

29/02/2012

OA No. 312/2011

Mr. Arpit Srivastava, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

Heard.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 29th day of February, 2012

ORIGINAL APPLICATION No. 312/2011

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. Shri Sumer Singh son of Shri Bishan Singh, aged 33 years, resident of Gali No. 1, Poonam Colony, Kota Junction, Kota.
2. Shri Lalit Kumar Singh son of Shri Om Prakash Singh, resident of Gali No. 4, Chopra Farm, Hatwara, Kota Junction, Kota.
3. Shri Sanjay Kumar Jha son of Shri Laxman Jha, resident of 84/1, Railway Workshop Colony, Kota Junction, Kota.
4. Shri Devendra Singh son of Shri Jageshwar Singh, resident of House No. 35, Gali No. 5, Shastri Colony, Kota Junction, Kota.
5. Shri Bhagwan Singh son of Shri Devi Ram, resident of 463/A, New Railway Colony, Kota Junction, Kota.
6. Shri Dinesh Bhai son of Shri Brahma Bhai, resident of New Railway Colony, Kota Junction, Kota.
7. Shri Brijesh Kumar Sisodia son of Shri Ganeshi Lal, resident of Gali No. 2, J.P. Colony, Kota Junction, Kota.
8. Shri Akram Khan son of Shri Mohammed Mustkim, resident of House No. 446, Gali No. 1, J.P. Colony, Rangpur Road, Kota Junction, Kota.
9. Shri Abdul Raoof son of Shri Abdul Gafoor, resident of Masjid Gali, Station Road, Kota Junction, Kota.
10. Shri Rajesh Shedwal son of Shri J.P. Shedwal, resident of House No. 4-GA-8, Vigyan Nagar, Kota.
11. Shri Mazid Ali son of Shri Mohammed Salim, resident of Gali No. 1, Pratap Colony, Kota Junction, Kota.
12. Shri Tilak Raj son of Shri Nareh Chand, resident of Gali No. 4, Poonam Colony, Kota Junction, Kota.

(All presently working as P.P. posted at Station Manager Office, Kota).

... Applicants

(By Advocate : Arpit Srivastava)

Versus

1. Union of India through Secretary Ministry of Railway, Rail Bhawan, New Delhi.
2. Joint Director (Establishment) (N), Railway Board, Government of India, Ministry of Railways, New Delhi.
3. General Manager, General Manager's Office, Opposite Indira Market, West Central Railway, Jabalpur.

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4. Senior Divisional Manager (Establishment), Railway Kota.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

The applicants have filed this OA thereby praying for the following reliefs:-

- “(a) The impugned order dated 6th July, 2011 (Annexure A/1) issued by respondent no. 4 may kindly be declared to be arbitrary, illegal, unjustified and unconstitutional and the same may kindly be quashed and set aside.
- (b) The respondents may kindly be directed to allow the applicants to submit their applications for promotion to the Group-C posts;
- (c) Any other order, direction or relief may please be awarded in favour of the applicants which this Hon’ble Tribunal may consider fit and proper in the facts and circumstances of the present Original Application.”

2. Brief facts, as stated by the applicants, are that they are challenging the letter of the Divisional Railway Manager, West Central Railway, Kota. On the subject of selection of Ticket Collectors PB-1 pay scale Rs.5200-20200 + 1900 Grade Pay RS(RP) 33.33% Commercial Department, Kota Division, vide letter dated 06.07.2011 (Annexure A/1) whereby the notice for demand of justice sent by the applicants on 18.06.2011 has been rejected on the ground that the promotion list issued in the year 2006 is applicable only to the Group ‘D’ employees of the Commercial Department.

2. The procedure for promotion to higher grade Group ‘C’ is provided under Para 189 and speaks that the Railway servant

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in Group 'D' categories for which no regular avenue of promotion exists, 33-1/3 of the posts in the lowest grade of Commercial Clerk, Ticket Collector, Train Clerks, Office Clerks, Store Clerks etc. should be earmarked by promotion. Group 'D' Railway servant to be eligible for promotion to Group 'C' posts should have put in a minimum of three years of continuous service for promotion to Group 'C' posts. Whenever vacancies arise in Group 'C' applications were invited for 33-1/3% quota from the staff working in Group 'D' irrespective of their Departments and in most of the cases, the employees of the Traffic/ Operation/ Commercial Departments were called for the said promotion. This fact is evident from the notification issued for the vacancies of the year 2006, 2007 and 2008.

