

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 27 day October, 2010

ORIGINAL APPLICATION No.216/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

Mukesh Dadhich
s/o Shri R.M.Sharma,
at present working as
Junior Engineer-I,
O/o Senior Section Engineer (BGTL),
Jaipur r/o D-74, Patrakar Colony;
Jawahar Nagar, Jaipur

(By Advocate: Shri P.V.Calla)

.. Applicant

Versus

1. The Union of India
through General Manager,
North-Western Railway,
Headquarter,
Jaipur.
2. The Divisional Railway Manager,
Jaipur Division, Jaipur
3. Shri Kishan Singh Sagar,
Junior Engineer-I,
R.A.C.,
Jaipur

.. Respondents

(By Advocate: Shri Hawa Singh)

ORDER

Per Hon'ble Mr. M.L.Chauhan, M(J)

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

"It is therefore, prayed that by an appropriate writ, order or direction respondents may be directed to modify the impugned panel (Annex-A/1) dated 7.6.2006 by placing the name of the applicant in the panel at appropriate place. Further, respondents may be directed to accord promotion to the applicant on the post of Section Engineer (Scale Rs. 6500-10500) treating him in the panel (Annex.A/1).

Further, it is prayed that the empanelment of the respondent No.3 in panel Annexure-A/1 for the post of Section Engineer may kindly be declared illegal.

Any other relief to which the applicant is found entitled, in the facts and circumstances of the present case, may also be granted in favour of the applicant.

The Original Application may kindly be allowed with costs."

2. Briefly stated, facts of the case are that the applicant while working on the post of Junior Engineer appeared in the selection test for the post of Section Engineer scale Rs. 6500-10500 pursuant to notification dated 28.5.2005 (Ann.A/2). The selection was to be made for 3 posts of Section Engineer, two of which were meant for General Category and one post was for ST category. Name of the applicant as well as respondent No.3 was included in the eligibility list. The applicant qualified the said selection along with respondent No.3, as can be seen from order dated 12.5.2006 (Ann.A/4) where name of the applicant has been shown at Sl.No.2 and that of respondent No.3 at Sl.No.3. Subsequently, vide impugned order

u/s

dated 7.6.2006 (Ann.A/1) respondent No.3 and one Shri Sunil Kumar Chhabra were placed on panel against General Category whereas no ST candidate has been placed in the panel. It is this order, which is under challenge before this Tribunal.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that the post of Section Engineer in the scale of Rs. 6500-10500 is a selection post, and in view of the Railway Board circular dated 7.8.2003, for some of the categories the interview has been abolished and selection criteria has been adopted according to written examination marks and service record of the individual. It is further stated that the applicant was found unsuitable on the screening of the record by the Selection Committee, therefore, he was not recommended for promotion and accordingly he was informed vide letter dated 4.7.2006. It is further stated that ACRs of the applicant for the year 2003-04 and 2004-05 are adverse and these adverse entries were conveyed to the applicant vide letter dated 3.3.2005 and 26.8.2005 but the applicant did not reply/put forward his defence to these letters communicated/conveyed to him. It is further stated that the applicant's service record was bad and he could not secure 60% marks in aggregate as per the Para 219 (g) of the IREM, as such, his name was not included in the panel of successful candidates.

4. The applicant has not filed rejoinder thereby controverting the stand taken by the respondents in the reply.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. One of the contentions raised by the learned counsel for the applicant is that since no vacancy was notified for SC category, as such, respondent No.3, who belongs to SC category, could not have been included in the eligibility list and also in the panel against general category. The second grievance made by the learned counsel of the applicant was that the applicant was also issued a minor penalty chargesheet (SF-11) in the year 2005 against which the applicant has filed reply. These adverse remarks as recorded vide Ann.A/5 which are based on the minor penalty chargesheet dated 12.4.2005 (Ann.A/8) could not have been taken into consideration while preparing the impugned panel. It is further stated that the only criteria for preparing the panel was written test, as such, the respondents could not have resorted to other criteria.

