

IN CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH

Dated, Allahabad. This 30th October, 2000

CORAM :

Hon' Mr. Justice R.R.K. Trivedi, VC  
Hon' Mr. S. Biswas, AM

Original Application No. 1316/96

1. Jang Bahadur Tiwari  
son of R.B. Tiwari  
Resident of 8/7, Sheo Nagar Colony  
Allahpur, Allahabad, presently  
posted as Senior Clerk, Personal  
Branch, D.R.M. Office, Allahabad

.....Applicant

Counsel for the applicant : Shri S.S. Sharma, Rajesh Pat  
Wasim Alam

Versus

1. Union of India through  
Chairman, Railway Board,  
New Delhi
2. General Manager(Personal)  
Northern Railway, New Delhi
3. Deputy Chief Commercial Manager(Law)  
Northern Railway, Baroda House,  
New Delhi
4. D.R.M. Northern Railway, Allahabad  
(Proforma Party)

.....Respondents

Counsel for the respondents : Shri P. Mathur

ORDER

( Open court )

( By Hon' Mr. S. Biswas, AM )

1. The application has been filed under section 19  
of Central Administrative Tribunal Act, 1985 seeking  
the following reliefs -

i) to declare the applicant successful in the  
examination for law assistants post held by the respondents  
in the year 1991 and 1995.

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2. It is submitted that the applicant is a Law Graduate from a recognised University and had completed 12 years of service when the respondents had advertised to fill up 13 posts of Law Assistants in the scale of Rs.1600-2660/-

3. In the written test, it is further submitted that in the list of 32 candidates prepared at the end of written test, the applicant's name figured at serial No.10 thereof (Para b) but he was not finally ~~em~~panelled after interview for malafide reasons. The respondents did not declare the results of the written and viva-voce as it ought to be, <sup>The way a</sup> ~~DRM~~ <sup>not given</sup> with the ~~party~~.  
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4. 14 posts of Law Assistants were again proposed to be filled up by the respondents in the departmental promotional quota of 1993 for which written test was held and the applicant again participated in the said written test. But none were selected by the respondents on the ground that both the successful candidates failed in viva. The applicant has further submitted that promotional quota posts were not filled due to malafide, as both the successful candidates in the written tests were from Ferozpur Division, and the written papers were corrected by the SDOM of Ferozpur. The General Manager(Personnel) later on (Annexure 5) sent a proposal to Railway Board for filling the posts by direct recruitment. The said proposal of General Manager(Personnel) was not accepted by the Board vide letter dt.18.10.94.

5. In the year 1994 the respondents again announced on 20.7.94 that 15 posts would be filled in the posts of Law Assistant, through examination and viva voce. The applicant was placed at number 1 after the written, but in the final panel of 4 after viva declared on 12.5.95 he was again dropped. He has impugned the selection as repugnant to the seniority norms, as he was at No.1 position in the written and the guidelines <sup>were violated</sup> on supersession by outstanding candidates.  
~~were violated~~  
5 - Bias  
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Again as against 15 posts for promotional quota, a fewer departmental candidates were empanelled;- but for by-passing that he had a better chance.

6. We have heard the counsels appearing on behalf of the opposite parties and have gone through the facts and legality involved in the submissions.

7. The learned counsel for the respondents submits that in all 3 departmental examinations, followed by viva voce were held for filling up departmental promotional quota posts of Law Assistants in 1991, 1993 and 1994, as per vacancies announced in this behalf. The applicant topped <sup>in</sup> all the three exams, but failed to qualify in the over all gradation after written as well as viva-voce tests, and therefore, he was not empanelled. In none of the years adequate number of suitable candidates were found after the test and viva voce and - therefore, in 1993 test, though there were 14 vacancies, but none was ultimately found suitable. Hence neither any malafide, nor any discrimination was committed against any one in the selection. The allegation is wild and vague. As regards the allegation that the quota of departmental posts was not filled in full the selection was made according to the guidelines dt.18.10.94 cited by applicant also.

