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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No.O.A.350/00548/2016

Date of order : 21.12.2016

Present : Hon'ble Justice Mr. V.C. Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

SUMIT ROY
VS.
UNION OF INDIA & ORS.
(S.E. RAILWAY)

For the applicant : Mr. A. Chakraborty, counsel

For the respondents : Mr. A.K. Banerjee, counsel(official)
Mr. M.K. Putatunda, counsel (private)

ORDER

Per Mr. Justice V.C. Gupta, J.M.

Heard Mr. A. Chakraborty, Id. Counsel for the applicant, Mr. A.K. Banerjee, Id. Counsel for the respondents and Mr. M.K. Putatunda, Id. Counsel for the private respondents and perused the records.

2. From the pleadings of the applicant the facts in short are that, in pursuance of a notification dated 07.08.2014 an advertisement was published to fill up the vacancy of Technical III(WTM) in pay band of Rs.5200-20200/- with Grade Pay of Rs.1900/- against 50% DPQ in the S&T (Open Line) of Kharagpur division. The options were invited and Kharagpur division sent the options of 4 persons on 28th of August, 2014. Options of the candidates who were in service on 22nd May, 2002 and were not having the qualification of Class-X Board Examination were ^{only 4} ~~also~~ called. The copy of the advertisement has been annexed as Annexure 'A-1' page 13 of the O.A., relevant portion of which is extracted herein below:-

"In terms of Estt. Srl. No.91/05 to fill up the vacancies in the category of Tech. Gr.III (WTM) against 50% Departmental Quota including higher grade chain vacancies with the following community

(Dwg)

wise break up, options are invited from Helper in PB Rs.5200-20200/- & GP Rs.1800/- of Telecom & Wireless Wing of S&T (O/L) deptt. Of KGP divn. And from those working in other organisation but maintaining lien in S&T(O/L) of Telecom & Wireless wing of S&T(O/L) deptt./KGP divn. who are in service as on 22.05.2002, not having the qualification of Class-X Board Examination and fit in B1 medical category.

UR = 01 SC = NIL ST = 01 Total = 02 Nos.

Helper who are enjoying financial benefit under MACP scheme are also eligible to submit option for promotion to Tech. Gr.-III(WTM).

Wide circulation may be made among the staff concerned and the options in the enclosed format completed in all respects received from Staff concerned may be sent in a consolidated statement after conducting proper scrutiny by Subordinate Incharge regarding their eligibility conditions mentioned in the Notification on or before 22.08.14. All the applications must be routed through the Concerning Bill section for certification. No options will be accepted without certification."

The applicant submitted his option in terms of the notification dated 07.08.2014 and his option was forwarded. The applicant being senior to private respondent, Sri G. Shyam, has been ignored and Sri G. Shyam has been placed in the eligibility list for promotion as is evident from the letter dated 14.03.2015 (Annexure A-3, page-15 of the O.A.) , relevant portion of which is extracted herein below:-

"In order to fill up 02 vacancies (UR-01, SC-Nil, ST-01 including the shortfall of non-matric quota) in the Category of Tech-Gr.III(WTM) in Pay Band rs.5200-20200 with Grade Pay Rs.1900/- the Trade Test will be conducted shortly.

It is advised to inform the following candidate to be in readiness to appear in the Trade Test as and when called for.

Srl.No.	Emp.No.	Name(S/Sr.)	Com	Design.	Unit
1	07953872	G. Shyam	UR	Helper	SSE(T)/Wireless/KGP

No ST candidate has submitted option for the post of Tech. Gr.III(WTM).

If the above staff is unwilling to appear in the Trade test, a written declaration in (.....not legible) effect should be obtained from him and send the same to this office within 10 days from the date of issue of this letter."