7. We have given due consideration to the submissions made by the learned counsel for the applicant. We are not at all impressed with the submissions so made by the learned counsel for the applicant. As can be seen from the notification dated 28.2.2005, selection for 3 posts of Section Engineer (Electrical) grade Rs: 6500-10500 was notified out of which two posts were for General Category and one for ST category. In the opening part of para-1 of the notification, it is stipulated that the posts of Section Engineer (Electrical) are to be filled in by way of selection process (and not by non-selection method). As can be seen from Part 219 (g) of the Indian Railway Establishment Manual (IREM) which deals with how

the selection posts are to be filled in, it is stipulated that selection posts are to be filled in by way of positive act of selection made with the help of Selection Board from amongst the staff eligible for selection. The procedure to be adopted by the Selection Board is stipulated in para-219 of the IREM. Para 219 (g) stipulates the factors to be taken into consideration by the Selection Board which inter-alia stipulates allotting marks under the heading professional ability, record of service etc. Para 219(g)(ii) stipulates that the candidate must obtain a minimum of 30 marks out of 50 marks in professional ability and 60 % marks in aggregate for being placed in the panel. Thus, contention of the applicant that panel is to be prepared solely on the basis of the written examination cannot be accepted.

8. That apart, as can be seen from the office order dated 12.5.2006 (Ann.A/4), while declaring the result of the qualified candidates, a note has been appended whereby it has been stated that further steps shall be taken in accordance with the Railway Board letter dated 7.8.2003. The respondents in the reply have stated that the panel was prepared strictly in accordance with the Railway Board letter dated 7.8.2003 as well as keeping in view the criteria laid down in Para 219 (g) of the IREM. The procedure of interview was abolished and selection on the basis of written examination and service record has been adopted. Thus, the contention raised by the learned counsel for the applicant that panel ought to have been made solely on the basis of the written examination cannot be accepted.

46

9. Further contention raised by the learned counsel for the applicant that since no post was meant for SC category, as such, name of respondent No.3 should not have been included in the eligibility list and he could not have been appeared in the selection test is also without any substance and deserve out right rejection. Respondent No.3 being eligible for selection to the post of Section Engineer, his name could not have been excluded solely on the ground that he is SC candidate. The SC candidate who is otherwise eligible can always compete against the general vacancy. No rule or instruction has been shown to the contrary which stipulates that SC candidate cannot appear against the general category post even if he fulfills the requisite criteria. This, contention of the applicant also cannot be accepted.

10. The third contention raised by the learned counsel for the applicant that adverse entries recorded in the year 2005 as per letter Ann.A/5 are based upon minor penalty chargesheet dated 12.4.2005 (Ann.A/8) and as such the same could not have been taken into consideration till the disposal of the minor penalty chargesheet, also cannot be accepted, inasmuch as, the chargesheet against the applicant was regarding his absence from duty w.e.f. 16.7.2004 to 27.9.2004 whereas perusal of the adverse remarks in ACR (Ann.A/5) reveals that he has been given adverse remarks under various heads and he has been graded as 'below average'. That apart, the applicant was also adversely reported upon in the year 2003-04. The applicant has not filed any representation/appeal for expunction of adverse remarks in the

year 2003-04 and also in the year 2004-05. As per the stand taken by the respondents in the reply that the applicant has to obtain 60% marks in aggregate as per Para 219(g) of IREM and applicant has failed to secure the requisite percentage of marks in aggregate, as such, his name was not placed in the panel has not been refuted by the applicant by filing rejoinder. Since the applicant has not qualified the selection test for placing him in the panel for the post of Section Engineer, as such, he is not entitled to any relief.

11. Accordingly, the OA being bereft of merit is dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

R/

M.L.Chauhan
(M.L.CHAUHAN)
Judl. Member