

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

APPLICATION NO.: _____

Applicant (S)

Advocate for Applicant (S)

Respondent (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p>10/04/2014</p> <p>O.A. No. 195/2010</p> <p>Mr. C. B. Sharma, counsel for the applicant. Mr. M.K. Meena, counsel for the respondents No. 1 & 2 Mr. S.S. Hasan, counsel for the respondents No 3 to 13.</p> <p>Heard the learned counsel for the parties.</p> <p><u>Order Reserved.</u></p> <p><u>(M. Nagarajan)</u> Member (J)</p> <p><u>v</u></p>

Anil Kumar
(Anil Kumar)
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 195/2010

ORDER RESERVED ON 10.04.2014

DATE OF ORDER : 12.5.2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER

Jagdish Prasad Jatav son of Shri Hari Ram Jatav aged about 51 years, resident of 366-D, Top Dara, Railway Colony, Ajmer and presently working as Kantewalon (Points Man) Traffic Department, Railway Station, Ajmer, North Western Railway, Ajmer Division, Ajmer.

... Applicant

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

Versus

1. Union of India through General Manager, North Western Zone, North Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.
3. Shri Kailash Chand Sukhdev, PP at Station Karjoda and under training of Commercial Clerk C/o Principal Zonal Railway Training School, Udaipur.
4. Shri Bhoju Ram Ganga Ram, PP at Station Vijay Nagar and under training of Commercial Clerk, C/o Principal Zonal, Railway Training School, Udaipur.
5. Shri Jagdish Prasad Prabhtilal, PP at Station Amarpura and under training of Commercial Clerk, C/o Principal Zonal Railway Training School, Udaipur.
6. Shri Mukesh Kumar Vasudev, Call boy at Station Ajmer and under training of Ticket Collector, C/o Principal Zonal Railway Training School, Udaipur.
7. Shri Shiv Charan Harphool, PP at Station Adarsh Nagar, Ajmer and under training of Ticket Collector, C/o Principal Zonal Railway Training School, Udaipur.
8. Shri Ramesh Chand Bhagwandas, PP at Station Ajmer and under training of Ticket Collector, C/o Principal Zonal Railway Training School, Udaipur.
9. Shri Jitendra Kumar Meena – Nanji Meena, Gate man at Station Bhilwara and under training of Ticket Collector, C/o Principal Zonal Railway Training School, Udaipur.
10. Shri Devendra Nath Gautam – Mahatab Lal, PP at Station Dewari and under training of Ticket Collector, C/o Principal Zonal Railway Training School, Udaipur.

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11. Shri Bajrang Lal Tara Chand Naranja, PP at Station Rajoshi and under training of Ticket Collector, C/o Principal Zonal Railway Training School, Udaipur.
12. Shri Suresh Chand Meena – Raju Lal Meena, PP at Station Gangrar and under training of Ticket Collector, C/o Principal Zonal Railway Training School, Udaipur.
13. Shri Vinod Kumar Gyani Ram, PP at Station Makreda and under training of Ticket Collector, C/o Principal Zonal Railway Training School, Udaipur.

... Respondents

(By Advocates: Mr. M.K. Meena – Respondent no. 1 & 2
Mr. S.S. Hassan – Respondent nos. 3 to 13)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

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

- "(i) That the entire record relating to the case be called for and after the same the panel dated 01.02.2010 (Annexure A/1) with the selection process be quashed and set aside with all consequential benefits.
- (ii) That by an appropriate order and direction selection conducted by the respondents be quashed and set aside with the direction to respondents to conduct selection afresh as per procedure and not to give promotion to the private respondents to the post of Commercial Clerk and Ticket Collector.
- (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. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant is working as Kantewalaon in Traffic Department, Ajmer and having qualification of non-matriculate.

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3. That the respondent no. 2 notified vacancies vide notification dated 18.03.2008 (Annexure A/2) to the post of Commercial Clerk and Ticket Collector in the scale of Rs.3200-4900 and 3050-4590 for promotion under Ranker Quota of 33 1/3 percent non matriculate and notified 11 vacancies, 03 for Commercial Clerk and 08 for Ticket Collector from Group 'D' staff having three years regular service and as per notification notified posts meant for non matriculate employees.

