

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 25th day of April, 2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Original Application No.09/2007

Chandra Prakash Sharma
s/o Shri Radhey Shyam Sharma,
r/o 5-A/14, Pareek Path Dehar Ka Balaji,
Jaipur and presently working as
Raj Bhasha Assistant Grade-I,
Office of General Manager, North Western
Railway Head Quarter Office, Jaipur

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through General Manager,
North Western Zone,
North Western Railway,
Jaipur
2. Chief Personnel Officer,
Office of General Manager,
North Western Zone,
North Western Railway,
Jaipur

.. Respondents

(By Advocate: Shri Anupam Agarwal)

Original Application No.214/2007

Chandra Prakash Sharma
s/o Shri Radhey Shyam Sharma,
r/o 5-A/14, Pareek Path Dehar Ka Balaji,
Jaipur and presently working as
Raj Bhasha Assistant Grade-I,

Office of General Manager, North Western
Railway Head Quarter Office, Jaipur

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through General Manager,
North Western Zone,
North Western Railway,
Jaipur
2. Chief Personnel Officer,
Office of General Manager,
North Western Zone,
North Western Railway,
Jaipur

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

ORDER (ORAL)

Since both the OAs have been filed by same person and similar facts are involved, as such, both the OAs are being disposed of by this common order.

2. The applicant preferred OA No.09/2007 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 declare result of selection process to the post of Raj-Bhasha Officer in the scale of Rs. 7500-12000 completed by the respondents treating the applicant as *eligible* by *quashing letters dated 25/7/2006* (Annexure A/1) with all consequential benefits.
- (ii) That the respondents be further directed to interpolate the name of the applicant in the eligibility list dated

10/11/2004 and 7/12/2004 (Annexure A/8 and Annexure-A/15) by modifying eligibility date as per examination of the year and vacancies upto 2006.

- (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 costs of this application may be awarded."

In the aforesaid OA, the applicant challenged the order dated 25.7.2006 (Ann.A/1) whereby the selection process undertaken by the respondents has been cancelled.

3. In OA No.214/2007, the applicant prayed for the following reliefs:-

- (i) That the entire record relating to the case be called for from the respondents and after perusing the same action of the respondents for conducting subsequent selection process be declared null and void by quashing notification dated 16/3/2007 (Annexure A/1) with the further process completed by the respondents with all consequential benefits.
- (ii) That the respondents be further directed to not promote any officials to the post of Assistant Raj Bhasha Officer in the scale of Rs. 7500-12000 (Group-B) without considering the matter of the applicant by this Hon'ble Tribunal as well as by the respondents.
- (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 costs of the application may be awarded."

4. Brief facts of the case are that the applicant was appointed as Rajbhasha Assistant Grade-II in the scale of Rs. 1400-2300 (Rs. 4500-7000) on 13.9.1989 after selection through the Railway Recruitment Board, Ajmer and thereafter promoted as Rajbhasha Assistant Grade-I in the scale of Rs. 5000-8000 w.e.f. 18.12.2001. The

1

respondents railway circulated instructions vide Railway Board order No.146/2004 dated 22.7.2004 in connection with eligibility condition for promotion to Group-B and Group-C posts taking into consideration the 5th Pay Commission scale and modified the same as the employees working in the grade the minimum of which is Rs. 5000/- and in higher Group-C will be eligible to appear for Group-B selections provided they have rendered not less than 3 years of non-fortuitous service in the grade. The respondents also issued seniority list of the staff working in Rajbhasha vide letter dated 18.10.2004 in which name of the applicant find place at Sl.No.8 in the grade of Rs. 5000-8000 (Ann.A/7 in OA No.09/07).

