

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD.

Dated: Allahabad, the 23rd day of February 2001.

Coram: Hon'ble Mr. Justice R.R.K. Trivedi, VC

Hon'ble Mr. S. Dayal, A.M.

ORIGINAL APPLICATION NO. 271 OF 1998

1. Akhilendra Nath Srivastava, a/a 42 yrs.,
son of late Prem Nath Srivastava,
presently posted as Chief Vigilance Inspector
(Personnel) (An Ex-Cadre Post), in the office
of Dy. General Manager, Northern Eastern Railway,
Gorakhpur, substantively holding the post of
Senior Personnel Inspector in N.E. Railway,
Gorakhpur.
2. Panney Lal, a/a 42 years,
s/o late Hira Lal,
presently posted as Chief Welfare Inspector
in the office of Dy. Chief Engineer (G.A.),
N.E. Railway, Gorakhpur.
3. Anand Kumar Khare, a/a 41 years,
s/o late Gopal Jee Khare,
Presently posted as Senior Statistical Inspector,
in the office of Statistical Officer,
N.E. Railway, Gorakhpur.

. Applicants

(By Advocate Sri Sudhir Agarwal)

Versus

1. Union of India through the Secretary,
Ministry of Railways, New Delhi.
2. The General Manager,
N.E. Railway, Gorakhpur.
3. The General Manager (P),
N.E. Railway, Gorakhpur.
4. The Railway Board,
Rail Bhawan, New Delhi, through its Chairman.

. Respondents

(By Advocate Sri A.K. Gaur)

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O R D E R

(RESERVED)

(By Hon'ble Mr. S. Dayal, A.M.)

This application has been filed, under Section 19 of the Administrative (Tribunals) Act, 1985 for setting aside the order dated 5.3.1998 and issuing direction to the respondents to finalise the panel in pursuance of written test and oral test already conducted following Notification dated 4.3.1997 for the post of Assistant Personnel Officer, Group 'B' and if the applicants are selected, to appoint them on the said post with consequential benefits.

2. By order dated 5.3.1998, the General Manager (P) of North Eastern Railway, Gorakhpur has cancelled the selection of Assistant Personnel Officer, Group 'B' against 30% quota for which written examination was held on 15.11.97 and 16.11.97 and interview was held on 13.1.98.

3. The case of the applicants is that they appeared for the aforesaid written examination against selection by Limited Departmental Competitive Examination, as they were working in Group 'C' and drawing pay-scales of more than Rs.1400/- minimum. The selection was to be done for 3 unreserved vacancies of Assistant Personnel Officer and one reserved vacancy for the Scheduled Caste for the same post. A Notification dated 4.3.97 was issued for the purpose. The applicants appeared in the written test on 15.11.97 and 16.11.97 and were declared successful on 15.12.97. Thereafter, they appeared in viva voci test on 13.1.98 before a Selection Committee. The Selection Committee proposed a panel and sent the same for approval to Respondent no.2.

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4. Sri Sudhir Agarwal, learned counsel for the applicant and Sri A.K. Gaur, learned counsel for the respondents have been heard. The case of the applicants is that Para 204.10 of Indian Railway Manual Volume-I provides as follows:-

" 204.10 - Recommendations of the Selection Committee should be put up to General Manager for approval. If he does not approve all the recommendations he will record his reasons in writing therefore and order a fresh selection. Once a panel is approved by the General Manager no amendment or alteration in the panel should be accepted with^{out} prior approval of the Railway Board."

The impugned order has been passed stating unavoidable reasons as the ground for cancellation for selection, which is no ground at all. Thus, the selection has been cancelled illegally. The General Manager has not recorded his reasons in writing. Secondly, the order giving reasons has to be made available to the applicants. It is also contended that where a selection is cancelled and the cancellation is challenged, a judicial review is opened^{ed} to consider as to whether the decision taken by the authorities concerned for cancelling the selection is valid or not.

5. The learned counsel for Respondents has contested the claim of the applicants. He has admitted the averment made by the applicants upto the stage of recommendations of names for empanelment by the Selection Committee for approval of General Manager. It has been stated in the counter reply that the selection was cancelled by Notification of General Manager (P)

dated 5.3.98 due to finding of irregularities in marking, which were found on investigation and the Railway Board considered them and required the General Manager, North Eastern Railway, Gorakhpur to cancel the selection, whereupon the General Manager cancelled the same. It is further stated in the counter reply that there were complaints received by the Vigilance organisation of Railway Board, which were investigated and the facts were put up to the Railway Board. The opinion of the Railway Board was that the selection should be cancelled.

6. In order to ascertain as to what was the reason for cancellation, the learned counsel for the Respondents was directed to keep ready the orders of cancellation along with report of the Vigilance organisation on the basis of which the selection was cancelled. The said record was shown to us on the date of hearing. It is clear from the record that a complaint was received regarding the conduct of examination for selection to the post of A.P.O. on 9.1.98 from a candidate, who felt that his answer books were not assessed correctly. The Railway Board thereupon ordered the withholding of result of selection for the post of A.P.O. on 13/15.1.98. It was decided that a test check should be done by re-evaluation of answer-books through another examiner. Thereafter, the random sample of 10 answer-books of written paper-I was drawn for an examination, in which near 95 candidates appeared. This written paper carried 150 marks. In the first paper, questions carrying more than 80 marks were such in which precise evaluation was possible

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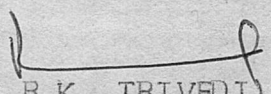
and remaining questions were essay type questions, in which there could be some subjectivity. The re-evaluation resulted in two candidates included in the sample getting more marks than they obtained while remaining candidates getting less marks than they did in the earlier written examination. The variation was from + 4 to -37, which is very significant. The respondents had decided to take disciplinary action against the evaluator, who is a very senior official of the Railways for the irregularities found in making the answer-books. In the light of these findings, the Railway Board decided that the selection for A.P.O. Group 'B' against 30% quota for which written test was held on 15.11.97 and 16.11.97 should be cancelled. On this advice of the Railway Board, the General Manager ordered cancellation.

7. The learned counsel for the applicants contended that the procedure adopted by the Respondents of re-evaluation was wrong and that if any set of answer-book is re-evaluated by another examiner, there would be difference in marks. We have considered this contention of the learned counsel for the applicants and we are of the view that the difference in marks is so significant that the conclusion drawn by the Railway Board that the marking suffered from serious lapses cannot be faulted. The balance of convenience is also in favour of the respondents, because the cancellation of selection does not deprive the applicants of opportunity to appear in selection for the post of Assistant Personnel Officer, as and when it is held.

8. In the light of above finding, we consider the prayer for relief made by the applicants unacceptable and dismiss the O.A. No order as to costs.


(S. DAYAL)

MEMBER (A)


(R.R.K. TRIVEDI)

VICE- CHAIRMAN

Nath/