categories candidates who were selected in their quota, their selection is valid and as far as the SC and ST categories are concerned they will be given pre-promotional training and thereafter they would be allowed to compete the examination".

From the aforesaid decision, it is quite clear that for competing against general candidates, no pre-promotional training is mandatory and, therefore, the plea of the learned counsel for the applicants in this regard is rejected.

6. As regards the zone of consideration, we have gone through the applicants' contention that persons who had failed twice in the earlier tests are also included in the later selection as per letter dated 10.9.1986, has been amended. He has not given any supporting evidence that this letter is not in force and has been amended in 1989. He has simply quoted the provisions of 203.4 of the IREM, 1989. According to us, the letter dated 10.9.1986 has not been amended and, therefore, there is no violation on the part of the respondents in calling the candidates for participating in the test who have failed twice earlier in the selection, in addition to candidates three times the number of vacancies.

7. As regards the over-all reservation, the learned counsel for the applicants has contended that the reservation has to be done ^{ne e} in accordance with different modes of selection and not on the basis of total strength of the cadre.



We find that as per the recruitment rules, the post of ACM in the scale of Rs.7450-11500 is required to be filled up by promotion only, out of which 70% vacancies are to be filled up on the basis of selection of eligible Group 'C' employees, and remaining 30% on the basis of LDCE, which is also a mode of promotion only. As per OM No.36021/7/75-Est. dated 25.2.76 issued by the Govt.of India, Department of Personnel and Administrative Reforms, reservations have been provided at 15% and 7 1/2 % of the vacancies for Scheduled Castes and Scheduled Tribes respectively in promotions made through LDCE in Group 'B', 'C' and 'D' post, and in promotions by selection from Group 'B', 'C' and 'D' posts, and from Group 'B' to the lowest rung in Group 'A'. In the present case also since the posts are required to be filled up through LDCE and on the basis of promotion by selection, reservation of 15% is required for the candidates belonging to SC category. These instructions have been further modified to the extent that with partial modification of the above mentioned OM, the reservation in posts filled by promotion under the existing scheme as indicated should be made applicable to all grades of services in which the element of direct recruitment, if any, does not exceed 70%, vide letter no.36012/17/88-Est. (SCT) dated 25.4.1989 issued by the Deptt.of Personnel & Training. Since, in the present case, all the posts are required to be filled by promotion and there is no element of direct recruitment, the instructions issued in 1976 hold good, and the contention of the respondents that there has to be over all 15% reservation taking into consideration both the modes (70% by selection + 30% by LDCE) is correct. Accordingly, the contention of the learned counsel for the applicants that the reservation has to be done in accordance with different modes of selection and not on the basis of total strength of the cadre of ACM, is without any merit and is rejected.

Contd.....9/-

8. In the result, for the reasons recorded above, the OA is without any merit and is accordingly dismissed, however, without any order as to costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

rkv.

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

पतिलिपि अवेधित:-

- (1) सचिव, उच्च न्यायालय दार एसोसिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल LS Rayput
- (3) प्रत्यक्षी श्री/श्रीमती/कु.....के काउंसल Mr Banjan
- (4) कंसलर, डेपू अ., जबलपुर न्यायापीठ
सूचना एवं आवश्यक कार्रवाई हेतु

6.8.04
अध्यक्ष न्यायाधीश

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