3. The applicant was not called for the trade test. Aggrieved by the action of the authorities in not calling the applicant and not keeping him in the eligibility list the present application has been filed seeking the following reliefs:-

"(I) Office Order dated 23.03.2016 issued by respondent no.2 asking the G. Shyam to appear in the Trade Test for promotion to the Post of Technician Grade III, cannot be sustained in the eye of law and therefore the same may be quashed;

(II) Respondents may be directed to conduct Trade Test in the Post of Technician Grade III(ETM) after scrutinising the option form submitted by the applicant in time."

4. Reply has been filed by the official respondents. It has been contended in the reply that a letter dated 21.05.2015(Annexure A-4 to the O.A.) was forwarded to Respondent No.2 enclosing therewith a photocopy of the earlier letter on 21.05.2015(Annexure A-5), but no acknowledgment receipt of the earlier letter dated 28.08.2014 by the office of Respondent No.2 has been annexed. However, by letter dated 24.08.2016(Annexure A-6 to the O.A.) direction was issued to send the options of three other staff including the applicant to the office of Respondent No.2 on or before 3rd of September, 2015 with necessary certification. In pursuance thereof, SSE(T)/W/Kharagpur by letter dated 25.08.2015 submitted fresh option forms dated 25.08.2015 of three staff including the applicant. It has been observed that the subsequent options were not submitted with certification of Bill Section within time. It was further pleaded that SSE(T)/Wireless/Kharagpur was informed by letter dated 18.02.2016 that ^{other} ~~different~~ options of three staff cannot be entertained at a later stage and the staff concerned may be informed accordingly. The rejection order dated 18.02.2016 is not under challenge in the instant O.A., rather, the applicant has assailed the subsequent order dated 23.03.2016 whereby G. Shyam,



the private respondent whose option was received within the stipulated last date was called for appearing in the trade test which was scheduled to be held on 07.04.2016. The private respondent has also filed his reply and pleaded that the applicant is not falling in the ambit of the advertisement, hence, he was rightly not called to appear in the trade test.

5. A rejoinder has been filed by the applicant reiterating the stand taken in the original application.

6. The undisputed facts as evident from the pleadings are that the applicant applied in pursuance of an advertisement dated 07.08.2014 to fill up the vacancies in Tech. Gr.III(WTM) by promotion under 50% quota from those who are in service as on 22.05.2002 and not having the qualification of Class-X Board Examination and fit in B-1 medical category. It is also not in dispute that the applicant was having Class-X passed Examination. Yesterday we asked to bring on record the relevant recruitment rules and the seniority list. The seniority list has been filed by the applicant by an affidavit wherein the name of the applicant, Sumit Roy is placed at Sl. No.28 and the name of G. Shyam is placed at Sl.No.38.

7. The relevant Recruitment Rules as per Sl. No.91 of 2005 has also been placed on record today by the counsel for the respondents which are extracted herein below:-

"Estt. Srl.No.91/2005

RBE No.70/2005

No.P/R/4/31/Pt.III

Dated 24.05.2005

Sub : Promotion of Group 'D' staff in the S&T department as ESM Gr.III, MSM Gr.III, TCM Gr.III and WTM Gr.III in scale Rs.3050-4590/- educational qualification for.

Ref: Railway Board's letter No.E(NG)I-99/PM8/2 dated 22.05.2002 (Estt. Srl.No.69/02)



Railway Board's letter No.E(NG)I-99/PM8/2 dated 29.04.2005 (RBE No.70/2005) is as under:-

In terms of the provisions contained in paras 149, 150 and 151 of Indian Railway Establishment Manual, Volume-I (1989 Edition), the vacancies in the categories of ESM grade III, MSM grade III, TCM grade III and WTM grade III all in the scale of pay of rs.3050-4590 are filled as under:-

- i) 50% by direct recruitment, and
- ii) 50% by promotion of departmental staff.

