

Central Administrative Tribunal  
Principal Bench: New Delhi.

15

OA No.1621/88

New Delhi this the 25th Day of April, 1994.

Shri N.V. Krishnan, Vice-Chairman(A)  
Shri C.J. Roy, Member(J)

Ishwar Singh Lamba  
S/o Sh. Maru Ram,  
Chief Controller, Northern  
Railway, Rewari.

Naresh Chander Gupta  
S/o Sh. Gopi Chand,  
8, Mahabat Khan Road,  
New Delhi.

...Applicants

(By Advocate Sh. G.D. Bhandari though none appeared).

Versus

1. Union of India through the  
General Manager, Northern  
Railway, Baroda House,  
New Delhi.
2. The General Manager (Personnel),  
Northern Railway, Baroda House,  
New Delhi.

...Respondents

(By Advocate Sh. N.K. Aggarwal, though none appeared).

ORDER(Oral)

Mr. N.V. Krishnan:

When this case was called on two occasions for final hearing neither the applicants nor their counsel were present. So was the case of the respondents. We, therefore, decided to peruse the record and pass orders thereon. We proceed to do so.

2. The two applicants before us are Chief Controllers in the Northern Railway, working under the second respondent. Their grievance is that their names have not been included in the panel for promotion to the Group 'B' service in operating Branch of P (T) and C Department against the 75% promotion quota vide panel dated 17.8.88 at Annexure A-1. It is stated that the applicants were eligible for consideration for promotion to the post which was by selection. A
- Uz

written test was held on 21.7.88, the results of which have been declared by the Annexure-A-5 which contains the names of candidates who have been called to appear in the viva voce test to be held on 3.8.88 and 4.8.88 for selection for promotion to the said Group 'B' post against the 75% quota. The names of the applicants are at serial No.47 and 72.

3. They appeared in the viva voce test, the results of which have been announced by the impugned Annexure A-1 memorandum dated 17.8.88. 35 names have been included in that panel. The names of the applicants do not figure therein.

4. The grievance is that the persons at serial No.27-35 of the panel are junior to the first applicant and the persons at serial No.60-95 are junior to the second applicant.

5. It is stated that there is no justification for not including their names when these applicants have a clear record except for minor lapse here and there and that no departmental enquiry was pending against them.

6. The selection has been impugned on the following important grounds.

6.1 Instead of restricting the zone of consideration to 114 candidates, i.e. three times the number of vacancies available which were 38, a number of additional persons were also allowed to participate in the test, whose names are given in Annexure 'B' to the Annexure A-4 letter by which the eligible persons in the zone of consideration were alerted for the selection. Further, in the selection, persons promoted on ad hoc basis have also been ignored and superseded. It is alleged that larger representations have been given to the scheduled caste (SC) and scheduled tribes (ST) and persons from the reserved.

12

list have been included. It is also alleged that the service record of officers of the Bikaner Division has not been received and, therefore, the viva-voce test held on 3.8.88 and 4.8.88 is irregular.

7. The respondents have filed a reply denying these allegations. It is stated that Rule 205 of the Indian Railway Establishment Manual provides that the selection should be made primarily on the basis of overall merit. But, for the guidelines of the Selection Board, the Manual indicates the marks to be given to various factors and the qualifying marks to be obtained in respect of these factors. It is stated that though the applicants qualified in the written examination for appearing in the viva voce test, they did not pass the test and, therefore, their names could not be included in the panel. In other words, the applicants were unsuccessful in selection.

8. It is stated that in addition to 114 eligible employees, some more persons, as mentioned in Annexure 'B' to the Annexure-4 letter, were alerted for the examination. This was only to be utilised in case there were dropouts from the persons falling within the zone of consideration for writing the examination. Though there were 38 vacancies a panel of only 35 candidates have been approved who alone qualified in the examination. It is submitted that in so far as the SC and ST candidates are concerned, some of them secured higher positions also on their own merit and, therefore, they could not be treated to be included in the panel on the basis of belonging to the reserved category. The respondents also state that the service records of all persons of the Bikaner Division was before the Selection Board. In the circumstances, it is stated that this application has no merit and that it should be dismissed.

62

9. In the rejoinder, filed by the applicant, the averments made in the OA have been reiterated and it is stated that 154 candidates were permitted to take the written test as against 114 who were in the zone of consideration. In view of this legality the selection should be quashed.

10. When the matter came up on an earlier occasion on 13.12.93 certain directions were given to the respondents to furnish some information and produce certain records. None has appeared before us from the side of the respondents. We, therefore, proceed to dispose of this case on merits.

11. We have carefully considered the prayer of the applicants. Their main grievance, i.e., their juniors have been included in the panel and superseded them is without any force, because, admittedly, Rule 205 requires a selection to be made on merits. If the performance of the applicants is not upto the mark and if juniors have performed better they have a right to be included in the panel over the heads of the applicants. This averment has been made by the respondents and in the OA no grounds have been raised to suspect the results of the selection on any serious ground.

12. The contention that persons beyond the zone of consideration were also allowed to appear in the examination and that, therefore, the selection itself should be cancelled is again without any substance. If the applicants had any grievance on this ground they ought to have raised it at the time of the written examination or immediately thereafter. The names of the two applicants appear in the Annexure A-5 list of persons who have qualified for the interview. The applicants cannot repudiate that list by challenging the examination itself. It has not even

12

191  
been pointed out any where that persons who are outside the zone of consideration, i.e., 114, except in the case of SC and ST have been included in the impugned A-1 panel. In this circumstance, we do not want to examine the validity of the respondents' contention that additional number of persons were alerted to participate in the written examination in case persons falling in the zone of consideration dropped out in this regard.

13. The next contention that the records of the Bikaner Division were not made available is rebutted by the respondents who state that all records were available for consideration by the Selection Board.

14. In the circumstances, we do not find it necessary to wait for the records which the respondents were directed to produce and we dismiss this O.A., as we do not find any merit in it.

No costs..

*C.J. Roy*  
(C.J. Roy)  
Member(J)

Sanju.

*N.V. Krishnan*  
25/4/84  
(N.V. Krishnan)  
Vice-Chairman