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**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

01.02.2007

OA No. 54/2005 with MAs 156/2006 & 347/2006

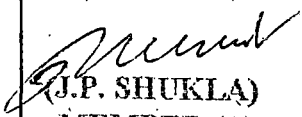
Mr. C.B. Sharma, Counsel for applicant.

Mr. S.P. Sharma, Counsel for respondents.

MA No. 347/2006 has been filed by the respondents thereby praying for condonation of delay in filing reply to the MA No. 156/2006. In view of the averments made in the MA, the MA is allowed. The reply filed to MA No. 156/2006 is taken on record.

Heard the learned counsel for the parties.

For the reasons dictated separately, the OA is disposed of.


(J.P. SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 1st day of February, 2007

ORIGINAL APPLICATION No.54/2004
Misc. Application No.156/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.J.P.SHUKLA, MEMBER (ADMINISTRATIVE)

Mahendra Kumar Meena s/o Shri Shri Ram Meena, aged about 32 years, r/o 324 E/C, Near Railway Station, Railway Colony, Gangapur City and presently working as Trained Graduate Teacher (Sanskrit), Railway School, Gangapur City.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through
General Manager,
West Central Zone,
West Central Railway,
Jabalpur
2. Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.
3. President and Senior Divisional
Personnel Officer,
West Central Railway,
Kota Division,
Kota.

.. Respondents

(By Advocate: Shri S.P.Sharma)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to apply reservation for ST community and to notify post of Post Graduate Teacher (Hindi) in the scale of Rs. 6500-10500 belonging to Gangapur City School for ST community by quashing notification dated 10/21.6.2004 (Annexure A/1) with all consequential benefits.
- (ii) That the respondents be further directed to consider candidature of the applicant against the vacant post of Post Graduate Teacher (Hindi), Railway School Gangapur City.
- (iii) That the respondents may be further directed to notify the vacant post by restricting selection from the staff of Kota Division.
- (iv) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (v) That the costs of this application may be awarded."

2. Briefly stated, facts of the case are that the applicant was appointed as Trained Graduate Teacher (hereinafter referred to as TGT) on 2.7.1999 in the grade of Rs. 5500-9000 for Sanskrit subject. In this case the applicant has challenged the order dated 21.6.2004 (Ann.A1) whereby the respondents proposed to hold selection for the post of Post Graduate Teacher (PGT) grade Rs. 6500-10500 (RSRP) in Hindi subject at Railway Senior Secondary School, Gangapur City without providing reservation for ST community. The grievance of the applicant is that he belongs to ST community. It is further stated that there are 8 posts of PGT at

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various placed in Kota Division and not a single ST candidate is working at present against these posts. It is further stated that the respondents are not maintaining the reservation roster. The applicant has further pleaded that the impugned notification has been issued by the respondents after receipt of the notice in earlier OA No.244/2004 whereby the applicant has prayed that he may be allowed ad-hoc promotion on the post of PGT (Hindi) in the scale of Rs. 6500-10500 as he was taking higher classes in Hindi subject since 2001-2002. It was further prayed in the earlier OA that the said post may not be filled by way of transfer and the respondents may be directed to allow pay and allowances of the post of PGT in the scale of Rs. 6500-10500 since 2001 when the applicant was asked to perform duties of the higher post.

3. Notice of this application was given to the respondents on 24.2.2005 and while issuing notices it was further ordered that appointment made on the basis of selection in terms of Ann.A1 shall be subject to the final outcome of this OA. It may be stated here that the respondents could not take any step to conduct the selection pursuant to Ann.A1 for a period of about 2 years and subsequently issued an eligibility list dated 4.7.2006 (Ann. MA/2) whereby only 3 persons were asked to appear in the written test to be held on 27.7.2006 in which name of the

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applicant did not find mention. It was further averred in the MA that the applicant has completed 5 years of service on 2.7.2004, as such, he was eligible for appearing in the written test as per the instructions issued by the Railway Board from time to time whereas the respondents are counting 5 years of service from the date of issue of notification which, according to the applicant, is not permissible and the said notification is under adjudication before this Tribunal. On the basis of this averment made in the MA, this Tribunal passed a detailed order on 24.7.2006 which is reproduced hereinbelow:-

“ The applicant has moved this MA No.156/2005 thereby praying that respondents may be directed to allow the applicant in the selection process going to be conducted on 27.7.2006 pursuant to the notification dated 21.6.2004 (Ann.A1).