3. Applicants, who are Group 'D' and working in Traffic/Operation Departments, though are eligible for promotion in Group C categories but they have been restrained from making application for their promotion to Group C categories. When this aspect of the matter was brought to the notice of Senior Divisional Manager (Establishment) and request was made to consider the request of applicants and accept their applications, he declined to do so and simply stated that he is going to fill up the 28 vacancies of Ticket Collector (PH-I) from amongst the eligible persons in the Commercial Department only.

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4. The applicants stated that the above action of the Senior Divisional Manager is against the decision already taken by the Railway and the Railway Board as well as against Para No. 189 of the Indian Railway Establishment Manual Vol. I and in violation of Articles 14 and 16 of the Constitution of India. If this process would be allowed to continue then they will be put behind the person who will be allowed promotion in the Group C categories for all times to come. The above action of the Senior Divisional Manager has been challenged by the applicants in the OA No. 260/2011 before the CAT Jaipur Bench. This OA was disposed of with the direction to the respondents to consider the notice for demand of justice of the applicants and pass appropriate order on the same prior to 11.07.2011.

5. The applicants further stated that the order dated 06.07.2011 which has been passed by the Divisional Railway Manager, West Central Railway, Kota is contrary to the rules as well as regulations issued from time to time. Therefore, being aggrieved by the above order, the applicants have filed this OA.

6. The applicants have further stated that at any point of time no discrimination was made amongst the employees of Group 'D' for making promotion to Group 'C'. For making promotion to Group 'C', the applications were invited from Group 'D' employees of Commercial as well as other

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Departments also. But in the present case, only the Group 'D' employees of Commercial Department are being made eligible for promotion to the post of Group 'C' and employees working in Traffic/Operation Departments are not treated as eligible. As per the provisions of Para 189 of the Indian Railway Establishment Manual, the applicants are also eligible to be considered for promotion to the post of Group 'C'. Therefore, the OA be allowed.

7. The respondents have filed their reply. In their preliminary objections, the respondents have stated that the present OA has been filed by 12 applicants. They have stated that it is wrong to say that Group 'D' employees irrespective of their department had been called for the promotion Group 'C'. The respondents want to place on record earlier notification dated 28.07.2010 to refute such allegation. Applicants have failed to demonstrate as to which notification they are referring to while alleging they have been restrained to apply. It is, however, not denied that the learned Tribunal in OA No. 260/2011 directed the respondents to consider the notice for demand of justice of the applicants and pass appropriate order. Accordingly, the answering respondents after consideration as per the direction passed the order dated 06.07.2011 (Annexure A/1). It being just and legal cannot be challenged in the manner done by the applicants. Applicants since not entitled cannot be considered in violation of the rules in this regard.

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8. They have further stated that Group 'C' which is filled by Ranker/LDCE is conducted by the Railways from among the eligible candidates of Group 'D' staff through seniority/selection based on written test and other criteria laid down in this regard.

9. Railways have several zones and each zone has its own headquarter office and General Manager is competent authority to take policy decision of the concerned zonal railway. Annexure A/7 is a policy for elimination of viva-voce test in the selection while Annexure A/8 is an order granting one time exemption which has no relevance to issue raised and the relief sought by the applicants. Accordingly, the reliance so placed by them is wholly misconceived. The respondents have stated that the contents of Para 4.5 are not correct. Orders at Annexure A/9 to A/12 have no co-relationship in the issue raised and relief sought by the applicants. They have not denied that the posts of Group 'C' against ranker quota are filled from amongst eligible Group 'D' staff as decided by the Zonal Railway in terms of Para 127 mentioned in ACS 154. Annexure A/9 is concerning to clerical cadre which is not related with a cadre of Ticket Collector. Annexure A/10 & A/11 are based on the policy of the Western Railway. Annexure A/12 is concerned to North Western Railway. In fact the selection which is being conducted for the post of Ticket Collector by Kota Division is based upon the policy of West Central Railway. The respondents have placed a copy of avenue of promotion of West Central Railway as Annexure R/1 to substantiate this aspect of the matter. The

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issue of eligibility was referred to the Headquarter office. The Headquarter office vide its letter dated 14.03.2011 (Annexure R/2) reiterated its stand. They have further submitted that earlier selections by other Divisions of this Zonal Railways were also made as per its provisions. Promotions are to be made as per procedure prescribed in Para 189 of the Indian Railway Establishment Manual Vol. I. Each Zonal Railway has its own policy procedure. Therefore, any challenge based on the previous practice by other Zonal Railways is without any substance. It is prerogative of the Administration to decide the eligibility as per its requirement looking to the knowledge of the person concerned.

