

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


10.08.2009

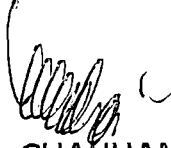
OA No. 329/2009

Mr. S. Shrivastava, Counsel for applicant.

Heard learned counsel for the applicant.

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


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 10th August, 2009

ORIGINATION APPLICATION NO. 329/2009

CORAM:

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

Kuideep Yadav son of Shri Umrao Singh aged about 41 years, resident of House No. 12, Shiv Colony, Shastri Nagar, Ajmer. Presently working as H.T.T.E. in Jaipur Division at Ajmer, North Western Railway, Jaipur.

.....APPLICANT

(By Advocate: Mr. S. Shrivastava)

VERSUS

1. Union of India through General Manager, In front of Railway Hospital, Hasanpura Road, North Western Railway, Jaipur.
2. Senior Divisional Commercial Manager (Establishment), North Western Railway, Jaipur Division, Jaipur.
3. Divisional Railway Manager, North Western Railway, Jaipur Division, Jaipur.

.....RESPONDENTS

(By Advocate : -----)

ORDER (ORAL)

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

- “(i) That this Hon'ble Tribunal may graciously be pleased to direct the respondents to produce entire service record (considered for selection) of the incumbents other than those came as SC & ST in the panel of HTTE dated 09.01.97 along with marks they were given in the viva voce test for selection in question and in case on comparison their service record, seniority and educational background found to be poor than the petitioner and even then were given higher marks than the petitioner then the

case of the petitioner in respect of selection for the panel of HTTE dated 09.01.97 should be re-examined and respondents may be directed to take appropriate steps to remove discrimination by re-evaluating the marks of the petitioner in particular viva voce test.

- (ii) Any other order, which may be deemed fit and proper by this Hon'ble Tribunal, may kindly be passed."

2. At the outset, it may be stated that it is a third round of litigation. Earlier, the applicant has filed OA No. 29/97, which was decided by this Tribunal on 02.02.2001 wherein the respondents were directed to re-check the quota for SC & ST candidates in terms of rules and the law laid down by the Apex Court as the grievance of the applicant was that reservation has not been applied correctly. In terms of this decision of the Tribunal, the respondents have re-check the quota and again the applicant was not held eligible for promotion. Thereafter, the applicant filed OA No.553/2003 on the ground that the respondents have not carried out directions given in earlier OA and have not re-checked the quota meant for SC/ST candidates and taking further action regarding promotion. This Tribunal dismissed the second OA thereby rejecting the contention of the applicant, holding that the applicant cannot be heard on merit on the principle of constructive res-judicata. The applicant has not challenged the selection in question on the ground of merit but it was challenged on the ground that the respondents have applied reservation wrongly to the reserved candidates in excess quota. It was also held that the applicant has not obtained qualifying marks for empanelment as such whether vacancies for SC/ST worked out correctively in terms of earlier judgement is of no consequence.

3. Now again the applicant has filed this OA thereby challenging the selection dated 09.01.1997 on merit entirely on different ground that persons who were less meritorious as per service record, seniority and educational qualification than the applicant were provided higher marks in the viva voce test and thus marks in viva-voce be revaluated.

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4. According to us, this OA is wholly misconceived and amounts to abuse of the process of this Court. As already stated above, the relief, as prayed for by the applicant, cannot be granted at this stage on the ground of constructive resjudicata. Further, it is not permissible for this Tribunal to quash the panel dated 09.01.1997, the validity of which panel might have expired after one year or such time as prescribed by the authorities. Undoubtedly the panel dated 09.01.1997 is not operated till date. On this ground also, this OA is not maintainable.

5. With these observations, the OA is disposed of at admission stage with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