5. Respondent No.1 notified 4 vacancies vide notification dated 10.11.2004 to the post of Group-B Assistant Rajbhasha Officer in the scale of Rs. 7500-12000 to be filled in by way of 100% promotion with the eligibility list and in the eligibility list 8 officials have been shown eligible from which two are working in the scale of Rs. 6500-10500 and 6 in the scale of Rs. 5000-8000 and respondents shown only 8 officials as eligible. Being aggrieved that the respondents only shown 8 officials as eligible, the applicant represented before the respondents vide application dated 18.11.2004 stating therein that not treating him eligible for the examination is not at all justified because the applicant completed 3 years service in the scale of Rs. 5000-8000 on 13.9.2003 as per A.C.P. Scheme and as per regular promotion on 18.12.2004 and examination is going to be conducted 9.1.2005 and prior to that applicant completed 3 years service in the required grade.

6. It is further submitted that the respondents calculated anticipated vacancies for further 2 years upto 30.6.2006 and respondents have also additional vacancies as per restructuring of cadres w.e.f. 1.11.2003 which is under process. The respondents are duty bound to include officials those became eligible upto 2006. Besides this, in the notification (Ann.A/8) it has been mentioned that date of eligibility is date of notification on which date eligibility will be taken into account and when the applicant completed 3 years' service on 13.9.2004, he is fully eligible for selection and the respondents are also duty bound to include name of the officials those completing three years service in near future as per three times of the vacancies for which Railway Board orders also permit to do so and promotion to these persons will be available after completion of three years serve, if they succeed in the selection process.

7. The applicant against the action of the respondents also filed OA No.556/2004. In the aforesaid OA, the Tribunal vide judgment dated 19th September, 2006 considered the reply submitted by the respondents wherein they have stated that despite of their best effort could not complete the process of selection till date. Accordingly, the competent authority has decided to cancel the notification alongwith selection procedure. The respondents have also annexed copy of notification so issued on 25.7.2006 alongwith the MA as Ann.MA/1. In view of the subsequent development, the OA preferred by the applicant was dismissed as having become infructuous. As the respondents made statement and submitted in

their reply that they have cancelled the examination, liberty was given to the applicant to challenge the said notification. Therefore, the present OA has been preferred by the applicant, challenging cancellation order dated 25.7.2006.

8. As submitted by the learned counsel appearing for the respondents that only 8 candidates were found eligible who were fulfilling the requisite service conditions on the date of eligibility i.e. 1.7.2004, therefore, the same was notified. The applicant was having only 2 ½ years of service in the grade of Rs. 5000-8000 and in higher Group-C grade was not eligible and therefore his name was not shown in the eligibility list. In terms of Railway Board instructions the employee must have three years non-fortuitous regular service in the grade and above on the date of eligibility. The ACP scheme gives only financial upgradation and did not extend the benefit of designation or other facilities such as actual working attached to that higher post. Accordingly, one cannot claim experience on the basis of such grant of ACP. Since the applicant had not completed 3 years non-fortuitous regular service as on 1.7.2004, as such, he was not included in the eligibility list.

9. It is further submitted that in view of the Railway Board letter dated 21.7.2005 (Ann.R/1) it was made clear that eligibility should be the date of assessment of vacancies and not the date of notification or examination.

10. After considering the rival submissions of the respective parties and in view of the clarification issued by the Railway Board vide Ann.R/1 and instructions issued by the respondents, the eligibility of

continuous working for a period of three years has to be considered upto 1.7.2004 and because the applicant was having 2 ½ years' service in the grade of Rs. 5000-8000 he was not found eligible and his name was not shown in the eligibility list.

11. With regard to cancellation of selection is concerned, in the earlier OA No.556/2004 the Tribunal at the time of admission on 4.3.2004 granted ex-parte stay and the applicant was allowed to appear in the examination provisionally to the post of Assistant Rajbhasha Officer, Group-B to be held on 12.3.2005 with the stipulation that the result of the said examination, so far it relates to the applicant shall be kept in sealed cover and the respondents were restrained to make regular appointment against one of the posts of Assistant Rajbhasha Officer. Liberty was also given to the respondents to make ad-hoc appointment on the said post which shall be subject to the final outcome of the OA and in the reply, the respondents have submitted that they have cancelled the entire selection process, therefore, the OA was dismissed as having become infructuous.

