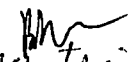



5/3/09

MR. C. B. Sharma, Counsel for applicant
~~MR. Praveen Kumar, Counsel for~~
MR. V. S. Garg, Counsel for respondents.

Held learned counsel for
the parties.

For the reasons dictated
separately, the OA stands dismissed.


(B. L. Khateri)
M(A)


(M. L. Chakravarti)
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 05th day of March, 2009

ORIGINAL APPLICATION NO. 212/2007

CORAM:

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

Kishan Lal Meena son of Shri Jansi Ram Meena aged about 41 years, resident of C/o Man Singh Meena, 89-A, Vivek Vihar, Gator Jagatpura and presently working as Head Clerk, Personnel Branch Head quartered Office, North Western Zone, North Western Railway, Jaipur.

.....APPLICANT

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through the General Manager, North Western Zone, North Western Railway, Jaipur.
2. The Chief Personnel Officer, Office of General Manager, North Western Zone, North Western Railway, Jaipur.
3. Shri Ram Ji Lal Meena, Head Clerk, Personnel Branch Head Quartered Office, North Western Zone, North Western Railway, Jaipur.
4. Shri Gulab Chand Meena, Head Clerk Personnel Branch Head Quartered Office, North Western Zone, North Western Railway, Jaipur.

.....RESPONDENTS

(By Advocate: Mr. V.S. Gurjar)

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 the respondents be directed to place the name of the applicant in the panel dated 13.06.2007 (Annexure A/1) by modifying the same and by deleting the name of respondent no. 3 or 4 as the case may be with all consequential benefits.

- (ii) That the respondents be further directed to allow promotion to the post of Office Superintendent Grade II, scale Rs.5500-9000 from the date junior so allowed with all consequential benefits including arrears of pay allowances after due fixation of pay with seniority.
- (iii) 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.
- (iv) That the cost of this application may be awarded."

2. Briefly stated, facts of the case so far as it is relevant for the decision of the case are that the respondents have issued a notification dated 23.03.2007 (Annexure A/4) for written examination for selection to the post of Office Superintendent II in the pay scale of Rs.5500-9000/- and for that purpose, eligibility list was prepared in which the name of the applicant find mentioned at sl. no. 3 and name of respondents nos. 3 & 4 find mentioned at sl. Nos. 4 & 9 respectively. It may be stated that the feeder category to the aforesaid post is Head Clerk in the pay scale of Rs.5000-8000/- to which category applicant as well as private respondents belongs. The applicant as well as private respondents amongst other eligible candidates appeared in the written examination, the result of which was declared vide order dated 21.05.2007 (Annexure A/2) in which the name of the applicant find mentioned at sl. No. 2 and name of private respondents find mentioned at sl. Nos. 3 & 6 respectively. However, the name of the applicant was not included in the panel so prepared by the official respondents on the basis of the written examination. The case set up by the applicant is that he made a representation dated 11.06.2007 (Annexure A/6) thereby requesting the official respondents for placing his name in the panel but the respondents instead of placing his name in the panel, they prepared the panel of only 3 persons vide order dated 13.07.2007 (Annexure A/7). It is on the basis of these facts the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. The action of the respondents has been challenged by the applicant on the ground that by not placing his name in the panel is arbitrary, illegal and unjustified as the applicant is senior to

respondent no. 3 & 4 in the cadre of Head-Clerk and also on the basis of eligibility list and had ^{the} been declared passed by extending benefit of relaxation. It is further stated that prior to declaration of the panel, the applicant has also made a request on 11.06.2007 (Annexure A/6) with the Railway Board which provides that reserve community candidates who secure 50% marks in aggregate excluding seniority deemed to be qualified in the selection and should be placed on panel on the basis of general seniority which is evident from Annexure A/5. It is further submitted that applicant being senior to respondents nos. 3 & 4, should be included in the panel over and above respondent nos. 3 & 4.

