

17

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

OA No.2002/1990, this/7<sup>th</sup> day of May, 1995.

Hon'ble Shri Justrice S.C. Mathur, Chairman  
Hon'ble Shri P.T.Thiruvengadam, Member(A)

1. Shri Yoginder Singh, s/o Shri Dewan Singh
2. Shri Munna Lal  
Both working as Levermen  
Railway Station, Aligarh(UP) .. Applicants

(By Shri B.S. Mainee, Advocate)

versus

Union of India, through

1. The General Manager  
Northern Railway  
Baroda House, New Delhi
2. The Dvnl. Railway Manager  
Northern Railway, Allahabad(UP) .. Respondents

(By Shri B.K.Aggarwal, Advocate)

ORDER

Hon'ble Shri P.T.Thiruvengadam

The selection for filling up the post of Switchman from amongst Leverman and Cabinman of Allahabad Division of Northern Railway was initiated in the year 1986. A written test was held on 31.1.87, which was followed by a viva voce test in the month of May, 1987. After taking into account the performance of the candidates in the written examination/viva voce test, eligible candidates were deputed for P-1 promotional course in the Zonal Training School. It is the case of the applicants that they are two such candidates admitted for the P-1 course and they had completed the course successfully. Despite this, after selections were held in the subsequent years, promotions to the post of Switchmen were made from the later selections, ignoring the applicants. This OA has been filed for a direction to the

respondents to promote the applicants as Switchmen and for assigning them seniority over those who had been selected in the subsequent selections.

2. To enable proper appreciation of the case, the respondents were directed to produce the relevant departmental file relating to the selection. On a perusal of this, we note that the selections were initiated as per Railway Board instructions dated 2.5.86 on the subject of promotion to the post of Switchman. As per these instructions, such posts are to be filled as under:

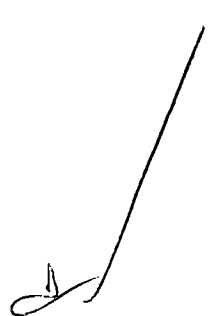
(i) 50% of the vacancies by the staff having 6th standard qualification from amongst Leverman/Cabinman through selection; and

(ii) 50% of the vacancies plus short fall against (i) above by a written examination and viva voce test from amongst Group C and D operating staff with minimum 5 years' regular service with Matriculation qualification.

3. We are concerned only with the first mode of filling up of the post of Switchman, namely, from amongst Leverman/Cabinman with 6th standard qualification.

4. From the proceedings we note that against the above mode, a total of 103 candidates had passed the written examination and had been subjected to the viva voce test, which was held in the month of May, 1987. In this list of 103 candidates, the applicants No.1 & 2 have been shown at seniority position No.99 and 100, respectively.

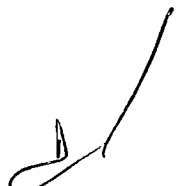
5. We also note that in the DPC proceedings referring to the 103 candidates who had passed the written examination, the total number of vacancies is shown as 44 only.



6. From the above list, the candidates were sent for P-1 promotional course in two different batches. When the results of the promotional course were received, action was taken to finalise the panel of successful candidates taking into account the declared number of vacancies and whether the candidates had passed the promotional course. In the file submitted to us, we also perused a copy of the Railway Board letter dated 5.4.76 to the effect that the names of the candidates appearing in such selections should not be notified till such time the candidates qualify in the promotional course. On receipt of the results of the promotional course, approval of the competent authority was taken for including 44 senior-most candidates who had qualified in all respects. (There was no one in the outstanding category). In the panel, which was approved, the applicants could not be included since sufficient number of senior candidates were available to meet the requirement.

