

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

23

O.A. No. 2069/97 and OA 2352/97
T.A.No.

Date of decision 16-10-98

Sh. Kamal Kumar (OA 2069/97)
Sh. Nagendra Rai (OA 2352/97)
and Others

... Petitioner

Shri V.P. Sharma

... Advocate for
Petitioner(a)

VERSUS

UOI & Ors

... Respondents

Sh. B.S. Jain (OA 2069/97)

... Advocate for Respondents

Sh. R.L. Dhawan (OA 2352/97)

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri K. Muthukumar, Member (A)

1. To be referred to the Reporter or
not?

Yes

2. Whether it needs to be circulated to
other Benches of the Tribunal?

No.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 2069/97

&

O.A. 2352/97

New Delhi this the 16 th day of October, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Hon'ble Shri K. Muthukumar, Member(A).

O.A. 2069/97

Kamal Kumar
S/o Shri S.P. Sharma,
3/12, Railway Colony,
Delhi Kishan Ganj,
Delhi.

... Applicant.

By Advocate Shri V.P. Sharma.

Versus

1. Union of India through
the General Manager,
Northern Railway, Baroda House,
New Delhi.
 2. The Divisional Railway Manager,
Northern Railway, Delhi Division,
Near New Delhi Railway Station,
New Delhi.
 3. The Divisional Personnel Officer,
DRM's office, Northern Railway,
Delhi Division, Near New Rly. Station,
New Delhi.
- ... Respondents.

By Advocate Shri B.S. Jain.

O.A. 2352/97

1. Nagendra Rai,
S/o Shri V.K. Rai,
70/B5, Motia Bagh Colony,
N.Delhi.
2. Rotan Singh,
S/o Shri Bharat Singh,
Railway Colony, Jind.
3. R.S. Sirohi,
S/o Shri N.S. Sirohi,
DRM Office, N.Delhi.
4. A.K. Tomar,
S/o Shri Jai Chandra Singh,
Const./Kashmiri Gate,
Delhi.

LS

5. Pradeep Kumar
S/o Shri Ram Saroop,
Railway Colony,
Rohtak.
 6. B.K. Mandal,
S/o Shri M.N. Mandal,
Railway Colony, Jind.
 7. H.P. Sharma,
Const./Kashmiri Gate.,
Delhi.
 8. K.K. Khoowal,
S/o Shri P.C. Khoowal,
Const./Kashmiri Gate,
Delhi.
 9. Dushyant Kumar,
Railway Colony,
Ghaziabad.
 10. Vivek Kumar,
Narela.
 11. D.C. Gautam,
Railway Colony,
Meerut.
 12. B.B. Arora,
Railway Colony,
Modi Nagar.
 13. G.K. Verma,
Railway Colony,
Modi Nagar.
 14. S.K. Mohan,
B-2, Sewa Nagar, Rly. Colony,
New Delhi.
- ... Applicants.

By Advocate Shri V.P. Sharma.

Versus

1. Union of India through
The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Delhi Division,
Near New Delhi Railway Station,
N. Delhi.

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3. The Divisional Personnel Officer,
Northern Railway, DRM's office,
near Delhi Railway Station,
New Delhi.

... Respondents.

By Advocate Shri R.L. Dhawan.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicants in these two O.As (O.A. 2069/97 and O.A. 2352/97) are aggrieved by the action of the respondents in calculating the total number of posts which became vacant since the year 1979 till date for selection to the post of Junior Engineer-I- Permanent Way Inspector (for short 'X-I') against the 10% LDC quota. The applicants have challenged the letters dated 14.8.1997 and 20.8.1997. The learned counsel for the parties have submitted that the issues in these two O.As are similar and hence the applications are being disposed of by a common order.

2. Under the recruitment rules issued by the respondents, the vacancies in the category of Permanent Way Inspector Grade-II in the scale of Rs.1400-2300 are to be filled as under:

- (i) 66-2/3% by direct recruitment through Railway Recruitment Boards; and
- (ii) 33-1/3% by promotion by selection of Permanent Way Mistries in scale Rs.1400-2300.

