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Central Administrative Tribunal, Principal Bench

Original Application No. 2329 of 1995

New Delhi, this the 1st day of September, 1999

Hon'ble Mr.R.K.Ahooja, Member(Admnv)
Hon'ble Mr.Syed Khalid Idris Naqvi, Member(Judl)

1. Prem Singh S/o Sh.Bishan Singh,
Driver Goods, Northern
Railway, Ghaziabad.

Residential Address

Prem Singh, 350-B, Sain Colony,
Ghaziabad

2. Kishan Lal S/o Sh.Bhola Nath,
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Residential Address

Kishan Lal,
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3. Jayanti Parshad S/o Sh.Prabhu
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Residential Address

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4. Joginder Singh s/o Sh.Thakur Dass,
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Joginder Singh, 171/A,
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5. Balbir Singh S/o Sh.Sadhu Singh,
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Residential Address

Balbir Singh, 195/3,
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6. Khairati Lal S/o Sh.Daulat Ram,
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Residential Address

Khairati Lal,
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7. Sham Kumar S/o Sh.Kishori Lal,
Driver Goods, N.R., Tughlakabad

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Residential Address

Sham Kumar, 254, Janta Flats,
Badarpur, Tughlakabad

8. Praveen Kumar S/o Shri Dal Chand,
Driver Good, N.R., Delhi

Residential Address

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9. Bhagwat Singh, S/o Sh. Chatter
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Tughlakabad

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10. Lala Ram S/o Shri Nathu Ram,
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11. Subhash Chander S/o Shri Kishan
Chand, . Driver Goods, N.R.
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Residential Address

Subhash Chander, 82/7A,
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12. Prem Dass S/o Shri Mool Chand,
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Ghaziabad.

Residential Address

Prem Dass, 245, Kailash Nagar,
Ghaziabad.

13. Ganga Bux Singh s/o Sh. Chakku
Singh, Driver Goods, Northern
Railway, Ghaziabad

Residential Address

Ganga Bux Singh, CZ-350/P
Sain Colony, Ghaziabad

14. Babu Lal S/o Shri Sukha Mal,
Driver Goods, Northern Railway,
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Babu Lal, 85/A-2,
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15. Prem Lal S/o Shri Pancham Singh,
Driver Goods, Northern Railway,
Ghaziabad

Residential Address

Prem Lal, 350-B, Sain Colony,
Ghaziabad

16. Harjinder Singh S/o Shri Guru
Bachan Singh, Driver Goods,
Northern Railway, Delhi.

Residential Address

Harjinder Singh, C-566, Rishi
Nagar, Shakur Basti, Delhi

.... Applicants

(By Advocate: Shri G.D.Bhandari)

Versus

1. Union of India, through the General
Manager, Northern Railway, Baroda
House, New Delhi

2. The Divisional Railway Manager,
Northern Railway, State Entry
Road, New Delhi

.... Respondents

(By Advocate: Shri P.S.Mahendru)

O R D E R (ORAL)

By Hon'ble Mr.R.K.Ahooja, Member (Admnv)

The applicants are holding the posts of Goods Driver in the grade of Rs.1350-2200 in Delhi Division of Northern Railway. They are aggrieved by the order dated 10.11.95 at Annexure A-1 whereby the names of those who have qualified as a result of the written test for selection to the post of Driver Passenger Grade Rs.1600-2600 have been notified. The applicants submit that they have been holding the posts of Good Driver for a long time and have a good record of service. In the normal course, the posts of Driver Passenger are filled up by way of selection through a positive act of written test and/or viva

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voce. However, the Railways notified a Scheme for restructuring of certain groups 'C' and 'D' cadres vide their letter dated 27.1.93 (Annexure A-3) in which the method of selection for filling up the posts was modified as follows:

"4.1 Vacancies existing on 1.3.93 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence:

i) from panels approved on or before 1.3.93 and current on that date; (ii) and the balance in the manner indicated in para 4 above.

4.2 Such selections which have not been finalised by 1.3.93 should be cancelled/abandoned.

4.3 All vacancies arising from 2.3.93 will be filled by normal selection procedure."

2. It is the contention of the applicants that the posts which are proposed to be filled up on the basis of the impugned order were all in existence prior to 1.3.93 and, therefore, in terms of para 4.1 and 4.2 reproduced above, they were to be filled in through a modified mode of selection i.e. on the basis of scrutiny of service record alone and not through a written and viva voce test. The applicants have also made various allegations regarding the conduct of the written test on the basis of which the impugned order (Annexure A-1) had been issued.