7. Having gone through the background, we will discuss the arguments raised.

8. The learned counsel for the respondents raised preliminary objection with regard to limitation. His plea was that the cause of action arose when the relevant panel was finalised in March, 88 but the applicants had chosen to approach this Tribunal only in September, 1990. It was, however, the case of the other side that there was no publication of the panel finalised in March, 88 and since promotions were being ordered at a much later date, limitation can not be held as a bar. We have not been shown by either side any letter/notification relating to the publication of the panel. During the hearing, a copy of the list containing 44 names placed in the panel as a result of



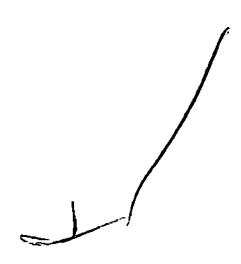
the selection held in 1987 was handed over to us. But this list seems to be part of only an internal noting. Accordingly, we are not in a position to entertain the objection raised by the respondents.

9. The learned counsel for the applicants referred to the orders passed by this Tribunal in similar cases. Copies of the orders dated 13.1.95 in OA 64/91 and OA 61/91 and order dated 24.8.94 in OA 1715/90 were referred. These orders in turn have placed reliance on the order passed in OA 358/90 and OA 29/90. All these OAs have been allowed in favour of the applicants therein.

10. The main argument of the respondents in all the cases cited was that the validity of the relevant panels had lapsed and the applicants had no case, even though they had been placed in the panels.

11. The respondents in this case have argued that the two applicants in this OA could not qualify for empanelment because of their lower seniority position and accordingly the argument advanced in this case is a different one. In the circumstances, the citations relied upon by the applicants are not of assistance to them.

12. It was then argued that the benefits of orders of courts/Tribunals should be extended to other similarly situated persons and it will be unfair to deny the same. A number of citations in this regard were referred to. We, however, note that the orders passed by this Tribunal in certain cases of similar nature can not be claimed as precedent as the findings have been based on different stands taken by the respondents. In the OA before us, the main

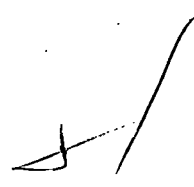


thrust of the respondents is that the applicants are not empanelled and accordingly have no right for consideration for promotion.

13. The learned counsel referred to the judgement passed by their Lordships of Supreme Court in Prem Prakash etc. vs. UOI & ors. reported in AIR 1984 SC-1831. It has been held that once a person is declared successful according to the merit list of selected candidates, the appointing authority has the responsibility to appoint him before going in for further recruitment. It has also been observed that there should be no time limit in the operation of the the list of selected candidates prepared to the extent of declared vacancies. This citation is also not helpful to the applicants since the panel finalised did not include the names of the applicants.


14. One of the candidates junior to the applicants who had not figured in the list of 44 candidates has been given the benefit of promotion. The learned counsel argued that on this basis, this application has to be entertained. It is however claimed by the respondents that such a situation had arisen in view of the orders passed by this Tribunal in other OAs that have been referred to herein. The respondents had no alternative but to implement the orders of the Tribunal. We are not satisfied that the situation quoted could be reason enough for allowing this OA. There are quite a few others, senior to the applicants, who have also not been reportedly considered for the benefit of promotion.

15. It was argued by the learned counsel that the applicants were under the genuine belief that they would be empanelled consesequent to their passing the written



examination and promotional course and accordingly did not choose to appear in the subsequent selections in the years 1988 and 1989. By denying them the benefit of promotion in pursuance of the panel finalised in March, 1988, the applicants are put to a great loss. We do not find this argument convincing. There is nothing on record to show that the applicants were given any assurance/hope that they were being promoted pursuant to the panel finalised in March, 1988. In para 4(14) of the OA, the applicants have further averred that they submitted representation on 16.12.88 etc. If the applicants did not appear in 1988 and 1989 selection, it was their own decision and there is no case for extending any relief on this account.

16. In the circumstances, the OA is dismissed. There shall be no order as to costs.



(P.T. Thiruvengadam)  
Member(A)



(S.C. Mathur)  
Chairman

/tvvg/