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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.249/94

New Delhi, this the 6th day of February, 1995

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

1. Shri Anil Kumar Bishnoi
s/o Shri Karan Singh
2. Shri Vinod Kumar Aggarwal
s/o Shri Herichand
3. Shri Satish Kumar Joshi
s/o Shri N.C. Joshi
4. Shri Pradeep Kumar Kundra,
s/o late Sh. Satpal
5. Shri Parmattam Lal
s/o Ishwar Singh
6. Shri Bhola Ram Dhawan
s/o Shri Ramji Dawan
7. Shri Satish Chander Gupta
s/o Sh. O.P. Gupta
8. Shri Man Mohan
s/o Sh. Parkash Das

All working under
DSTE/Tele DRM Office,
New Delhi

... Applicants

By Advocate: Shri B.S. Maine,

Vs.

Union of India
through

1. 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 Shyam Moorjani

JUDGEMENT

Hon'ble Shri J.P. Sharma, Member (J)

Applicant Nos. 1 and 8 are T.C.M. Grade I,
Applicant Nos. 2, 3, 4, 5 and 6 are M.C.M. and Applicant
No. 7 is Wireless Maintainer Gr.I working under D.S.T.E./
Tele DRM Office, New Delhi. They have jointly filed

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this application. Aggrieved by the order dated 18.10.93 passed by A.P.O., Northern Railway, New Delhi whereby the selection for the post of Telecommunication Inspector (TCI) grade Rs.1400-2300 (RPS) was cancelled by the competent authority. The applicants filed this application on 1.2.94 praying for the grant of the reliefs that the impugned order of cancellation of selection be quashed and the respondents be directed to finalise the selection and declare the final result without any further delay. DRM Office, New Delhi by the circular dated 15.12.92 notified ^{the} selection for the post of TCI Gr.III in the scale of Rs.1400-2300. Three of the applicants Vimod Kumar, Pradeep Kumar Kundra and Bhola Ram were called for the selection. By another letter dated 6.1.93 this selection was postponed. By another notice of DRM's office, New Delhi dated 23.2.93, this selection was abandoned because of restructuring w.e.f. 1st March, 1993. Subsequently DRM office, New Delhi issued a circular in June, 1993 for the selection of TCI Gr.III in the scale of Rs.1400-2300 in which all the present applicants were called to appear and the examination to be conducted on 7.7.93. It may be recalled that earlier by the DRM office letter dated 15.12.92 only 12 persons were called and by the letter dated June, 1993 28 persons were called. The written test for the selection which was to be held on 17.7.93 was subsequently postponed to 31.7.93. As a result of the written test by the letter dated 30.8.93, Divisional office, New Delhi notified that all the 8 applicants were to appear for interview on 14.9.93 for viva-voce test. Some of the applicants ^{staff members} made a representation to the DRM, Northern Railway in October, 1993 that APO/New Delhi has taken wrong decision and declared the panel as cancelled on 18.10.93 due to wrong

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assessment of vacancies after conducting written test and viva-voce test. They requested that the staff be posted on the declaration of the result. The Divisional Secretary on 19.10.93 also made a similar representation to the DRM, New Delhi. Having not been given appointment, the present application has been filed.

2. The notice was issued to the respondents who filed the reply and ~~taking~~ ^{during} the preliminary objection that the selection has been cancelled by the competent authority on account of irregularities as mentioned in the impugned order. It is further stated that the post of TCI Gr.III Rs.1400-2300 is a selection post which is filled from working employees by way of selection and also through Railway Recruitment Board from open market on the basis of prescribed quota. On the basis of direct recruitment 13 TCI were selected but out of these only 7 TCI were posted in Delhi Division against clear vacancies and rest of 6 TCI were posted in IRCCIT, a separate unit other than Delhi Division. The respondents have given reasons of cancellation of selection because of wrong calculation of vacancies and against the defaulting staff proceedings under D&A Rules have been drawn. The action of the respondent is fair and equitable.

3. The applicants have also filed the rejoinder stating that the grounds of cancellation by the respondents is factually incorrect. It is stated that 40% of the posts of TCI are filled up by direct recruitment, 40% by normal selection from the category of M.C.Ms/ W.Ms and T.C.Ms and 20% are filled up on the basis of limited Departmental Competitive Examination (LDCE). Since 4 posts were filled up by LDCE that goes to show that there must be 8 vacancies available for normal

selection. The applicants have also pointed out that 6 TCI who were posted in IIRCOI are also part of Delhi Division and they are borne on the senioritylist of Delhi Division. The senioritylist of TCI Gr.III has also been filed showing that 36 TCIs Gr.III are working in Delhi Division. The applicants who were called for in the selection have vested right to be appointed after the declaration of panel. The departmental enquiry initiated against the Superintendent of Section P-III has since been ended in a minor penalty of withholding of one privilege pass of Mr. Arora.