2. As the Railways are aware vide this Ministry's letter of even number dated 22.05.2002 pursuant to acceptance of recommendation of Railway Safety Review Committee qualification of Class X Board Examination was prescribed for promotion of Group 'D' staff in the S&T Department to the posts of ESM Grade III, MSM Grade III, TCM Grade III and WTM Grade III all in the pay scale of Rs.3050-4590 with the stipulation that the existing Group 'D' staff in service as on 22.05.2002 not possessing the qualification of Class X Board Examination may be allowed two chances to appear in the two consecutive trade tests conducted after the issue of the letter *ibid*.

3. The Federation in the PNM-AIRF have represented that the existing Group 'D' staff should be allowed promotion without insisting on enhanced qualification of Class X Board Examination. The matter has been discussed in successive PNM-AIRF Meetings in which the Federation have been insisting on their demand that the condition of qualification should not be applicable to existing staff. Pursuant to these discussions the Ministry of Railways have reviewed the matter and have decided that the condition of qualification of Matriculation having been accepted pursuant to RSRC's recommendations and sophistication in S&T equipment/technology, the qualification cannot be done away with altogether. However, keeping in view the aspirations of existing Group 'D' staff in service as on 22.5.2002 not having the qualification of Matriculation, it has been decided that 50% of the quota earmarked for promotion of Group 'D' staff in the categories mentioned above may be filled from amongst existing Group 'D' staff in service as on 22.5.2002 not having the qualification of Class X Board Examination. The balance of 50% of quota earmarked for promotion should continue to be filled from amongst Group 'D' staff in S&T Deptt. possessing the qualification of Class X Board Examination. Accordingly, the posts of ESM/MSM Gr.III, TCM Gr.III and WTM Gr.III all in the pay scale of Rs.3050-4590 will henceforth be filled as under:-

- i) 50% by direct recruitment, and
- ii) 50% by promotion of S&T Group 'D' staff as under:-

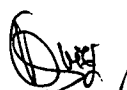
- (a) 50% plus shortfall against (b) below by promotion from amongst staff having the qualification of Class X Board Examination, and

(b) 50% by promotion from amongst existing Gr. 'D' staff in service as on 22.5.2002 not having the qualification of Class X Board Examination.

4. The Indian Railway Establishment Manual Vol.I 1989 Edition is accordingly amended as in the ACS Nos. 172 enclosed."

Para 3 of this Sl.No.91 of 2005 categorically made it clear that the existing Group 'D' staff in service as on 22.05.2002 not having qualification of Matriculation shall be given preference against 50% quota^{and} only for the remaining vacancies. The Group 'D' staff having qualification of Class-X examination will be considered.

8. Our attention has been drawn by the counsel for the applicant that at Annexure A-2, page 14 the options were sent for technical Group 'D' WTM to SSE(T)/W/Kharagpur wherein the name of the applicant finds place at the top. It has been contended that it is the list of Matric pass candidates. But we do not find the qualification of the applicant given anywhere in the said list. Our attention has also been drawn to Annexure A-3 wherein it has been contended that the contents of this letter shows that in the special trade test for promotion to the post of Technical Gr.III (WT.M.) in pay band of Rs.5200-20200 with Grade Pay of Rs.1900/- against Matric quota will be conducted shortly, but the reference has categorically mentioned in this letter that options have been considered in the light of the letter dated 07.08.2014 which has been annexed as Annexure A-1 to the Original Application. On the strength of these two documents it has been stated that the department has sent the option against the Matric quota and not against the non-Matric quota. It is also contended that possibility cannot be ruled out that separate examination to fill up the vacancies of Matric quota has been published. But nothing has been brought on record by the



applicant. In this case, the applicant has a specific case that he applied in pursuance of an advertisement dated 07.08.2014 mentioned herein above which categorically mentioned that the post meant for promotion against 50% quota would be for those who are in service on 22.05.2002 not having qualification of Class-X Board Examination and fit in B-1 medical category. Admittedly the applicant does not fall under the aforesaid category. Hence, we do not find any merit in this case.

9. The O.A. is accordingly dismissed. The interim order stands vacated.

No cost.



(J. Das Gupta)
Administrative Member
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(Justice V.C. Gupta)
Judicial Member