

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

(b)

O.A.No. 1945/1994

New Delhi this the 27th day of July, 1999.

**Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)**

1. Vidya Bhushan Sharma
S/o Shri D.C.Sharma
Divisional Cashier Office
Northern Railway
Delhi (Main) Station
Delhi – 110 006.

2. Asharfi Lal Sharma
S/o Ram Swaroop Sharma
Divisional Cashier Office
Northern Railway
Delhi (Main) Station
Delhi – 110 006.

Applicants.

(By Advocate: Shri P.M. Ahlawat)

VERSUS

1. Union of India
Through its General Manager
Northern Railway
Baroda House,
New Delhi.

2. F.A. & C.A.O (B.E)
Northern Railway
Baroda House
New Delhi.

3. Chief Cashier/J.A
Northern Railway
New Delhi.

Respondents.

(By Advocate: Shri M.L. Sharma for R-4 to 7)

(X)

ORDER (Oral)

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)

We have heard Shri P.M.Ahlawat, learned counsel for the applicants. None for the official respondents. Shri M.L.Sharma, learned counsel for the private respondents No. 4 to 7.

2. The applicants, who are holding the post of Senior Cashier in the scale of 1600-2660, had approached the Tribunal seeking a direction that their category should be changed to that of the category of Inspector of Cashiers (IOC) in the same grade and also to quash and set aside the letter dated 8.9.94 (Annexure A-1) which had announced the written test to fill up the post of IOC through a process of selection.

They had sought an interim direction to stay the selection. The Tribunal however did not agree, but by its order dated 27.9.94 directed the respondents to permit them to appear in the test provisionally subject to the outcome of the OA without prejudice to their stand in the OA. The applicants accordingly appeared in the written test and it is not in dispute that they failed.

3. Shri Ahlawat for the applicant submits that there is no need for a selection to fill up the posts which is in the same grade as Senior Cashier Grade I. As an alternative contention, he states that the selection undertaken by the applicant is against the statutory rules and instructions of the Railway Board. In this connection, he says that the Railways had gone on the assumption that there were 15 vacancies. He submits that this is improperly fixed as the total cadre strength is only 32. He also refers to the letter dated

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8.9.94 as at Annexure A-1 which shows the total number of vacancies as 15, and 15 for general candidates and 2 for S.T. This is inconsistent and the vacancy position itself is not correct. It is also the contention of the learned counsel that as per para 215(e) of the IREM the zone of consideration should be three times the number of staff to be empanelled who will be called for written or viva-voce test. Even assuming that there were 15 vacancies, the number of persons who should have been called would be strictly on the basis of seniority. He submits that 14 senior cashiers were called but in addition the Railways had also entertained the applications of a number of others in the lower grade 1400-2300 even though they are much junior. According to him, this is in violation of the mandatory requirement of the provisions of the IREM. Shri Ahlawat goes on to submit that the action of the Railways in calling persons who are much junior in the lower grade is tantamount to showing favour to them and has been done with a view to accommodate one Shri Y.K.Sharma who had appeared in the selection and was eventually selected.

4. Shri M.L.Sharma for the private respondents submits that the OA is without any merit. He contends that when the applicants challenge the selection of Y.K.Sharma he should have been made a party which they have not done. In view of the non-joinder of party it is not open to the applicants to raise this issue. Shri Sharma also submits that admittedly the applicants appeared for the written test but did not come out successful. In such a situation, it is not open to them to question the entire selection process. Having participated in the selection they are estopped from going into the correctness of the selection. He refers to certain decisions of the Tribunal in support of his contention. He also says that IOC post is a selection post even

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though it has the same scale as the post of the Senior Cashiers and the Railway Administration is competent to order the selection and it is not open to the employees to question the process. The selection process was laid down and the persons who appeared in the selection and who had failed can not challenge the selection.

5. We have considered the contentions of both counsel and have also gone through the materials on record. As has been brought out earlier the main reliefs sought in the OA is that the applicants who are senior cashiers should be accommodated and redesignated as IOC without any selection and then quash and set aside the letter of the Railway Administration which has announced a written test. We find from the reply statement of the official respondents that the post of Inspector of Cashiers is altogether a different post as compared to the Senior Cashiers Grade I even though they carry the same scale. The Railway Administration have brought out that the Senior Cashiers Grade-I is non-selection post whereas the IOC is a selection post and it carries supervisory work which is not part of the duties of the Senior Cashiers Grade-I. We also find from the Railway Board circular dated 22.3.94 which is annexed as Annexure R-1 to the reply statement of the official respondents that there is break up among the Cashiers post namely the level of Junior Cashiers in the scale of 1200-2040 and the Senior Cashier Grade-II in the scale of 1400-2300 which is at 60% of the total strength and Senior Cashiers Grade-I in the scale of 1600-2660 at 20%. The hierarchy at the Cashiers level is that junior cashiers advance to the level of senior cashier Grade-II and then to Senior Cashier Grade-I. Inspector of Cashiers is stated to be the supervisory level and the level of senior cashiers has been assigned the same scale of 1600-2660 which is available to the highest non-

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supervisory level. It is therefore clear from the Railway Board circular that the post of IOC is distinct from that of senior cashiers and the appointment to this level is regulated on the basis of selection which includes ^{written} another test. This is brought out clearly in para 4 of the Railway Board circular referred to above. In the light of this position, the first relief sought for by the applicants that they should be automatically redesignated as IOC is without merit and is rejected.