4. We have heard the learned counsel for the parties at length and perused the records. We have also seen the department record of conducting the selection. On 12.10.93 APO, New Delhi on the order of the ADRM where he has been directed to re-examine the complaint from M.P. Shri Surya Narayan Yadav which is in file number 754E/53/Pt.VII/P-3. On the basis of this complaint, ADRM had ordered for an enquiry and certain persons were also dealt with departmentally who were found to have given a wrong calculation of the vacancies. It is on record that initially the vacancies which were to be filled up only 4 in number from the 40% of the promotee quota but subsequently these vacancies were raised to 9. The learned counsel for the applicant has given this reason that the respondents have admitted that 20% of the vacancies to be filled up on the basis of Limited Departmental Competitive Examination were filled up in the year 1990 and 4 successful candidates on the basis of this LDCE were selected and that is evident by the letter dated 4.12.90 (Annexxre A-3) issued by

DRM Office, New Delhi. If this is taken to be a guide then for 40% of the vacancies of the promotee quota would be 8 and 8 vacancies will go to the quota of direct recruits. The respondents have already inducted 15 direct recruits in TCI who were undergoing training and out of these 8 of them have been appointed in Delhi Division and 7 have been sent to CPA/IRCOT/ New Delhi on his demand keeping their lien on Delhi Division. This figure of 15 is available from the report of APO while the applicants in their application have referred to only 13 vacancies of direct recruits. Whatever may be the position there could have been only 8 vacancies of direct recruits if the 20% vacancies of LDCE are taken into account. The complaint made to the AURM is that there was a wrong calculation of vacancies inasmuch as that there were 8 posts of direct quota, 8 posts of departmental quota and 4 posts of talented quota. There were 26 TCI actually working on the Division. In the complaint it is also mentioned that 2 posts which have fallen vacant due to promotion in the TCI grade Rs. 1600-2660, those incumbents have since been reverted prior to fixation of initial date of selection. The number of vacancies should have been reduced to 7. We have gone through the reply filed by the respondents and the respondents in their reply have not given any correct picture about the calculation of vacancies of different quota i.e. direct recruits, promotee quota and LDCE quota. It is admitted in the counter that 4 TCI were appointed in the LDCE quota after having come out successful in the examination. It therefore goes to show that the respondents also in their counter have not in any way denied the filling up of the vacancies of 20% quota upto 4.

5. The learned counsel for the applicant has also filed the senioritylist of TCI Gr.III Rs.1400-2300. This goes to show that those who are in the direct quota were sent to IRCOT but their lien has been maintained inthe Delhi Division. This senioritylist shows 36 TCI and it has been issued in June,1994.

6. We have also seen the departmental file and we find that the result of the selection has been finalised and out of these 7 applicants have since been recommended to be empanelled. Except Man Mohan,applicant No.8 all these applicants have been recommended but they have not been empanelled because of the complaint.

9 vacancies which were declared 8 were taken to be General, one for S.C. and none for S.T. Now going to the reasons for ^{Cancellation of} selection, the APO vide its report dated 12.10.93 stated that the assessment of vacancies for selection against promotee quota was not correct. Moreover, appointment of 8 candidates against the direct quota on this Division was also not correct. The Divisional Personnel Officer made a remark that since very premise of the selection is erroneous, it would be prudent to cancel the selection. This note has been approved by the competent authority as is evident from the departmental file. But it appears that none of the authorities has given any reason as to the wrong calculation of the vacancies and even the complaint it states that the vacancies are reduced from 9 to

7. Now the question arise when 8 persons of direct quota have been appointed and 4 of the IDCE then the number of vacancies in the promotee quota cannot be less than 8. Though thecounsel for the applicant

as well as report of the APO shows that 14 persons have come from direct quota out of which 7 have gone to IRCCIT and 8 remained in Delhi Division. Though who joined the IRCCIT have also got their lien in Delhi Division. There has been no malpractice or complaint of any irregularities in the selection. The only grievance of the complainant, if any, was the wrong calculation of vacancies. In that event none is prejudiced if the actual vacancies existing are taken into account. In the report of APO referred to above, the calculation of vacancies given as promotee quota 4, direct quota 3 and talented quota 2. When already 4 from IDCE quota have joined and more than the strength of quota had joined then the division of the quota in this ratio is totally unfair and unjustified.

If the quota of direct/^{and} IDCE was wrongly calculated and incumbents have been appointed then the applicants cannot be deprived of the fruit of their selection and they can be appointed in the available vacancy of TCI and those which are likely to fall vacant in future. However, their seniority will govern from the date of joining.

7. The application is therefore ^{partly} allowed and the respondents are directed to declare the panel of the selection of the applicants and those empanelled should be considered for giving appointment in the available vacancies of TCI Rs. 1400-2300 and if the vacancies are not available then those who cannot be adjusted according to merit should be appointed without passing any further selection in the vacancies which occur in any of the quota and should be adjusted as there is already excess appointment in the quota of IDCE as well as direct quota. The respondents to comply

with this direction within 3 months or sooner the vacancies are occurred if not already available. Those who have not passed the selection could not be empanelled and would have no right to the appointment, but those who have passed the selection shall be empanelled and shall be considered for appointment as said above. No order as to cost.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)

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