4. That the respondent no. 1 prescribed separate written examination for 33 1/3 meant for non matriculate and 16 2/3 for matriculate. The learned counsel for the applicant submitted that perusal of the notification dated 18.03.2008 would show that this examination was for non matriculate employees whereas the respondents also allowed matriculate passed employees who appeared in this examination. It is against the provisions of the Scheme.

5. The learned counsel for the applicant also submitted that Group 'D' staff having three years regular service could apply for these posts but in the cases of SC & ST category, no minimum qualifying service is required but the respondents allowed private respondents nos. 3, 5 and 8 to 13. These private respondents were not having three years experience but they were put on the panel against the general category candidates. Thus the respondents against the provisions of Para 127, 128 and 189 of IREM Vol. I allowed ineligible employees not having three years

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service and having higher qualification and placed in the panel dated 01.02.2010 (Annexure A/1) against the vacancies for general category inspite of fact that these officials applied in respective category. Therefore, the learned counsel for the applicant submitted that the panel dated 01.02.2010 (Annexure A/1) with the selection process be quashed and set aside and the respondents be directed to make a fresh selection as per procedure.

6. The official respondents as well as private respondents have filed their reply. The official respondents in their reply have stated that the employees in the panel dated 01.02.20910 have been rightly placed. Their names find place in order of their merit.

7. The official respondents in their reply have submitted that ranker quota of 33 1/3 is selection for promotion from Group 'D' to Group 'C' of the employees. The non matric is eligibility. However, it is not the earmarked eligibility, as alleged by the applicant. The rules do not provide that only non matric employees will be promoted against the quota. This is in fact the minimum eligibility. As per the notification dated 18.03.2008 (Annexure A/2), eligibility condition was that an employee has to be literate and having knowledge of Hindi and English along with practical experience. In the said notification, there is no bar for those who had higher education. Therefore, it is wrong to state that notification dated 18.03.2008 was meant only for the non matric employees.

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8. The selection was for ranker quota of 33 1/3% by which Group 'D' employees were called from different departments and hence such selection was a general selection. In a general selection, the panel has to be prepared on the basis of merit of the employee and not on the basis of their seniority. In the notification, it has been clearly mentioned that the selection would be based on written examination that is to say that the selection is on the basis of merit. Thus the panel dated 01.02.2010 is legal panel.

9. The respondents have further stated that the applicant did not raise any objection against the letter dated 05.08.2008, which was the eligibility list with regard to the employees who could appear in the written examination as per the selection process. He is raising an objection after he has been declared unsuccessful in the selection.

10. The respondents in their reply have stated that as per Para 189 of the IREM, Group 'D' employee is eligible for promotion to Group 'C' post, who put in a minimum of three years of continuous service. However, the said condition does not apply to SC/ST employee. Therefore, it is wrong to say that the respondent nos. 3, 5 and 9 to 13 have been allowed but they are not having three years service. The condition of three years continuous service does not apply to SC/ST employees in terms of Para 189 of IREM as has been mentioned earlier. The respondent no. 8

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belongs to General category and he has more than three years continuous service.

11. The respondents have stated that no candidate belonging to General category with less than three years continuous service has been placed on the panel dated 01.02.2010 (Annexure A/1). The panel dated 01.02.2010 is absolutely legal and is in consonance with Para 189 of IREM. Therefore, the OA has no merit and it should be dismissed with costs.

12. Private respondents nos. 3 to 13 in their reply have stated that in the notification dated 18.03.2008, it has been stated that the posts are for non matriculates. This is the selection in which all Group 'D' employees can apply. The applicant appeared in the selection test but failed.

13. The official respondents had given 15 days time to file objection against the eligibility list but the applicant did not file any objection. Selection has been made according to the rules. The selection is based on merit and not on seniority. The learned counsel for private respondents also submitted that there is no bar of matric employees also to participate in the selection process. He also submitted that for SC/ST candidates, there is no requirement of continuous three years service to be eligible. He submitted that respondents nos. 3, 5 and 9 to 13 are SC/ST category candidates. The respondent no. 8 belongs to General category and he has three years continuous service. The panel dated 01.02.2010 has

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been rightly prepared. There is no illegality in that panel. Therefore, the OA has no merit and it should be dismissed.