I have heard the learned counsel for the applicant. The grievance of the applicant is that the cut off date vide notification dated 21.6.2004 is highly arbitrary and the same has been fixed in order to deprive the applicant to appear in the selection test for the post of PGT in the grade of Rs. 6500-10500 as he has earlier approached this Tribunal by filing OA No.244/2004 which was decided vide judgment dated 21.7.2005.

I have considered the submissions made by the learned counsel for the applicant. Prima facie, I am of the view that action of the respondents in conducting such selection is highly arbitrary. The Railway Board vide its various circulars has provided that eligibility of minimum service has to be seen at the time of actual promotion and not at the time of appearing in the selection test. On the contrary, vide impugned order dated 21.6.2004 (Ann.A1) it has been provided that cut off date for the purpose of eligibility will be the date of issue of the notification. The respondents will explain by filing affidavit, whether the said cut off date was fixed as per the instructions issued by the Railway Board or the same was fixed at the instance of some officers of railways and if so, name of such officers may be indicated. Further, the respondents will also explain as to what is the object sought to be achieved by fixing the cut off date as the date of issue of notification when it has been provided in the said notification that application of eligible and willing teachers should reach within one month from the date of issue of notification. Further, the respondents will also explain why the calendar for examinations was not fixed which is also

stipulated in the Railway Board circulars and why the examination was held after a lapse of about two years thereby making a person ineligible who has acquired experience of 5 years in the meanwhile. Thus, their right of consideration has been adversely effected which is violative of Article 14 and 16 of the Constitution of India and it is fundamental right of every individual to be considered for the post. Further, from the material placed on record, it is evident that the applicant has joined at TGT on 2.7.1999 and he was to complete 5 years of service on the post of TGT on 1.7.2004 i.e. about 10 days before the cut off date fixed by the respondents vide notification dated 21.6.2004 whereas the examination is being held after a lapse of two years from the date of issue of notification dated 21.6.2004.

Accordingly, I am of the view that the applicant has made out a case for grant of interim relief. The respondents are directed to allow the applicant to appear provisionally in the selection test to be held for the post of PGT (Hindi) as per notification dated 21.6.2004. The respondents are further restrained from making appointment to the post of PGT (Hindi) pursuant to selection to be held on 27.7.2006 vide letter dated 4.7.2006 (Ann.MA/2) till the next date.

In the meanwhile, respondents may file reply to the MA thereby meeting the observations made by this Tribunal in this order.

Let the matter be listed on 9.8.2006.

A copy of this order be supplied to the learned counsel for the respondents/applicant."

4. The respondents have filed reply to the MA No.156/2005. In the reply, the respondents have not met out the observations made by this Tribunal as to why the cut off date for determination of eligibility was fixed contrary to the instructions issued by the Railway Board. The only explanation given in the reply affidavit was that the matter regarding cut off date for determination of eligibility of the candidate for appearing in the examination was under active consideration of the railway authorities and the Railway Board vide order dated 22.8.2006 has now decided that the cut off date for determination of eligibility of the staff should be the date of issue

