

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1886/89 198
T.A. No.

DATE OF DECISION 22 Jan, 1990

J.N.S. Yadav & Ors. Applicant (s)

Shri B.S. Mainee Advocate for the Applicant (s)

Versus

UOI Respondent (s)

Shri O.P. Kshtriya Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(delivered by Hon'ble Shri I.K. Rasgotra, Member).

This application is filed jointly by three applicants, who were working as Draftsmen in the Signal Department of the Divisional Railway Manager's Office, Northern Railway, New Delhi, under Section 19 of the Administrative Tribunals Act, 1985, against the impugned order No. 752-E/87-VIII/E-1-B/II dated 28.4.1989 (page 15 of the paper book) for holding selection against 25 % of intermediate apprentices for promotion from amongst Tracers and Assistant Draftsmen to the higher posts of Draftsmen in the grade of Rs. 425-700 (pre revised).

2.1 The facts of the case are that the applicants were appointed as Tracers with effect from 11.2.1964, 18.2.1964 and 27.10.1964, respectively, in the scale of

dr

Rs. 260-400/-. They were promoted as Draftsmen to Rs. 330-560 in the year 1971. The next promotional post for them is that of Senior Draftsman in the grade of Rs. 425-700/-. The recruitment to the post of Senior Draftsman is regulated in accordance with the Railway Board's letter No. E(NG) III-78 RRI/3 dated 20.7.1978 (Annexure R-IA), relevant portion whereof reads as under:-

- "(a) 50% by direct recruitment of diploma holders in Mechanical/Electrical/Signal/Telecommunication Engineering;
- (b) 25% by promotion for selection from Assistant Draftsmen;
- (c) 25% from amongst Tracers/Assistant Draftsman who are matriculates and are not above 35 years of age."

(The age limit was enhanced to 45 years of age vide Railway Board's letter No. E(NG) I-81/172 dated 6.11.1981 circulated by the Northern Railway on 11.1.1982. It was further clarified by the Railway Board vide their letter No. E(NG) 78-RRI/3 dated 16/18.4.1979 that the new pattern of 25% intermediate apprentices ... will apply only to vacancies arising after 20.7.1978. The Board vide their letter of even number dated 20.4.1979 also advised that the qualifying service for Tracer/Assistant Draftsman for being considered against 25% quota would be three years.)

2.2 In pursuance of the above, the Northern Railway initiated the process for selection vide letter dated 26-5-1981 (Annexure R-II) by inviting applications from the eligible Assistant Draftsmen in the grade of Rs.330-560 and Tracers in the grade of Rs. 260-430. The eligibility of the staff concerned was to be determined as on 31.12.1978 and 31.12.1979. Eleven eligible candidates

appeared in the written test on 25.9.1983. The age limit for eligibility, however, was kept as 35 years, even though the Railway Board had enhanced the age limit for the purpose of 45 years in 1981. The applicants, therefore, became ineligible, having crossed the age of 35 years. Had the Railway Administration implemented the Railway Board's revised instructions regarding the age of eligibility, the applicants would have become eligible for appearing in the competitive examination. The applicants represented against their being debarred from appearing in the competitive examination due to non-implementation of the enhanced age limit of 45 years by the Northern Railway vide Annex. A-5. The representation was sent by the S.S.T.E. (D&D) to S.P.O. (P.C.) on 20.9.1983 for necessary action. No action appears to have been taken to provide relief to the applicants consequent to their representation.

2.3 The respondents initiated another selection vide their letter dated 30.4.1987 retaining the age of eligibility to 35 years (page 18 of the paper book) and fixing the date of eligibility as 30.4.1987. The age limit was, later enhanced to 45 years for the eligible staff as on 30.4.1987 vide Northern Railway's letter dated 9/10.6.1987. The applicants' grievance is that in the first selection, the cut off date was fixed as 31.12.1978 and 31.12.1979 retaining the age of eligibility as 35 years. This resulted in their becoming ineligible for appearing in the competitive examination. In the second selection initiated on 30.4.1987, the cut-off date for eligibility was fixed as 30.4.1987. The cut-off date of 30.4.1987 again made them ineligible as on that date, they had crossed the age of 45 years. The written examination was held on 20.5.1989 in accordance with the impugned order dated 28.4.1989 (page 15 of the paper book)

followed by interview on 18.9.1989. The results of the examination were announced on 20.9.1989.

- 2.4 The applicants have, by way of relief, sought:
- (a) to quash the impugned orders dated 28.4.1989 (page 15 of the paper book)
 - (b) direct the respondents to consider the applicants for the selection in process in 1989, and
 - (c) quash the selection held in 1983.