4. Notice of this application was given to the respondents. The respondents have filed their reply. The facts as stated above have not been disputed. It is, however, stated that the applicant was declared as passed by applying relaxed standard against Scheduled Tribe category. Accordingly, the panel was issued on 13.06.2007. It is further stated that after compilation and addition of marks of professional ability and service record, Shri Gulab Chand Meena, ST category candidate, who secured 60% marks in the written examination and 60% in the professional ability, was found suitable from amongst all the candidates of ST Community to be placed on panel against the reserved vacancy of ST quota. Accordingly, the promotion order was issued on 18.06.2007. According to the respondents where junior SC/ST employee qualifies the selection of non-safety categories as per general standards laid down i.e. 60% marks and his senior SC/ST employee passes with marks of relaxed standard i.e. 50% for placement against the result vacancy, the selection committee should first draw the list of candidates who can be empanelled by applying the general standard for qualifying a selection and empanelment. This list is to be checked whether it contains the required number of candidates belonging to SC and ST as per the roster. It is further stated that in case of deficiency, the same should be made good by including the other reserved candidates who passed by applying relaxed standards. The SC/ST are to be placed on the panel after those who have qualified with general

standard as per policy decision which is in consonance with the object of providing reservation to the reserved categories aforesaid. For that purpose, the respondents have placed reliance on Railway Board letter dated 14.04.1983 (Annexure R/1).

5. The applicant has filed rejoinder thereby reiterating the submission made in the OA. He contended that respondents have not prepared the panel in accordance with instructions dated 30.07.1971 (Annexure A/5).

6. We have heard the learned counsel for the parties and have gone through the material placed on record. The question which requires our consideration is whether the junior ST employee who qualified in the selection of non-safety category as per general standard laid down i.e. obtained 60% marks will be given preference to a senior ST category employee who passed with marks of relaxed standard i.e. 50% for placement against the result vacancy. In order to appreciate the point in controversy, it will be useful to quote various Railway Board's decisions. The applicant has placed reliance on the instructions issued by the Railway Board vide Annexure A/5, which is extracted in extenso :-

"In partial modification of the instructions contained in para II of the letter NO. E(SCT)68CM15/10 dated 27th August, 1968 the Board have decided that in the case of selection posts in Class III filled on promotion where safety aspect is not involved, the reserved community candidates who secure 50 per cent marks in "professional ability" and 50 per cent marks in "aggregate" (excluding seniority) should be deemed to have qualified in the selection and placed on the panel in accordance with their general seniority."

7. During the course of arguments, the applicant has also placed reliance on RBE 152/99. At this stage, it will be useful to quote relevant portion which thus reads as under:-

Kindly call for the instructions circulated vide Board's letter of even number dated 2.9.1998 (Bahri's RBO 1998, P 208), vide which the earlier instructions contained in Board's letter No. 89-E(SCT)-I/25/4 dated 2.6.89 were reiterated.

Accordingly, the candidates belonging to SC/ST community, who have been selected on their own merit alongwith the candidates belonging to other community, will not be adjusted against the quota reserved for SCs and STs.

2. The scope of the instructions contained in Board's letter dated 2.9.1998 (Bahri's RBO 1998, P. 208) has been misunderstood by some of the Railways/Production Units because, in the subject, the word "promotions" has been used, alongwith the word "Recruitment". It is clarified that the instructions issued vide Board's letter of even number dated 2.9.1998 are applicable only to the recruitment categories. As far as promotional categories are concerned, the earlier instructions as detailed below continue to be applicable:-

- (i) The clarification issued vide item (i) of Railway Boards letter No. 83-E(SCT) 42/1 dated 14.4.1983 is as under:

<p>Whether a junior SC/ST employees who qualifies in the selection of non-safety categories as per general standard laid down i.e. obtains 60% marks will be preferred to a senior SC/ST candidate who passes with marks of relaxed standard i.e. 50% for placement against reserved vacancy and whether this action will not amount to supersession of SC/ST employee?</p>	<p>The concession in qualifying marks is granted to fill up the reserved vacancies only. This has already been clarified vide items 2 of Board's letter No. E(SCT) 68 CM/10 dated 23.10.1969. It is, however, further clarified that by applying the general standard for qualifying in a selection and empanelment, the Section Committee should first draw a list of candidates who can be empanelled. This list should be checked up to see whether this contains the required number of candidates belonging to SC and ST as per the 40-point roster. In case of deficiency, the same should be made good by including the other reserved candidates who pass by applying relaxed standards."</p>
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8. On the other hand, the respondents have placed reliance on the instructions dated 14.04.1983 (Annexure R/1), which thus reads as under:-

- (v) The concession in qualifying marks is granted only to fill up reserved vacancy. The SC/ST candidates have to obtain the minimum marks fixed for general candidates to fill up the unreserved vacancies.
- (vi) Where a junior SC/ST employee qualifies in the selection of non safety categories as per general standards laid down i.e. 60% marks and a senior SC/ST employees passes with marks of relaxed standard i.e. 50% for placement against reserved vacancy, the selection committee should first draw a list of candidates who can be empanelled by applying the general standard for qualifying a selection and empanelment. This list should be checked up whether this contains the required number of candidates belonging to SC and ST as per the 40 Point Roster. In case of deficiency, the same should be made good by including the other reserved candidates who pass by applying the relaxed standard. The SC/ST employees qualifying with relaxed standard should be placed on the panel after those who have qualified with general standard. The candidates empanelled under best amongst the failed policy should be placed at the bottom of the panel."