8. The learned counsel for the respondents also points out that the applicant has not made the so called juniors parties in the application. The said omission only seeks to <sup>diminish the civil consequences which are likely to be caused to</sup> the officers already promoted. SB

11. It is observed that through the applicant submitted that in the list of the written test results, his name was at serial number 10, the annexed list is not dt.30.7.92 in the first place. This is a panel of 13 candidates, drawn up ~~xx~~

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after both written and viva voce. The said panel is dt.27.11.1992, not 30.7.1992 and the name of the applicant does not appear there. A list of 32 candidates called for interview is, however, found in annexure 4 dt.30.7.92, where the applicant's name is shown at serial number 10. Therefore much is wanted in the presentation of the applicant's case.

12. The select panel after both the written tests and viva voce of 1991 has been submitted twice by the applicant, namely, at annexure OA 2, and RA 3 and once by the respondents at annexure-CA IV. They do not tally in material particulars with one another in several respects to be relied upon for a decision. The CA IV is dt.27.11.92, with the particulars of the issuing office missing there. The RA 3 written is <sup>which</sup> ~~is~~ <sup>is</sup> dt.26.11.92 - is said to be the panel issued after 1991 test, + viva. In R 3, 6 names are apparently replaced or added as the case be. They are Gopal Dubay, Raja Ram, Om Prakash, Naresh Kr., G.S.Srivastava and Om Prakash (SC). Whereas, six names which are shown in annex.OA/2 originally namely, R.S.Sharma, P.N.Mudgil, Devender, Anil Tyagi, Ajit Bhatnagar and Jag Ram Yadav stand dropped in the later submitted order but dt.26.11.92 not 27.11.92 as is the dt.of annex.OA/2. The CA 4 said to be the final panel dt.27.11.92 name-wise tallies with the OA/2 but the particulars of the issuing office is missing. The panel particulars as submitted by the applicant are self-contradictory and lack authenticity to be relied upon. Therefore, the submissions of the applicant regarding his suitability as compared to Jag Ram Yadav (Para C/O A) and applicability of 50% quota of supercession by outstanding juniors (para d/OA) are demolished for want of submission of authentic final panel and inter se seniority list of the candidate. Even the allegation that the panel was not addressed to Divisional Railway Manager, Allahabad, cannot be sustained for the same reason.

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13. We are not able to accept the plea that the viva voce results are necessary to be announced, as no malafide is attributable to it. That the applicant had scored the highest marks in the written test in the last exam. announced on 16.3.95, has nothing to do with his final selection. He must have got proper weightage but in the overall gradation after viva voce he missed the target. There are other very seniors in the said list dt.16.3.95 <sup>who</sup> had similarly failed to be empanelled.

14. We have also looked in the policy of supersession limit by outstanding candidates upto only 50% of the seniors -as made out in the application. We are not able to accept the applicability in the present case. This may apply in departmental promotion of selection posts strictly in accordance with seniority-cum-fitness. "Outstanding" is an abstract grading relevant for departmental promotion. No viva voce or written test is involved there. The selection of Law Assistant in the present case was based on numerical assessment on the basis of written test and viva voce. The claim of the applicant is not supported by any authentic seniority list. The position of the applicant in the result of the applicant in the written test cannot be a substitute for seniority list.

15. As regards the allegation that all the posts were not filled by departmental candidates in the selection, is an absurd demand. In the instructions dt.18.10.94 as cited by the applicant also the Bd had clearly stated that only to the extent of availability of suitable candidate, the panel should be limited and in the quota limit was not decided <sup>but to</sup> be changed. As the question of selection was involved, we are unable to accept the plea that disqualified or

failed candidates should be empanelled after a selection. Evendently the applicant missed the  $\phi$  target due to performance in the test and viva.

16. The citations are out of context.

17. We accordingly reject the OA as devoid of merits.

18. No order as to the costs.

S. B. Rao  
AM

VC

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