

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 632/86
T.A. No.

199

DATE OF DECISION 4-6-93

<u>Shri R.S.Sant</u>	Petitioner
<u>Shri KP Dohare with PM Ahlawat.</u>	Advocate for the Petitioner(s)
Versus	
<u>Shri R.L.Dhawan</u>	Respondent
<u>KNR Pillai</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V.Krishnan, Vice-Chairman (A)

The Hon'ble Mr. B.S.Hegde, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri N.V.Krishnan, Vice Chairman(A))

The applicant who, at the time of filing the application was employed as Assistant Commercial Officer (Claims Prevention) in the Northern Railways has claimed the following reliefs in this application.

i) In view of the serious irregularities and illegalities committed by the respondents by interpolating names of the junior ineligible and unsuitable persons, the entire panels of 1976 and 1978 be quashed.

ii) The interpolation of names S/Shri MM Verma, BN Singh and AP Choudhary be quashed from the panel of 1976 being illegal, void and against all rules and cannons of justice.

iii) The petitioner's name may be interpolated on the basis of the seniority & suitability and services

rendered in class II for more than 8 years on ad hoc basis, if the panels are not to be scrapped.

iv) Against the quota reserved for S/C the name of the petitioner may be considered for interpolation over and above S/Shri Mukandi Lal & Bikram Singh (both S/C) according to seniority position.

2. The applicant has impleaded only (i) the Union of India (ii) the General Manager, Northern Railway (iii) the Chief Personnel Officer, Northern Railway and (iv) Shri RC Dhawan, Dy.Chief Personnel officer, Northern Railway, who passed the impugned order dated 4-8-86. Subsequently, Mukandi Lal one of the persons against whom relief is sought by the applicant, filed MP 472/93 seeking his impleadment as additional 5th respondent because he was necessary party to these proceedings. That M.P. was allowed.

3. The official respondents 1 to 3 have filed a reply denying that any relief is due to the applicant. The 5th respondent has also filed a reply contending that the applicant cannot be granted any relief in respect of his appointment.

4. At the outset, the learned counsel for the applicant submitted that in so far as quashing the panel of 1978 is concerned as prayed for in para 1 of the relief, that prayer was now become infructuous because, in separate proceedings, that panel has already been quashed by an order of this Tribunal. The official respondents have confirmed this by stating that the selection held in 1978 was quashed in writ petition No.1328 of 1978 (OP Malik & Ors. Vs. UOI) which was received in this Tribunal on transfer from the Delhi High Court and disposed of as T.A.431/85.

5. In regard to the other reliefs, the learned counsel

✓

of the applicant was specifically asked how any relief could be claimed by him against S/Shri NM Verma, BN Singh, A.P. Choudhary and Bikram Singh, referred to in clause (ii) & (iv) of the relief when they have not been impleaded as respondents. Further, the applicant has also not impleaded the persons likely to be affected if the panel of 1986 is quashed, as prayed for in sub para 1.

6. The learned counsel of the applicant was not in a position to satisfy us on these counts. In the circumstances, this applicant is being considered only in respect of prayer No.(iii) viz for inclusion of his name in the panel of 1976 which was expanded in 1984 and 1986.

7. The panel in connection with the selection for promotion to class II service in TIT & C Department was published on 31-12-76 (on page 138 of the paper book) and it contains 26 names but it does not include the name of the applicant. This list was prepared, as indicated therein on the results of the written test held on 6-4-75 and the subsequently test held on 21-7-75 and 5-4-76 and viva voce test held later on on 29,30 and 31 March 1976^{and}/supplementary viva voce test held on 21-4-76. The applicant claims in para 6 (iv) of the O.A that in 1975 when selection for class II IRTS (T&TC) were held, he was pretty senior to other persons who were called for the written examination held on 6-4-75. He gives the details of the alleged relative seniority of these persons as appearing in the "List of staff eligible for the written test to be held on 6-4-75 for promotion to class II service in T(T)&C.D" (An.4) and compares them with the similar list candidates who were called for interview after the written test held on 17-12-78 (An.6).