3. The allegations of the applicants have been denied by the respondents in their counter affidavit. They contend that the modified method of selection was applicable only in respect of posts which have arisen

prior to 1.3.93 and also in respect of vacancies which became available as a result of restructuring of group 'C' and 'D' cadres. The respondents have denied that the impugned order concerns vacancies which fell in either of the two categories. It is the stand of the respondents that all these vacancies have arisen after 1.3.93 as a result of cadre review sanctioned on 7.7.94 which resulted in increase in the sanctioned strength of Driver Passenger Grade Rs.1600-2660. Some other vacancies also occurred due to normal attrition on account of retirement and promotion to higher grades.

4. Learned counsel for the applicants has drawn our attention to Annexure A-5 which is a notice for holding a selection test for the post of Driver Passenger. This notice has been issued on 18.11.92 and relates to a total number of 60 vacancies. Annexure A-6 is the result of the written test held from 16.12.92 to 27.12.92 and supplementary test held on 21.8.93. It gives the number of candidates who have qualified in the test. This notification is dated 15.12.93. Shri Bhandari points out that though the process of selection had been initiated on 18.11.92 i.e. prior to the restructuring order dated 1.3.93, it came to be concluded as late as on 15.12.93. Thus in terms of para 4.1 and 4.2, vacancies which were available prior to 1.3.93 but for which no panel was available, the selection had to be made in terms of modified procedure involving a scrutiny of the service record and selections which had not been finalised in terms of para 4.2 of the

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restructuring scheme, had to be cancelled or abandoned. He pointed out that contrary to the instructions which have statutory force, the respondents persisted with the selection process and issued the results thereof vide Annexure A-6.

5. It was further contended by Shri Bhandari that vide Annexure A-7, which is also a notice for selection to the post of Driver Passenger dated 16.12.94, the number of vacancies notified is 108. The number of vacancies increased to 132 vide notice dated 22.6.95 (Annexure A-8). Shri Bhandari argued that such a large number of vacancies could not have become available all of a sudden on account of retirement or promotion to higher grades. It must therefore be assumed that these vacancies were also available prior to 1.3.93. Clearly therefore, according to the learned counsel, the respondents have consistently proceeded in contravention of para 4.1 and para 4.2 of the restructuring scheme in as much as they have not adopted the modified procedure and put the applicants through the normal selection process.

6. We have carefully considered the above contentions and arguments. We are, however, unable to agree with the same. It appears from the pleadings of both the parties that there is no increase in the number of posts of Passenger Driver on account of restructuring per se. The point taken by the applicants is that the large number of vacancies available in 1994 would indicate that the same were a carry over for the period prior to 1.3.93. On the

other hand, we find from the notice of the examination (Annexure A-5) that the number of vacancies were only 60. If there had been higher number of vacancies, there was no reason that all those could not have been included in this notice. Furthermore the applicants did not impugn the selection made on the basis of notice at Annexure A-5 and completed by Annexure A-6. They have waited till the respondents notified the selections in 1994 and completed the selection process in 1995 only after finding that they had not come out successful in the test. In para 4.20 of the counter, it is stated that there was a cadre review of the grade of Driver Passenger on 7.7.94.

7. Shri P.S.Mahendru, learned counsel for the respondents submits that clearly all the vacancies were a ~~post to~~ 1.3.93 phenomenon and therefore the provisions of para 4.1 and para 4.2 of the restructuring scheme did not apply thereto. We find from the rejoinder filed by the applicant that this statement of the respondents has not been specifically controverted. We cannot therefore conclude that the higher number of vacancies arising after the notice at Annexure A-5 are either due to cadre review or normal attrition. We therefore find merit in the contention of the respondents that the posts in question which are relating to the impugned order ~~which became~~ available ^{after or} ~~prior to~~ 1.3.93 had to be filled in accordance with ^{usual or} ~~old~~ Rules. It is also contended by the applicants that the selection procedure has not been ^{properly &} ~~fully~~ gone through. This point has however not been pressed before us. Nevertheless, we agree with

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the learned counsel for the respondents that the applicants having gone through the selection process and having waited till the results were declared, cannot question the validity of the selection. In the result, we find no merit in this O.A. and it is accordingly dismissed. No costs.

Syed Khalid Idris Naqvi
(Syed Khalid Idris Naqvi)
Member(Judl)

R.K. Ahooya
(R.K. Ahooya)
Member(Admnv)

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