6. The applicants also have challenged the selection process and submit that ineligible persons have been called for selection. In terms of para 215 (a) of IREM the act of selection may consist of written test and/or viva voce test. In the present case, the Railway Administration has prescribed the positive act of selection as to include the written test which is well within their competence as per the relevant para and it is in consonance with the provisions of para 215(a). It is also contended that among the number of people who are called for selection, some were not eligible. In particular it was stated that the number of posts as stated by the Railways as 15 is not really borne out. It is argued that where the total cadre strength is 30 one time vacancy of 15 seems to be high. This is only an assumption. There is a clear averment of the Railways that the vacancies were 15. We see no reason to doubt this statement in view of the categorical stand of the respondents. Shri Ahlawat submits that the Annexure A-1 talks of the vacancies of 17 i.e., 15 + 2 for SC whereas in the reply statement the number has been shown to be 15. We find that the Annexure A-1 is copy submitted by the applicant and it is not a photocopy of the Railway Board circular. In the light of the clear averment in the reply statement that number of vacancies in fact was

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15 we proceed on the basis that there were 15 vacancies and not less nor more.

7. It is also argued that even it is assumed that the number of vacancies are 15, persons in the zone of consideration cannot exceed three times the number of total vacancies which is 45 whereas officials who are in the grade of Senior Cashiers Grade-II in the scale 1400-2300 have been called. The learned counsel has contended that the omission to call the senior most among the Senior Cashiers Grade-I and invite people who are in Grade-I is against the provisions of para 215(e) of the IREM. Para 215(e) reads as follows:

"(e) Eligible staff up to 3 times the number of staff to be empanelled will be called for written and/or viva-voce test. The staff employed against fortuitous short term or stop-gap promotion to the immediate lower grade in the manner otherwise than in accordance with the regular approved method of promotion will not be eligible for consideration. It is desirable to hold written test as part of a selection in respect of all initial selection grade post in the different channels of promotion, but in every case a viva-voce test shall be held. If a written test is proposed to be held, advance intimation shall be given to all eligible candidates."

It is clear from the above that three times the number of staff to be empanelled should be called for the written test. We find from the reply statement that the post of IOC have to be filled up by willing candidates of Senior Cashiers (emphasis supplied). When they found number of persons at the level of Senior Cashiers Grade-I was less than 45, they had approached the Railway Board regarding inclusion of persons in the lower grade of 1400-2300. Admittedly the Railway Board had confirmed that this can be done. In other words, Senior Cashiers Grade-II were also eligible to

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participate in the selection. It is possible that some other persons who had applied and who have been called for selection may not be Senior Cashiers Grade-I but in the light of the position that the zone of consideration is to be strictly followed, we see nothing irregular in this. Obviously some of the senior persons had not chosen to apply for the test. This would be evident from the list enclosed at Annexure A-1 which gives the list of Senior Cashiers who applied for IOC selection. In other words this list is of persons who were willing and who had actually applied for the selection to the level of IOC. The respondents have proceeded on such basis and nothing has been brought out in the present OA that senior persons, who had applied were ignored while persons who are junior were called. In any case, it is not the applicants case that they themselves were not considered. Shri Ahlawat submitted that the executive instructions of the Railway Board can not ~~can not~~ overlook the statutory rules and according to him, statutory rules require that only the senior-most persons should be associated in the zone of consideration whether they are willing or not willing. We have already referred to the provisions of para 215(e) and we find that nothing in this para to substantiate this stand of Shri Ahlawat that even if a person is not willing he should be forced to appear in the selection. We find that para 215(e) does not say that it has to be restricted only to senior-most persons. It talks of the zone of consideration being three times the number. Obviously this instruction will be relevant to the eligible applicants who applied for the selection and it cannot be construed that for reckoning the same even persons who are not willing to participate in the selection should be taken into account. Para 215(a) of the IREM talks of eligible staff up to three times the number of staff to be empanelled will be called for written and/or viva voce test. Obviously if a person is not willing he cannot be forced to appear.

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We have not been shown any other rules or instructions which are ~~contains~~ ^{containing} 07 to the decision of the Railway Board. This contention of the applicant therefore fails.

We note that the applicants had appeared in the written test and had failed. Shri Ahlawat contended that the facts is that they filed the OA prior to the holding of written test and they appeared in the written test only in compliance with the orders of the Tribunal. Even apart from this aspect, for the reasons brought out above, we hold that the action of the respondents in conducting the selection is not illegal or irregular.

8. The OA therefore, fails and is dismissed with no order as to costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

V.Ramakrishnan
(V.Ramakrishnan)
Vice Chairman (A)

Vtc.