8. Patently such a comparison cannot be made. The An.A-4 and An.6 are not seniority lists. If the applicant

U2

claims seniority in 1974 or 1975 he should have produced the seniority list relevant to the year when the examination was held or of the preceding year i.e. 1975 or 1974. No such proof has been produced by him to show that he was senior to the persons shown in the An.4 list. He has, therefore, not established that he was senior to any person who was called for the examination.

9. That apart, if he had grievance on that account, he should have made an issue out of it at the relevant time i.e. in 1975 and either sought departmental, or remedies. Not having done so, he cannot now make such a claim.

10. The 1976 panel was admittedly enlarged on two occasions; once in 1984 by the An.3 letter dated 13-9-84 by including and therein MM Verma, AP Choudhary and BM Singh/for the second time on 4-8-86 (An.2) by including the names of Mukandi Lal and Bikram Singh. As stated above, the applicant has not impleaded any of these persons, though he has challenged their inclusion. Mukandi Lal, however, has got himself impleaded as respondent No.5.

11. The applicant contends that the expansion of the panel is illegal as it is not provided for in the rules. At the same time, he claims that his name also should be interpolated in the same manner as the names of the five persons mentioned above were included in those panels. Obviously the applicant is approbating and reprobating simultaneously which cannot be permitted. Nevertheless we consider his claim on merits.

12. In their reply, the official respondents have stated that the applicant was not considered at the time of the selection held in 1975 because he was not in the zone of consideration. The applicant has not pointed out to any instance where any person who is junior to him in 1975 has been included in the 1976 panel.

13. MM Verma, AP Choudhary and BN Singh were included

by expansion of the panel 1984 because they had passed the examination and qualified in the selection, ^{but not appointed} due to want of vacancies. The subsequent panel prepared in 1978 was also, the subject matter of litigation. 35 candidates were included in that panel but the result could not be declared because of the stay order issued by the Delhi High Court- The High Court permitted the notification of that panel in 1984 by which time many had retired and a panel of only 18 remained- The applicant could not find a place in that panel. The names of S/Shri MM Verma, AP Choudhary and BN Singh were included in the 1976 panel in the above circumstances after orders were given by the competent authority.

14. In so far as Mukandi Lal is concerned, he qualified in the 1978 selection but the panel was quashed. However, he was much senior to many others who were included in the 1976 panel as a result of the judgement of the High Court of Allahabad in his favour. Therefore, the Board decided to include his name also in the 1976 panel.

15. The respondent No.5 has stated in his reply that the question of his seniority was subjudice in the Allahabad High Court where he had filed a writ petition in 1965. Ultimately, his claim was allowed by Allahabad High Court in respect of his promotion and seniority. He passed the 1978 selection but the panel prepared was quashed. He represented that his name should be considered for inclusion in the earlier panels in the special circumstances of the case. It is on account of this special consideration that his name was included in the panel 1975-76.

16. As for as Bikram Singh is concerned, his case is similar to that of MM Verma, BN Singh and AP Choudhary. He too had qualified in the selection of 1976 but his name could not be included because of lack of vacancies.

Ur

For the enlargement of the panel there was one more vacancy to accommodate a scheduled caste and hence he was included.

17. Thus the respondents contend that the cases of MM Verma, BN Singh, AP Choudhary, Mukandi Lal and Bikram Singh are totally different from that of the applicant. The basic difference was that the applicant never qualified in the 1975 test and 1976 selection because he was not eligible for consideration. On the other hand out of 5 persons mentioned above, 4 other than Mukandi Lal were selected but were not accommodated due to lack of vacancies. The 5th Mukandi Lal was included in the defunct 1978 panel but was included in the 1976 panel because of the seniority given to him by the Allahabad High Court's judgement.

18. In the circumstances, we find no merit in this application. Therefore it is dismissed.

B.S. Hegde
(B.S. HEGDE) 4/6/93
Member (J)
4-6-93

N.V. Krishnan
(N.V. KRISHNAN)
Vice Chairman (A)
4-6-93