

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

23.3.09

Mr. P.V. Colle, counsel for applicant
Mr. T.P. Shalme, counsel for resp'ts.

Heard learned counsel for
the parties. The OT stands dismissed of
by a separate order.

000.10.61

B.L. Chatterjee
(B.L. Chatterjee)

M(A)

M.L. Chahal
(M.L. Chahal)

M(S)

None present for defendant
Mr. Hemant Gaurav Ploxy Counsel for
Mr. T.P. Shalme counsel for the respondent.

Give case has been referred before D.R.(1) due to non availability of
Bench. Be detail before the Hon'ble Bench on 16.03.2009.

DEPUTY REGISTRAR
(GOURAVI SINHA)

OHA

15.03.2009

OA No. 545/2008

None present for defendant.
Mr. Kumar Gaurav Ploxy Counsel for
Mr. T.P. Shalme Counsel for respondent.

List is for hearing on 23.03.2009.

M.L. Chahal
(M.L. Chahal)
MEMBER (C)

OHA

(S.L.KHATRI)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 23rd day of March, 2009

ORIGINAL APPLICATION No.245/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Dashrath Singh Yadav
s/o Shri Megh Singh,
Keyman, Office of Assistant Engineer,
Kota (North), Resident of
C/o Netrapal Choudhary, Pratap Colony,
Kota.

... Applicant

By Advocate: Shri P.V.Calla

Versus

1. Union of India,
through General Manager,
West Central Railway,
Jabalpur.
2. Divisional Railway Manager,
Kota Division, Kota.

... Respondents

By Advocate: Shri Tej Prakash Sharma

O R D E R (ORAL)

The applicant has filed this OA thereby challenging the select panel dated 21.3.2006 (Ann.A1) for the post of Gangmate scale Rs. 3050-4590 praying that direction may be issued to the respondent to

include his name in the aforesaid panel by granting promotion in the aforesaid scale from the date other similarly situated candidates were so promoted with all consequential benefits.

2. Briefly stated, facts of the case are that the respondents issued notification dated 10.8.2005 (Ann.A2) for selection to 11 posts of Gangmate scale Rs. 3050-4590 based on the vacancies determined unit-wise. As can be seen from the said notification, 8 posts were advertised in respect of Baran unit and 3 posts for Chhabra unit. The applicant belongs to Baran unit and his name find mention at Sl.No.7 in the eligibility list of the said notification. The combined written test for both these units was held on 5.2.2006 and result of the written examination so conducted was declared on 16.2.2006 (Ann.A3). In the said result name of the applicant find mention at Sl.No.3 of Baran unit. However, name of the applicant did not figure in the impugned order dated 21.3.2006 (Ann.A1) whereby the respondents have issued promotion order in respect of persons who have qualified the written test as well as declared successful by the selection committee after verifying the work report/service record of the individual prior to preparing the final panel of the post. It is on the basis of these facts, the applicant has filed this OA.

The grievance of the applicant is that his name has been wrongly excluded from the final panel and he was allowed to appear in the selection despite it was in the knowledge of the railway administration that the applicant was undergoing penalty. As such, the respondents are estopped to consider the NIP for promotion to the post of Gangmate. Further grievance of the applicant is that Shri Madan-Chaturbhuj was included in the eligibility list dated 10.8.2005, as such, he could not have been included in the list of qualified candidates vide Ann.A3. Further, grievance of the applicant is that appointment in the aforesaid grade of Gangmate was solely based on written test, as such, the respondents could not have taken into consideration the service record of the applicant.

Based on these submissions, this Tribunal vide order dated 20.7.2006 directed the respondents to keep one post of Gangmate in the grade of Rs. 3050-4590 in respect of Baran unit vacant till the next date, which stay was continued from time to time.

3. The respondents have filed reply. In the reply the facts as stated above have not been disputed. The respondents have categorically stated that no doubt the applicant has qualified the written examination but the Selection Committee has not found the applicant fit on the basis of his work report as well as service record. Therefore, his name could not be

placed on the final panel dated 21.3.2006. The respondents have also placed on record copy of the panel as issued vide office order dated 21.3.2006 (Ann.R1). From perusal of this panel, it is evident that the said panel was prepared unit-wise for 10 different units.

4. When the matter was listed on 3.1.2007, the learned counsel for the applicant argued that one Shri Dharam Das whose name find mention at Sl.No.3 against Bundi unit, his name has been incorporated in the panel whereas name of the applicant who was also similarly situated to that of Shri Dharam Das and was also undergoing penalty for a period of six months as imposed vide order dated 7.12.2005 has not been empanelled. This Tribunal vide order dated 3.1.2007 directed the respondents to file further affidavit as to how the case of the applicant is not similar to that of Shri Dharam Das and as to why the applicant's name was not included in the panel dated 21.3.2006. Pursuant to the direction given by this Tribunal, the respondents have filed additional affidavit. In para 4 of the said affidavit the respondents have categorically stated that the post of Gangmate is a selection post and panel has to be prepared from those candidates who have not only obtained 60% marks in written test but have also obtained 60% in personality address, leadership, technical qualification and

record of service. Since the applicant has not obtained 60% marks in aggregate (though he has obtained 60% marks in written test) his name could not be placed in the final panel as per the procedure stipulated in Railway Board order RBE No.137/2003.