14. Heard the learned counsel for the parties and perused the documents on record. It is not disputed that the percentage of promotion from Group 'D' to Group 'C' is 50%. This 50% has been divided into two categories (1) 33 1/3% for non matriculate category and (2) 16 2/3% for matriculation category. As per Para 189 of IREM following provision has been made for promotion to higher grade in Group 'C'.

"(a) Railway servants in Group 'D' categories for whom no regular avenue of promotion exists 33 1/3% of the vacancies in the lowest grade of Commercial Clerks, Ticket Collectors, Train clerks, Number Takers, Time Keepers, Fuel Checkers, Office Clerks, Typist and Stores Clerks etc. should be earmarked for promotion....."

15. Promotion to Group 'C' will be subject to the following conditions:-

(i) All promotions should be made on the basis of selection. There should be written test to assess the educational attainments of candidates followed by interview where considered necessary....."

16. For 16 2/3%, Group 'D' Railway servant to be eligible must have passed matriculation and must have put in minimum two years of continuous service. The eligibility criteria of minimum two years of continuous service does not apply to SC/ST candidates. Thus it is clear that 50% promotion quota has been divided by the Railway in two categories, firstly where no formal academic qualification has been laid down except eligible candidates should be able to read and write and second for those who have

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qualification of matriculation. According to the respondents, there is no mention in IREM Para 189 that those having matric and higher qualification cannot appear against the quota of non matric. There is no such condition in this Para of the IREM. We are not inclined to agree with the contention of the learned counsel for the respondents that this 33 1/3% vacancies meant for non matric can be filled up by candidates having matric or higher qualification. If that be so, there was no need to bifurcate the promotion quota of 50% into two categories (1) having a qualification of non-matric and the other matric. If the employees having qualification matric or higher are allowed to participate in the examination along with non matric then the employees who are falling in the category of non matric will be at a disadvantage. Moreover, the official respondents have made separate provisions for the employees who are having matric qualification and for them, the minimum qualifying service to be eligible also reduced to two years instead of three years.

17. A bare perusal of Para 189 of IREM Vol. I shows that this 33 1/3% of the quota is meant for those categories of Group 'D' employees for whom no regular avenue of promotion exists. Since the employees who do not have matric qualification, have no regular avenue of promotion, therefore, the quota of 33 1/3% is for non matric. We are of the opinion that under this quota, the employees who have matric qualification cannot be allowed to appear. Hence the selection made based on the basis of such employees, who are matric, under the 33 1/3% of non matric

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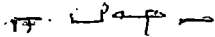
quota is bad in law. Hence, such selection is quashed and set aside. Therefore, the panel based on such selection dated 01.02.2010 (Annexure A/1) is also quashed and set aside.


18. The other contention of the learned counsel for the applicant that General Category posts have been filled by the SC/ST categories, it is stated that the said selection was based on merit and, therefore, if SC candidates have more marks in the written test than the General category candidates then they can be placed under the General Category posts provided they have not appeared in the examination on the basis of any relaxed standard. In the present case, condition of three years of regular service is required to be eligible for a general category candidate. Therefore, according to us, if a SC candidate having three years of experience has appeared and secured marks more than a General category then only he can be appointed against the General category candidate. However, if a SC candidate with less than three years experience has appeared in the written examination, it means that he has appeared in the written examination on the relaxed standards meant for SC/ST candidates. Therefore, he would not be eligible to occupy the vacancies meant for General category candidates. It appears from the pleadings of the parties that three candidates (SC) who are on the panel of Commercial Clerk did not possess three years of continuous service on the date of eligibility. Therefore, they cannot be accommodated against the General category candidates and hence their selection is also quashed and set aside. The selection of private respondent no. 7 for the post of

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Ticket Collector is also quashed and set aside on the same grounds. The respondents are directed to hold a fresh selection on the basis of revised eligibility prepared under 33 1/3% meant for non matric.

19. With these directions, the OA is disposed of with no order as to costs.


(M. NAGARAJAN)
MEMBER (J)


(ANIL KUMAR)
MEMBER (A)

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