10. Para 189 of the Indian Railway Establishment Manual Vol. I only prescribes the procedure for selection but it no where speaks about the eligibility. Therefore, any submission with regard to the violation of Articles 14 & 16 of the Constitution of India is wholly misconceived. The respondents have stated that the OA has no merit and it deserves to be dismissed.

11. The applicant has filed rejoinder and the respondents have filed reply to the rejoinder.

12. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicants reiterated the facts, as stated in his OA as well as in the

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rejoinder. He emphasized that the applicants were Group 'D' employees and working in the Traffic & Operation Department are also eligible to be considered for promotion in Group 'C' to the post of Ticket Collector but they are not being considered by the respondents on the ground that they are not working in Commercial Department. This is a case where provisions of Paras 180 & 189 of the Indian Railway Establishment Vol. I are applicable for making promotion from Group 'D' to Group 'C'. Corrections were made through Advance Corrections Slips in Railway Establishment Manual and in this connection; he referred the Advance Corrections slips No. 154 and 155 (Annexure A/4 and A/5 respectively). He also referred to Circulars issued on 03.01.1991, 22.09.2003 and 13.07.2004 (Annexure A/6, A/7 and A/8 respectively of the OA). During the course of arguments, he also referred to the letter dated 07.08.2008, 18.08.2008, 15.03.2011 and 10.05.2011 (Annexure A/9 to Annexure A/12 respectively) which refer to the process of making promotion/selection to the Group 'C' from Group 'D' staff. He further argued that Para 189 of the IREM provides that irrespective of the Department, if vacancy arise in Group 'C', Group 'D' employees are entitled to make applications. Similarly Para No. 180 of the IREM also provides for promotion from Group 'D' to Group 'C' for both Transportation and Commercial Department. Therefore, the contention of the respondents that filling up the post of Ticket Collector, only Group 'D' employees of Commercial Department will be eligible is contrary to the provisions of the Manual. During the course of arguments, learned counsel for the applicant gave the copy of the letter No. ET/1025/1/Part-

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2/AASM) dated 29.11.2011 issued by the West Central Railway for filling up the post of Assistant Station Master in which the applications from Group 'D' employees of Traffic as well as Commercial Department have been invited. He also gave a copy of the notification No. ET/1025/13 dated 24.01.2012 of the West Central Railway in which applications have been invited for the post of Goods Guard and in which employees of both the Traffic and Commercial Department have been made eligible to apply. Therefore, learned counsel for the applicant submits that the applicant may be allowed to appear in the examination for the post of Ticket Collector and the OA be allowed.

13. On the contrary, learned counsel for the respondents argued that averment of the applicants that Group 'D' employees irrespective of their Department be called for promotion to Group 'C' is not correct. Each Zonal Railway decides about the avenue of promotion in each department and accordingly, the promotions are made from eligible candidates of that department only and in this connection, he referred to Annexure R/1. He also submitted that promotion avenues for Commercial Department as well as Traffic Department are different. He argued that the post of Ticket Collector is for the Group 'D' staff of Commercial Department and, therefore, Group 'D' staff of Commercial Department is eligible to be considered promotion while the applicants are from Traffic Branch and, therefore, they are not eligible to apply. He also argued that Annexure A/7 is for elimination of viva voce test.

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Annexure A/8 is an order granting one time exemption and, therefore, it has no relevance with regard to the issue raised by the applicant. Annexure A/9 is concerning to the clerical cadre. It is not related to the cadre of Ticket Collector. Annexure A/10 A/11 is based on the policy of the Western Railway and Annexure A/12 is concerned to North Western Railway. Thus none of these Annexures are relevant to the present case. Therefore, the applicants cannot place reliance on these documents. He further argued that Zonal Head office of Western Railway vide letter dated 14.03.2011 have directed that AVC may be followed to fill up the post of Ticket Collector (Annexure R/2).