5. At this stage, it may be relevant to mention here that earlier this Tribunal has allowed this OA vide order dated 16th July, 2007 by holding that since the applicant has qualified the written examination, as such, no further viva-voce/interview was required to be held. In other words, securing of 60% marks in personality address, leadership, technical qualification and record of service cannot be insisted. The Tribunal further held that only thing remained is record of service from which it could be seen whether a candidate is undergoing any penalty or not. As such, the applicant could have also been appointed/promoted on the aforesaid post after undergoing the penalty as was done in the case of Dharam Das. Accordingly, direction was given to the respondents to the effect that the applicant be also considered for giving posting after expiry of the period of penalty as there was no other ground for not giving posting. From the material placed on record, it is evident that subsequently Review Petition was filed by the respondents thereby placing Railway Board order RBE No.137/2003 dated 7.8.2003 on record which

stipulate the procedure for holding the selection for promotion to the post. It was contended that the decision rendered by this Bench to the effect that panel was ^{to be} prepared only on the basis of written examination is contrary to the procedure prescribed in the aforesaid Railway Board circular in regard to selection post which post is to be filled by way of positive act of selection consisting of written test and/or viva-voce. Vive-voce being must in every case and more particularly in view of the provisions contained in para 219 (g) which stipulate that in order ~~to~~ empanel a candidate he must obtained a minimum of 60% marks in professional ability etc. and 60% marks in aggregate. The same bench after taking into consideration the aforesaid circular and keeping in view the fact that the post to which the selection was being conducted was not non-selection post but was a selection post for which purpose written test as well viva-voce is must in every case, the Review Petition was allowed, as such, this OA was restored to its original number for the purpose of hearing.

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

7. Admittedly, the applicant belongs to Group-C category for which promotion has to be made in terms of the provisions contained in Chapter II, Section B

of the IREM. Para 215 (a) of the IREM deals with promotion in respect of selection posts. Para 215 (a) stipulates that the post will be filled by a positive act of selection with the help of Selection Board from amongst the staff eligible for selection. The said rule further stipulates that suitability shall consist of written test and/or viva-voce test; in every case viva-voce being a must. At this stage, it will be useful to reproduce para 215 (a), which thus reads:-

"215.(a) Selection posts shall be filled by a positive act of selection made with the help of Selection Boards from amongst the staff eligible for selection. The positive act of selection may consist of a written test and or/viva-voce test; in every case viva-voce being a must. The staff in the immediate lower grade with a minimum of 2 years service in that grade will only be eligible for promotion. The service for this purpose will include service if any, rendered on ad hoc basis followed by regular service without break. The condition of two years service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration."

Thus, from the portion as quoted above, it is apparent that promotion can be given only when the employee is considered fit for promotion and employee can be considered fit only after he passes the department test and/or on the basis of the viva-voce test and as per selection made with the help of Selection Board.

Further, Para 219 (g) of the IREM deals with the procedure to be adopted by the Selection board as find mention in Railway Board order RBE No.137/2003 and a candidate must secure 60% in aggregate for being

placed on the panel. As per the stand taken by the respondents in the additional affidavit, the applicant has not obtained 60% marks in aggregate (though he has obtained 60% marks in written test) as such, he was not placed in the panel. The respondents in the additional affidavit has also stated that so far as Shri Madan-Chaturbhuj and other candidates are concerned, their names were placed in the panel to the post of Gangmate as they were found suitable for the post as per the criteria laid down in para 219 (g) of the IREM. In view of the stand taken by the respondents in the reply as well as in the additional affidavit that the applicant has not secured 60% marks in aggregate, as such he could not have been empanelled, we are of the view that the applicant has got no case whatsoever. Further, the case of the applicant is not identical to other persons who, though was under currency of penalty, but they have qualified the selection test and their promotion was deferred till the currency of penalty is over. Admittedly, the applicant has not qualified the selection test and was also undergoing penalty for a period of six months as imposed vide order dated 7.12.2005 and that penalty was not over when the final panel was prepared on 21.3.2006.

8. That apart, the currency of penalty during preparation of the select panel is immaterial in the

instant case as the applicant has failed to qualify the selection test in terms of Railway Board instructions and Para 219 (g) of the IREM, as such his name could not have been empanelled. Thus, according to us, the applicant has got no right to claim inclusion in the select panel and to grant appointment/promotion on the post of Gangmate in the scale of Rs. 3050-4590.

9. With these observations, the OA stands disposed of with no order as to costs.

(B.L.KHATRI)

Admv. Member

(M.L.CHAUHAN)

Judl.Member

R/