

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2502/2003

New Delhi this the 21st day of April, 2005.

**HON'BLE Mr. Shanker Raju, Member (J)
Hon'ble Mr. M.K. Misra, Member (A)**

Shri Jatinder Kumar,
S/o Shri Ajab Lal,
Working as Junior Engineer (W)I,
Under Section Engineer (W),
Northern Railway, Tughlakabad,
New Delhi and 16 others

-Applicants

(By Advocate Shri B.S. Mainee)

-Versus-

Union of India through:

1. The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. The General Manager,
Northern Railway,
Baroda House, New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
State Entry Road, New Delhi.

-Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R

Mr. Shanker Raju, Hon'ble Member (J):

The following reliefs have been claimed in the amended OA:

"8.1 That this Honorable Tribunal may be pleased to allow this O.A. and direct the respondents to produce the relevant records of Respondent No.1 and Respondent No.2.

8.2 That this Honorable Tribunal may be further pleased to quash the impugned orders directing the respondent No.1 to work out unreserved vacancies for the L.D.C.E. quota for the selection period 1998-2000 by carrying forward unreserved vacancies remained unfilled in the previous L.D.C.E. as has been done in case of reserved vacancies.

8.3 That this Honorable Tribunal may be further pleased to direct the respondent No.1 to de-reserve the reserved

vacancies as recommended by respondent No.2 enabling the respondent No.2 to fill up the said vacancies by out of those applicants who have already qualified the L.D.C.E. quota for the aforesaid period and the reserved vacancies may be carried forward for the next L.D.C.E.

8.4 That this Honorable Tribunal may be further graciously pleased to quash the Railway Board order dated 23.10.2003 in so far as it has failed to comply with the direction of this Honorable Tribunal and has passed non-speaking and non-reasoned order and further directing the respondent No.1 to de-reserve six reserved vacancies as per DOPT instructions reiterated by the Railway Board itself and direct the respondent NO.2 to fill up de-reserved vacancies out of those general community employees including the applicants who have qualified in the L.D.C.E. and are waiting for posting.

8.5 That this Honorable Tribunal may be further pleased to direct the respondents to work out the correct number of vacancies to be filled up against 30% quota for the L.D.C.E. held in the year 2001 for the period 1998-2000 by including carried forward vacancies pertaining to general community candidates which remained unfilled in the previous L.D.C.E. held in the year 1994-95 and 1998-99.

8.6 That any other or further relief which this Honourable Tribunal may deem fit and proper under the circumstances of the case may also be granted in favour of applicants.

8.7 That the cost of the proceedings may also be granted in favour of the applicants."

2. Applicant working as Junior/Section Engineers in the Civil Engineering Department seek promotion under 30% quota for Limited Departmental Competitive Examination (LDCE) for the posts of Assistant Engineer. A written examination was held to fill up 15 vacancies of Assistant Engineers through LDC against 30% quota for the vacancy year 1998-2000. 43 candidates have been shown to have passed the written examination and after holding viva voce test the final results were declared on 6.5.2002 and 12.11.2002. Only 8 candidates, i.e., 7 general and 1 ST were placed on the panel. The General Manager, Northern Railway has recommended for de-reservation of two S/C and S/T vacancies which remained unfilled even after finalizing the LDCE. Some queries were made by letter dated 13.6.2002, which were responded to on



18.6.2002. A reply sent on 6.1.2003 appraised that in view of shortage of junior scale/Group 'B' in the Railways and increased work load due to safety side it was necessary to de-reserve the vacancies meant for SC/ST. Applicants have not been placed in the panel despite qualifying the written examination and viva voce. Instead of considering them against the de-reserved quota a selection for 30% LDCE was initiated vide OM dated 13.5.2003. This led to filing of OA-1383/2003 which was disposed of on 28.5.2003 with a direction to respondents to work out the unreserved vacancies for the selection held in 2001-2002 and should take a conscious decision on the proposal of respondent No.1 pertaining to de-reservation of the reserved vacancies. An order passed on 23.10.2003 rejected the proposal to de-reserve posts, rather it has been decided to fill up these reserved vacancies temporarily by promoting senior-most candidates on ad hoc basis and to hold a special selection for SC/ST candidates to fill up the vacancies on regular basis. The aforesaid has not been complied with, rather the selection ordered on 15.5.92 was processed.

3. Learned counsel for applicants contended that though there are no rules yet the de-reservation as agreed to by the respondents cannot be rejected by the Minister as the Railway Board is competent to take a decision and moreover it is stated that no reasons have been assigned for not de-reserving the vacancies as recommended.

4. Shri Mainee contends that for reservation carry-forward is rule for reserved category but when the vacancies for general category had not been filled up in the yester years under 30% quota instead of carrying forward the vacancies were again put up in the general pool and were further bifurcated into 30 and 70 percent quota is to deprive general candidates of consideration.

5. Shri Mainee states that denial of promotion to the general category candidates on de-reserved vacancies who had made the grade in the LDCE held in the year 2001-2002 against the vacancies of 1998-2000 is in violation of Board's letter dated 6.1.2004, according to which, due to ban on de-reservation of reserved vacancies and since the reserved vacancies in safety category cannot be kept vacant, Board's letter dated 11.5.99, which provides filling up of reserved posts due to non-availability of SC/ST candidates for ad hoc promotion has not been followed.