12. Merely because the applicant was allowed to appear under the ex-parte order dated 4.3.2005 in the examination provisionally, still the eligibility has to be adjudicated upon by this Tribunal.

13. The applicant has filed aforesaid two OAs, and the OA No.09/07 with regard to cancellation of examination is concerned, it is within the domain of the respondents, if they deem it proper in the interest of public at large that the selection process which has been initiated at the instance of the respondents is to be cancelled

they can cancel. The applicant has not made out any case merely because he was allowed to appear provisionally in the selection process which has been cancelled has any locus to challenge cancellation order as in the present case, but the eligibility is yet to be decided by this Tribunal. Consequently, we find no merit in OA No.09/2007, which deserves to be dismissed and disposed of as observed hereinabove.

14. With regard to OA No.214/2007, the facts are similar as in OA No.9/07. By way of this OA, the applicant prayed for calling the record from the respondents and after perusing the same action of the respondents for conducting subsequent selection process be declared null and void by quashing notification dated 16.3.2007 (Ann.A/1). This Tribunal having considered the submissions advanced on behalf of the respective parties deemed it proper vide order dated 16.3.2011 to direct the respondents to produce the record for perusal and today the respondents have placed the entire record for our perusal and we have carefully perused the record submitted before us.

15. The issue with regard to relief claimed by the applicant to consider him eligible to appear in the examination for promotion to the post of Assistant Rajbhasha Officer is concerned, it is not disputed that the applicant preferred this OA against notification dated 16.3.2007 by which the respondents started selection process to the post of Assistant Rajbhasha Officer Group-B by canceling earlier selection without declaring result, which was under challenge before this Tribunal in OA No.556/04 and further

cancellation is also under challenge in OA No.09/07. The grievance of the applicant is that after canceling the earlier selection process the respondents started fresh selection process during pendency of OA No.9/077 and also challenged change of vacancies/posts from 4 post of OC category to 3 posts of OC and one post of SC without any basis as earlier examination was held for 4 posts in which the applicant was declared successful.

16. Upon perusal of original record it reveals that promotion on the post of Assistant Rajbhasha Officer (Group-B) is 100% by way of promotion and by applying roster system there are 3 posts available for General and one post for SC category. Perusal of original record further reveals that Shri Harikesh Meena in the category of ST and Shri J.P.Topo in the category of ST have been given promotion. According to fresh notification for filling up 4 vacancies, the respondents applied roster system and after applying the roster, 3 vacancies were determined for General category and one for SC category, as such, we are fully satisfied that the respondents have rightly applied roster system and no illegality has been committed. As we have disposed of OA No.09/2007 observing that the respondents were competent to cancel the selection in the interest of public at large and the applicant having no locus to challenge the cancellation of said examination as he was only permitted provisionally to appear in the said examination and the Tribunal has made clear that allowing the applicant provisionally shall remain subject to the decision of the OA, we find no merit in OA No.214/2007 also as the roster system has rightly been applied by

the respondents. The applicant has no locus to challenge the same as he was not found eligible as discussed hereinabove. The eligibility has to be considered as per the date fixed by the respondents. The applicant is also not eligible in the said examination as requisite qualification is three years experience on 1.7.2004 and the applicant has acquired only 2 ½ years service, thus he was not eligible to appear in the said examination. Therefore, OA No.214/2007 is also dismissed being bereft of merit.

16. With the observation as aforementioned, both the OAs stand disposed of with no order as to costs.

17. The Registry is directed to place copy of the order in both the case files.

18. In view of the order passed in the OAs, no order is required to be passed in MA No.268/2007, which shall stand disposed of accordingly.

*copy given vide
No. 5683869.
28/7/11
Y*
(ANIL KUMAR)
Admv. Member

1
(JUSTICE K.S.RATHORE)
Judl. Member

R/