By the Railway Board's letter dated 21.6.1995, it has been stated that pursuant to the discussions in the PNM meetings, it has been decided by the Board that 10% out of the direct recruitment quota of 66-2/3% for Permanent Way Inspector Gr.III may be carved out and filled by LDC from amongst the serving Permanent Way Mistries possessing the qualification for direct recruitment to the post of Permanent Way Inspector Grade-III for a period of next three years. In the impugned letter

dated 14.8.1997 staff were called for selection in the post of JE-I (P. Way) Grade Rs.1400-2300 against the 10% LDC quota in which three posts have been shown as vacant, out of which two in the general category and one reserved for SC.

3. The respondents in their reply have submitted that the previous panel of PWI was issued on 22.3.1979 for 31 candidates which was formed against the vacancies of direct recruitment quota and they have shown the vacancies occurring yearwise from 1980 till 1996 in Para D, giving a total of 38 vacancies. They have also submitted that prior to the revised panel of promotion in 1995, the quota fixed for direct recruitment ^{was 75% ~~15%~~} and 25% by promotion by selection of Permanent Way Mistry Grade Rs,1400-2300. According to the applicants, the respondents have filled up more than 100 posts in the direct recruitment quota since 1979 and have not reserved the corresponding number of vacancies in the promotion quota under the 33-1/3% from 1979 onwards. Shri V.P. Sharma, learned counsel, submits that the respondents are now proposing to conduct the selection in the promotion quota after 17 years in which out of total 38 posts, 27 posts have been shown against the direct recruitment and 11 for selection. According to him, more than 100 posts have been filled in the past under the direct recruitment quota and accordingly 10% of these ^{which} posts/are to be taken for LDC quota would be more than three, which is the number shown by the official respondents. He has also submitted that the respondents have applied the Railway Board's instructions dated 21.6.1995 with retrospective effect from 1979 which is illegal.

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4. The main contention of Shri V.P. Sharma, learned counsel, is that the respondents when announcing the selection for the post of JE-I against the 10% LDC quota, have not acted strictly in accordance with the rules in calculating the promotion quota and he has, therefore, sought a direction to them to determine the ^{vacancies} ~~source~~ meant for the promotion quota from 1979 in terms of the vacancies earmarked for direct recruitment, so that they can then calculate the actual vacancies which will go to the LDC quota.

5. In the additional affidavit filed by the respondents, they have admitted that there have been excess vacancies previously in the direct recruitment falling ^{in the B-} ~~by~~ promotee quota. Out of the 27 vacancies for direct recruitment during the period from August, 1995 to March, 1998, there is a backlog of 17 vacancies required to be filled from promotee quota and there is an excess of 17 vacancies in the direct recruitment quota. We find merit in the submissions made by Shri V.P. Sharma, learned counsel, that after the O.As have been filed on 3.9.1997 and 3.10.1997 respectively, the respondents have recalculated the vacancies falling under the various quota but they have taken into account the vacancies upto March, 1998, which in terms of the Railway Board's letter dated 21.6.1995 is not in order, as this letter cannot be given effect to from a retrospective date. Accordingly, the calculation of the 10% LDC quota from the share of direct recruitment quota which is to be worked out from the share of direct recruitment quota of 62-2/3% for promotion of PWI- Grade-III, has to be done strictly in accordance with the Rules and instructions, including the letter dated 21.6.1995. In this view of the matter, the number of vacancies for selection against the 10% LDC quota and the

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33-1/3% promotee quota as announced by the respondents in the impugned letters dated 14.8.1997 and 20.8.1997, will have to undergo a change according to the respondents' own averments in the additional reply filed by them on 8.5.1998. The respondents have stated that out of 45 vacancies existing and anticipated in the direct recruitment quota, LDC quota is 3 which is what has been stated in the impugned letter dated 14.8.1997. This quota is obviously to be recalculated, based upon the availability of vacancies in the direct recruitment quota which existed prior to the operative date for the LDC. This number would accordingly undergo a change in view of the averments made by the respondents themselves in the additional counter affidavit.

6. In the above facts and circumstances of the cases, the O.As are allowed. Respondents are directed to review the facts and situation and redetermine the posts meant for the direct recruitment, LDC and promotion quota from the year 1979 in accordance with law/rules and instructions and act in terms thereof. The results of the LDC quota as well as the promotee quota shall be determined accordingly which shall apply to the selections in the impugned orders.

No order as to costs.

(K. Muthukumar)
Member (A)

(Smt. Lakshmi Swaminathan)
Member (J)

'SRD'

Attested
K. Muthukumar
CO. CIV