

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application 859 of 2000

Jabalpur, this the 7th day of April, 2004

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

Pooran Singh Driver
S/o Shri Man Singh, aged
about 46 years Bungalow
No. 16-DB, Railway Quarters
Bina

APPLICANT

(By Advocate - Smt. J. Chaoudhary)

VERSUS

1. Union of India through
General Manager,
Central Railway, Bombay V.T.
Mumbai
2. Divisional Railway Manager(P)
Central Railway
Bhopal

RESPONDENTS

(By Advocate - Shri N.S. Ruprah)

O R D E R

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the following main relief:-

"(1) To quash the panel of promotees to the post of Mail Driver Annexure A-VI or in the alternative the applicant be considered for the promotion to the post of Mail Driver."

2. The brief facts of the case are that the applicant was initially appointed on compassionate grounds as YKC on 29.9.1978. He was promoted to the post of Fireman Grade-II and thereafter further promoted as Diesel Assistant during 1982-83. He was officiating as Diesel Goods Driver from 1987 to 1990 and was posted at Bhopal as Goods Driver. According to the applicant, the promotion from Goods Driver to Passenger Driver is based on seniority-cum-merit and the applicant being the senior was found fit to be promoted as Passenger Driver and was working as Passenger Driver since 1995.

2.1 A charge-sheet was issued to the applicant on

17.3.1999. The applicant submitted a detailed reply. Thereafter vide order dated 22.4.1999 a penalty of stoppage of increment for two years without cumulative effect was imposed on the applicant.

2.2 According to the applicant, a list of selected candidates to fill the vacant posts of Passenger Driver was issued vide letter dated 2.3.2001. The name of the applicant did not find place in the list, although he cleared the selection test held on 10.1.2001 (Annexure-A-VIII). The grievance of the applicant is that he was not selected and instead his juniors were promoted as Mail Driver vide Annexures A-VI and A-VI(A). Aggrieved by this, he has filed this OA.

3. The respondents in their reply have stated that the OA is not maintainable because the applicant has not made all his juniors as parties. They have further submitted that the impugned order Annexure-A-VI has promoted as many as 31 Goods Drivers who were junior to the applicant. According to the respondents the selection for the post of Passenger Driver is done on the basis of seniority-cum-suitability. It is not mandatory that every senior should be selected. As many as 10 Goods Drivers, who were senior to the applicant, were not selected. Thus, the applicant cannot claim absolute right to be promoted only on the basis of his being senior to those who have been promoted. The respondents have admitted that the applicant was working as Passenger Driver on stop gap arrangements. The respondents have also admitted that 31 Goods Drivers who were junior to the applicant were promoted on 22.6.1999 vide Annexure-A-VI.

4. Heard both the learned counsel for the parties. The learned counsel for the applicant has stated that the applicant was found fit for the post of Passenger Driver and a certificate to that effect has been issued on 21.12.1995 (Annexure-A-I). She has also argued that since the post of Passenger Driver is a non-selection post and the promotion

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from the post of Goods Driver to the post of Passenger Driver is on the basis of seniority-cum-fitness and the applicant was also working as Passenger Driver, he should not have been superseded by his juniors and should have been promoted. According to her only minor penalty was imposed on the applicant and, therefore, this should not have come in the way of his promotion.

5. The learned counsel for the respondents on the other hand has contended that the certificate issued at Annexure-A-I to the effect that the applicant is fit to hold the post of Passenger Driver, is not issued by the competent authority and does not entitle him for promotion to the post of Passenger Driver. He can be promoted to the post of Passenger Driver as per rules. Since, there was a DE pending against him and his record was not upto the mark, he has not been promoted.

6. We have considered the rival contentions of the learned counsel of the parties. We have also perused the ^{impugned} records of the selection for the post of Passenger Driver. We find that in the impugned selection, 120 general category candidates, 9 SC candidates and 9 ST candidates were considered for promotion to the post of Passenger Driver. The said selection comprised of professional ability (50 marks); personality, leadership and expression (20 marks); and service record (15 marks). Out of the total 85 marks, the applicant got only 36 marks. The qualifying marks out of the total was 60% i.e. 51. As the applicant did not get 51 marks, he was declared unsuitable in the said selection. In the year 2001, there were 23 general vacancies, and no post of SC was there. Accordingly the applicant participated ⁱⁿ the selection as a general category candidate. He got 52 marks out of 100, which was less than the qualifying marks of 60%, hence the applicant was again declared unsuitable in the selection held in the year 2001.

7. As the applicant has been found unsuitable in both the selections, he is not entitled to get any relief from this Tribunal. It is now the settled legal position that having appeared in a test, one cannot question its validity after failing in the test (see: Om Prakash Vs. Akhilesh Kumar, AIR 1986 SC 1043).

8. In the result, the OA is bereft of merits and is accordingly dismissed. No costs.

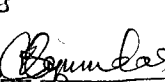

(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

rkv.

पृष्ठंकन सं ओ/व्या.....जबलपुर, दि.....

पतिलिपि जर्जित:-

- (1) सचिव, उच्च न्यायालय तह एरि कानून, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल Smt. J. Choudhary
- (3) प्रत्यक्षी श्री/श्रीमती/कु.....के काउंसल N S Ruprah
- (4) कंशपाल, के.प्र.अ., जबलपुर न्यायपीठ
सूचना एवं आवश्यक कार्यवाही हेतु 
उप रेजिस्ट्रार 12/4/04

Issued
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