6. On the other hand, respondents' counsel vehemently opposed the contentions and stated that carrying forward vacancies for reserved categories has been upheld by the Apex Court in **State Bank of India Scheduled Castes/Tribes Employees Welfare Association and others v. State Bank of India and another, JT 1996 (4) SC 547**. Further by relying upon para 204.9 of IREM-I it is contended that panel consisting of employees who have qualified the selection and in so far as calculation of vacancies are concerned para 202.2 clearly rules that vacancies for two years should be assessed carefully with an addition of 20% of the cadre. In this backdrop it is stated that there is no rule for carry forward the unreserved vacancies.

7. Shri R.L. Dhawan, learned counsel for respondents has given particulars of calculation of vacancies under 30% quota and stated that for the 30% quota for the years 1993-95 whereas out of 23 unreserved vacancies only 14 were filled up and for the years 1995-97 out of 23 unreserved vacancies 15 were filled up. Accordingly for the year 1999-2000 out of 26 a panel of 34 persons comprising 8 SC, 1 ST and 25 unreserved was formed on 5.2.1999. For 1998-2000 as against 30% quota out of 8 vacancies a panel of 9 was made of 8 unreserved and 1 ST which was not acceded to and rejected by the Minister. As such,

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recalculating vacancies a selection was notified on 20.5.1993 whereas out of 17, 7 applicants are placed in the panel.

8. On careful consideration of the rival contentions of the parties promotion from Group 'C' to Group 'B' is governed by Chapter. I Section A, para 201.1 of IREM-I, according to which selection is to be held for 70% of the vacancies and for LDCE 30%. As per para 202.3 it is laid down that there is no carry forward element of reservation if no SC/ST has qualified for appointment and in such a situation reserved vacancies should be de-reserved.

9. The Tribunal earlier in OA-1383/2003 directed respondents to take a conscious decision pertaining to de-reservation. As per Railway Board's letter dated 6.1.2004 on non-permissibility of exchange of reservation between SC/ST and as the safety category vacancies cannot be kept vacant due to safety of trains operation, Railway Board's letter dated 11.5.99 provides de-reservation and failing which ad hoc promotion for a limited period. Respondents have sent the proposal for de-reservation but the same has been turned down vide letter dated 23.10.2003 on the ground that only 135 eligible SC/ST candidates had appeared out of which only one had qualified. Accordingly, they have decided to temporary promote senior-most candidates and thereafter to hold a special selection for SD/ST candidates. Respondents have also produced before us the file relating to de-reservation. Whereas we find that the Minister concerned rejected the proposal of de-reservation without stating any reasons and the reasons assigned in the draft forwarded are also not in consonance with the instructions on the subject.

10. It is no more res integra that IREM has assumed a statutory character and in the event as per para 202.3 ibid when there are no eligible available candidates who had failed to qualify for appointment against the reserved vacancies the reserved vacancies should be de-

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reserved and filled up only after de-reservation. A proposal of the General Manager has been acceded upto Board's level and a decision has been taken to resort to ad hoc promotion. It is also on the ground that there would be a special drive for filling up SC/ST vacancies but without initiating such a drive respondents have ordered a fresh notification for selection on 5.9.2003.

11. Though we do not agree to the contentions raised by Shri Mainee that there would be a carry forward rule for unreserved category in so far as carving out their quota under 30% to be carried forward instead of being again pooled in a general pool and thereafter to carve out 30% and 70% quota respectively as this would amount to reservation of unreserved vacancies. Moreover, reservation and carry forward of vacancies for reserved category is an exception to Article 14 of the Constitution as contained in Article 16 (4) and with an intelligible differentia and reasonable nexus with the objects sought to be achieved, there is no infirmity in pooling the unfilled vacancies in reserved category in the next quota for carving out of LDCE as well as 70% promotee quota.

12. Another aspect of the matter is that though a model employer Government has to assign reasons for its action. While the Tribunal has directed the respondents to pass reasoned order on the proposal of de-reservation, yet we find that the only reasons is that out of 135 eligible candidates belonging to SC/ST only one ST candidate succeeded. The basic criteria and object to de-reserve was the Railway Board's decision dated 6.1.2004 keeping in view the administrative exigencies and safety of train operation in safety category. Keeping the vacancies unfilled would not be in the interest of Railways. When the Government passes an order in compliance of the directions of the Tribunal it is obligatory upon it as a sine qua non of fair procedure to support the order with reasons. The reasons assigned were to promote senior-most candidates on ad hoc

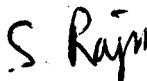
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basis which was not even followed and thereafter the fresh selection was continued.

13. It was incumbent upon the authorities to have first de-reserved the vacancies and thereafter should have initiated the process to fill up the vacancies, as at the Railway Board's level this de-reservation was cleared keeping in view the safety category, yet the decision to stall this de-reservation of six posts has not been supported by any reasons. As such, the order passed on 23.10.2003 cannot be countenanced in law.

14. In the result, for the foregoing reasons, OA is partly allowed. Order dated 23.10.2003 is also set aside. The matter is remitted back to the respondents for reconsideration on de-reservation and keeping in light para 202.3 of IREM-I to take a fresh decision within a period of three months from the date of receipt of a copy of this order and thereafter to consider cases of applicants subject to final outcome for promotion under unreserved category of de-reservation for the posts of AEN under 30% LDCE quota. Till then respondents are directed not to give effect to the promotion pursuant to notification dated 5.9.2003. No costs.


(M.K. Misra)
Member(A)


(Shanker Raju)
Member (J)

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