14. He further argued that Para 189 of the Indian Railway Establishment Manual only prescribes the procedure. It does not prescribes the eligibility criteria. He also argued that Para 180 is a general para providing promotional channels of transportation and commercial departments from Group 'D' to Group 'C' posts. As per it, Railway servants in the lowest grade in both the departments are eligible for consideration for promotion to the higher grades of respective departments. He also argued that earlier also a notification was issued for filling the post of Ticket Collector on in 2010 vide notification dated 28.07.2010 (Annexure R/3) in which only Group 'D' employees of the Commercial Department were made eligible. Therefore, he argued that the present OA has no merit and deserves to be dismissed.

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15. After hearing the learned counsel for the parties and perusal of the documents on record, it is clear that the short controversy involved in this case is whether the applicants who are Group 'D' employees in the Traffic/Operation Department of the Railways are eligible to apply for the written examination for the selection to Group 'C' of Ticket Collector or not. Learned counsel for the applicant has relied on the provisions of Para 180 and 189 of the IREM Vol. I, which are quoted below:-

"180. Transportation (Traffic) and Commercial Department- All railway servants in the lowest grade should be eligible for consideration for promotion to higher grades in both the Transportation and Commercial branches. Applications should be invited from amongst categories eligible for promotion from both the branches. All Railway servants who apply will be considered. An adhoc seniority list will be prepared on the basis of length of continuous service in the grade and suitable men selected and placed on a panel for training. Systematic and adequate training and examinations or tests must precede actual promotions.

189. Promotion to higher grades 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, Trains Clerks, Number Takers, Time Keepers, Fuel Checkers, Office Clerks, Typists and Stores Clerks etc. should be earmarked for promotion.

.....

....."

16. Perusal of Para 189 of IREM Vol. I shows that it lays down general principles of promotion and procedure to fill up the post of promotion to higher grade in Group 'C' but Para 180 specifically provides for promotion avenues to the Group 'D' of Transportation (Traffic) and Commercial Department. It clearly states that applications should be invited from amongst

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category eligible for promotion from both the branches of Railway servants. An ad hoc seniority list will be prepared on the basis of length of service in the grade and suitable candidates selected and placed on panel for training. This Para does not provide promotion to Traffic and Commercial Department separately from Group 'D' to Group 'C'. Para 180 is a specific Para with regard to employees of Transportation (Traffic) and Commercial Department while Para 189 is of general nature providing promotion to higher grade in Group 'C'. Learned counsel for the respondents argued that after the bifurcation of the promotion avenues for Traffic Department and the Commercial Department, the Group 'D' of the respective departments can apply for Group 'C' promotion in their respective department according to avenues for promotion. On the contrary, the learned counsel for the applicant placed reliance on letter No. ET/1025/1 Part-2 (AASM) dated 29.11.2011 which is for the selection of Assistant Station Master. This letter is issued by West Central Railway. According to the list provided by the learned counsel for the respondents for promotion avenues of Commercial and Traffic Department, the post of Assistant Station Master is in the cadre of Traffic Department. Therefore if the averment of learned counsel for the respondents is to be accepted then only the Group 'D' employees of Traffic Department should have been eligible for this post but according to this letter dated 29.11.2011, the employees of Traffic as well as Commercial Department have been made eligible to apply. The learned counsel for the respondents was asked to clarify this position but he was not able to do so. Similarly, for filling up the post of

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Good Guard, a notification has been issued on 24.01.2012. In this notification also, the employees of Traffic Department as well as Commercial Department have been made eligible to apply. Annexure A/10 is again a letter of West Central Railway dated 18.08.2008 in which the employees of both Traffic and Commercial Departments have been made eligible to apply for the post of Trains Clerk. Thus in our view West Central Railway is allowing candidates from both the Traffic as well as Commercial Department to apply for a Group 'C' post. Therefore, in the interest of justice, we deemed it proper and just to direct the respondents that the applicants may also be considered to be eligible to apply for promotion to the post of Ticket Collector.

17. With these observations, the OA is disposed of with no order as to costs.

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(Anil Kumar)
Member (A)

K.S. Rathore

(Justice K.S.Rathore)
Member (J)

AHQ