2.5 As an interim relief, the applicants pray that the respondents be restrained from finalising the selection till the decision of the application.

2.6 The Tribunal, as ad interim relief, had directed the respondents to hold a special examination, both written test and viva voce, for the post of Senior Draftsman within 15 days from 29.9.1989, but not to publish the results till the disposal of this application. Persons already selection in the test held and for which the results have been announced, may be allowed to proceed with their training but they should be informed that their selection will be subject to the outcome of this application.

3. We have heard the learned counsel for both the parties and gone through the records carefully. The application deals with the promotion of Tracers/Assistant Draftsman through a competitive examination to fill up 25 per cent of the vacancies, the remaining 75 per cent being filled, 50 per cent by direct recruitment and 25 per cent by promotion. We find that the first selection in accordance with the Railway Board's instructions dated 20.7.1978, to fill 25 per cent of vacancies by competitive examination was initiated vide Railway Administration's letter dated 26.5.1981. The age limit for eligibility of the staff was, however, fixed as 35 years. The age limit of 35 years was,

2

however, enhanced by the Railway Board to 45 years, keeping the other conditions of eligibility unchanged in November, 1981. While the 25 % intermediate apprentice quota was, no doubt, applicable to vacancies arising after 20.7.1978, the Administration fixed 31.12.1978 and 31.12.1979 as the cut-off dates for determining the age limit.

3.1 The respondents have indicated that the cut off dates were fixed with reference to the time at which the processing of the case for selection was initiated. It is, however, observed that the applications against 25 per cent vacancies to be filled by competitive examination were called for vide letter dated 26.5.1981 and the written test for all the eligible candidates was fixed for 25.9.1983 vide office letter No. 754-E/87-PT 7(E-IIB) dated 1.9.1983. From 26.5.1981, when the applications were invited to 25.9.1983, when the examination was held, an important development by way of enhancement of the age of eligibility from 35 years to 45 years in November, 1981 had taken place. There was, therefore, adequate time for the respondents to react to the new situation created by revision of the age of eligibility to 45 years. This would not have in any way disturbed the schedule for conducting the examination which was held in September, 1983.

3.2 Since the examination was scheduled to be held in September, 1983, the respondents should have normally avoided the possibility of denying the opportunity from appearing in the examination of 1983 to the candidates who might have become eligible on 31.12.1980 and 31.12.1981. This would have enlarged the zone of consideration and would have given the chance to the best candidates to occupy posts of higher responsibility. We, however, feel that revocation of selection made in 1983 at this stage would re-open the settled facts and might lead to administrative problems.

3.3 Again for the second selection initiated in 1987, the eligibility should have been determined as on 31.12.1983, 31.12.1984, 31.12.1985, 31.12.1986 and 31.12.1987. The fixing of cut-off date as 30.4.1987 is not only a deviation from the past practice, but would also deprive a large number of candidates, who would be otherwise eligible, if age limit is determined annually for the vacancies occurring in each year. We, therefore, do not see any justifiable logic in fixing the cut off date as 30.4.1987 for determining the age (45 years) of eligibility for the competitive examination held in 1989.

4. In the interest of justice and fair play, we are of the view that the respondents should invite fresh applications for the competitive examination, taking into account the vacancies available for filling up through the competitive examination, on annual basis and determining the age of eligibility each year. It has been held in several judicial pronouncements that the vacancies arising in different years should not be bunched up for consideration in one year -

(a. ATR 1987 (II) CAT Madras 275
Basava Sindivele Vs. UOI & Ors.

b. 1983 (1) SLR Supreme Court 789
Y.V. Rangaiah Vs. J. Sreenivasa Rao).

5. In view of the above and having regard to the facts and circumstances of the case, we quash the selection held in terms of order No. 752-E/87-VIII/E-1-B/II dated 23.4.1989 (page 15 of the paper book); simultaneously, the special examination held on 29.9.1989 in accordance with the direction of this Tribunal, should also be cancelled. We further direct that the respondents should call for fresh applications from the eligible candidates considering the vacancies annually and determining the age of eligibility yearwise. The entire process of holding the written test and viva voce and declaring the results should

be completed within the time frame fixed by the Railway Board, but not later than six months from the date of communication of this order, in any case.

6. The application is disposed of as above, with no order as to costs.

I.K. Rasgotra
(I.K. Rasgotra) 22/1/90
Member (A)

T.S. Oberoi
(T.S. Oberoi)
Member (J)