9. Now let us decide whether the applicant has made out a case in the light of instructions, as quoted above. It may be stated that the selection was made/conducted by the respondents for filling up three posts of Office Superintendent Grade II in the pay scale of Rs.5500-9000/-, out of which two posts were meant for general category and one for ST category. Admittedly, the applicant belonged to ST category. Against three posts, 6 persons qualified the written examination and result of which was declared vide order dated 21.05.2007 (Annexure A/2). From perusal of this Annexure, it is evident that the list was prepared as per seniority and the name of the applicant find mentioned at sl. No. 2 and in remark column; it has been mentioned that he has qualified examination under relaxed standard. Similar entry has been made against the name of one Shri Ram Kishore Meena, whose name find mentioned at sl. No. 4 of the said list. In fact out of 6 persons, who have qualified the written examination, it is only 4 persons who have been declared qualified as per general standard laid down i.e. obtained 60% marks in written examination as well as in aggregate. From the material placed on record, it is also evident that only three persons have been

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empanelled including ~~respondents~~ nos. 3 & 4. It may be relevant to submit here that one Shri Kedar Lal Meena, who also belonged to ST category and has qualified the selection as per general standard and whose name is mentioned above Shri Gulab Chand Meena in the seniority list as well as in the eligibility list has not been empanelled for the reason that against two general category posts, other two ST candidates have been empanelled and they had not been considered as ST category candidates for the reason that they have been selected on their own merit against general vacancy which course was admissible to the respondents in view of Para No. 1 of RBE 152/99, which instructions have also been relied upon by the applicant itself. Thus according to us, the applicant cannot challenge the selection of Respondent no. 3, Shri Ram Ji Lal Meena, though junior to him in the cadre of Head Clerk, who was empanelled against general vacancy as he has qualified examination on its own merit and due to non availability of general category candidate and thus his name was rightly included in the panel. Although the applicant has challenged the appointment of both respondent nos. 3 & 4 in this OA but as can be seen from his representation dated 11.06.2007 (Annexure A/6), his grievance is regarding respondent no. 4, Shri Gulab Chand Meena, and his specific request is that he should have been empanelled against the reserved vacancy of ST.

10. Now the further question which requires our consideration is whether the applicant has made out a case against respondent no. 4. We have already extracted relevant portion of the Railway Board instructions issued in the year 1983 as appended by the respondents as Annexure R-1. From perusal of Para (v) of these ^{instructions} ~~Annexure~~, as quoted above, it is clear that the concession in qualifying marks is granted only to fill up reserved vacancy. Admittedly, one vacancy was reserved for ST against which respondent no. 4 was empanelled instead of applicant who was admittedly senior. As can be seen from Para No. (vi) of the aforesaid instructions, it is clear that selection committee has first to prepare/draw a list of candidates who can be empanelled by applying the general standard for qualifying a selection and empanelment. In case this list contains the required


number of candidates belonging to reserved category, there is no need to include the name of such SC/ST in the panel who has qualified under relaxed standard. Name of such candidates who have qualified under relaxed standard has to be included in the panel only if there is some deficiency of reserved candidates. These instructions further makes it clear that even in case of deficiency, the persons who have qualified with relaxed standard should be placed in the panel after those who have qualified with general standard.

11. In view of the aforesaid instructions issued by the Railway Board, we are of the firm view that the name of the applicant was not required to be empanelled in the panel and in any case, if the same was required to be included, definitely his name has to be included below respondents nos. 3 & 4. Thus we see no infirmity in the action of the respondents whereby they have promoted respondents nos. 3 & 4 on the basis of impugned panel dated 13.07.2007 (Annexure A/7) in which the name of the applicant does not find mention. Further the reliance as placed by the learned counsel for applicant on RBE No. 152/99 whereby the aforesaid point has been clarified; according to us demolish the case of the applicant rather than helping him.

12. Thus viewing the matter from any angle, we are of the view that the applicant has not made out any case for relief.

13. Thus for the foregoing reasons, the OA is dismissed with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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