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of notification of any selection. Thus, the observations made by this Tribunal vide the order as reproduced above, have not been met out by the respondents and they have given evasive reply thereby justifying their unjustified action. Further, the reliance placed by the respondents to the Railway Board order No. 117/2006 dated 22.8.2006 is of no help to the respondents, rather it demolishes the case of the respondents. Perusal of the said order reveals that prior to 22.8.2006 in terms of para 215 (a) of the IREM Vol.I 1989 Edition, the basic eligibility condition for appearing in the selection for promotion in normal line was that the staff should have been working in the immediate lower grade on regular basis and the condition of minimum residency was required to be fulfilled at the time of actual promotion and not necessarily at the time of consideration. The aforesaid criteria for determining the eligibility was changed w.e.f. 22.8.2006 thereby prescribing that with effect from the date of issue of notification, the cut off date for determination of eligibility should be the date of issue of notification. It was further made clear that this order will have the prospective effect viz. from the date of issue of notification i.e. 22.8.2006 and it was also made it clear that the notification for selection already issued will not be affected by the said amendment meaning thereby that for the post where selection has already been notified

eligibility list shall be prepared on the basis of the rules/instructions which were prevalent prior to issuance of the RBE No.117/06 dated 22.8.2006. In other words, the post for which selection has already been notified, the cut off date for determining eligibility of the candidates for appearing in examination should be determined with reference to the time of actual promotion even if such promotion is made after 22.8.2006 when the new amendment has come into force. At this stage, it will be useful to quota RBE No. 117/2006 dated 22.8.2006 on which reliance has been placed by the respondents themselves, in extenso, which thus reads:-

“Sub: Selections/LDCEs for promotion within and to Gr.’C’ – Cut-off date for determining eligibility of the candidates for appearing in exam.

As the Railways are aware in terms of para 215(a) of IREM Vol.I 1989, the basic eligibility condition for appearing in the selections for promotions in normal line is that staff should be working in the immediate lower grade on regular basis, the condition of minimum residency is required to be fulfilled at the time of actual promotion and not necessarily at the stage of consideration. The eligibility in terms service condition, qualification etc. for appearing in the selection stands prescribed in a few cases like selections for promotion from Group ‘D’ to Group ‘C’ to General (Selection) posts, to posts against LDCE quota and inter-apprentice quota in Technical Departments.

2. The question of prescribing a cut-off date for determining the eligibility of staff for appearing in the selections/LDCEs for promotion within Group ‘C’ and from Group ‘D’ to Group ‘C’ has been raised by AIRF in the forum of PNM. The matter has been discussed with both the federations in a meeting held on 13.7.2006. Pursuant to these discussions it has been decided that for appearing in the selections/LDCEs for promotions within and to Gr.’C’ the cut-off date for determining the eligibility of the staff should be the date of issue of notification for the said selection.
3. The above instructions will be effective from the date of issue of this letter and the notifications for selections/LDCEs already issued will not be affected.”


WJ

5. Thus from whatever has been stated above, the irresistible conclusion, which can be drawn, is that the cut-off date for the purpose of determining the eligibility for the post of PGT as date of notification is illegal and contrary to the instructions issued by the Railway Board which prescribe that eligibility has to be seen at the time of promotion and not from the date of notification. Accordingly, the impugned notification Ann.A1 is quashed and further steps taken by the respondents pursuant to such selection are declared illegal. The respondents shall not give effect to the examination conducted pursuant to such notification. It will be open for the respondents to issue fresh notification in accordance with law and instructions issued by the Railway Board from time to time. It is further made clear that this Tribunal has not gone into the other aspects of the matter namely whether reservation is applicable to the post of PGT as advertised vide Ann.A1 and this point is kept open.

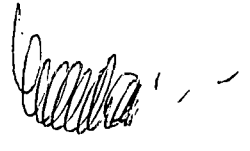
6. With these observations, the OA is allowed with no order as to costs.

7. In view of the fact that the OA has been allowed and notification dated 21.6.2004 has been quashed and further steps taken pursuant to such notification have

been declared illegal, no further order is required to be passed in MA No.156/06, which shall stand disposed of accordingly.


(J.P.SHUKLA)

Administrative Member


(M.L.CHAUHAN)

Judicial Member

R/

Cp's Bros
Vick
112 & 113. 6/