

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

...

Original Application No. 462 of 1998

this the 26th day of May 2004.

HON'BLE MR D.C. VERMA, VICE CHAIRMAN
HON'BLE MR D.R. TIWARI, MEMBER(A)

1. Bal Krishna, S/o Sri Sheo Prasad, presently posted as Fitter Gr.II, (Ticket no.1818) Carriage & Wagon Eastern Railway, Mughalsarai.
2. Bishwanath Baur, S/o Late Sudhir Chand Baur, posted as Fitter Gr.II, (Ticket no. 1861), Carriage & Wagons, Eastern Railway, Mughalsarai.

Applicants.

By Advocate : Sri A Trivedi for Sri S. Agarwal.

Versus.

1. Union of India through the Secretary, Ministry of Railways, New Delhi.
2. The Railway Board, Rail Bhawan, New Delhi through its Chairman.
3. The General Manager, Eastern Railway, Fairly Place, Calcutta.
4. The Chief personnel Officer, Eastern Railway, Calcutta.
5. The Sr. D.P.O., Eastern Railway, Mughalsarai.
6. The D.R.M., Eastern Railway, Mughalsarai.

Respondents.

By Advocate : Sri A. Tripathi.

O R D E R

PER D.C. VERMA, VICE CHAIRMAN.

By this O.A., two applicants have prayed for quashing the order dated 13.2.1998 by which the panel dated 27.8.1998 was modified and the name of the applicants have been dropped. ^{Alternative} ~~Further~~ prayer is to

direct the respondents to treat the applicants validly selected and to include their names in the panel without adversely affected the selected persons on the post of Train Examiner in the pay-scale of Rs.1400-2300/-.

2. To bring out the points, in dispute, a little detailed facts is required to be given. Applications were called to fill-up 40% promotional quota to the posts of Train Examiner in the Grade of Rs. 1400-2300/-. The present two applicants were also eligible, so they alongwith others appeared in the test held on 11.5.1995. Those who passed the written test, including two applicants, appeared in the Viva Voce test held on 19.8.1996 and 26.8.1996. The final panel was notified on 27.8.1996 (Annexure A-4). The name of both these applicants were in the list. The name of the applicant namely Bal Krishan was at sl. no. 14, while the name of the applicant ^{Bishwanath Baur} was at sl. no. 8 in the panel. The applicants were to undergo training of six weeks and thereafter the applicants were to resume promotional duties on their respective/posts. However, on 24.10.1996 the applicants ~~were~~ received an information that the panel dated 27.8.1996 has been cancelled on the grounds of some procedural defects. A representation dated 24.10.1996 was made against cancellation of the panel. The representation was not considered and a fresh selection was notified vide letter dated 25.10.1996 fixing the written test on 5.11.1996. Feeling aggrieved, the present two applicants alongwith 14 others filed O.A. no. 1149/96. And interim stay against holding of fresh selection was given by this Tribunal. The said O.A. was decided by a Division Bench of this Tribunal on 16.9.1997. While deciding the said O.A., the Tribunal observed as below :-

"19. In the present case, we have recorded our findings earlier above that considering the facts and circumstances of the case there was no justification to cancel the entire panel. The panel could

have been amended by deleting the names of those in respect of the candidates the Committee had noticed the irregularities and we have also discussed earlier. We are in respectful agreement with what is held in the judgment of Kanhaiyalal.

20. In view of what has been deliberated above, the application is allowed and the impugned order dated 15.10.1996 is quashed. Orders dated 22.10.1996 and 25.10.1996 are also quashed. This will however not preclude the respondents from suitably amending the panel with a view to delete the names of the applicants in respect of whom irregularities have been found. No order as to costs. Stay order dated 1.11.1996 is vacated."

3. After the aforesaid order of the Tribunal, the respondents have issued fresh panel dated 13.2.1998 containing 11 names. ~~In the fresh panel~~. The name of the present two applicants have not been included. Aggrieved by this, the present O.A. has been filed.

4. The grounds taken by the applicant is that the principles of natural justice has not been observed by the respondents and none of the applicants were given any show-cause notice. It is also submitted that on what grounds the name of two applicants has not been included in the subsequent list, is not disclosed by the respondents. In the earlier order dated 16.9.1997 (O.A. no. 1149/96) the Tribunal has not observed anything against the two applicants.

5. Counsel for the parties have been heard. It is not disclosed in the respondents' pleadings that after the Tribunal's order in O.A. no. 1149/96 any enquiry was made with respect to individual candidates, who were selected in the earlier panel. It is also not shown that what was the mode to enquire about dis-qualification for deleting the name of candidates, whose names were earlier shown in the selected panel. The criteria adopted therefor has not been disclosed even during the course of arguments. The learned counsel for the respondents submitted that the Tribunal by its order in O.A. no. 1149/96 gave liberty to the respondents to amend the panel by deleting the name of those in respect

of the candidates the Committee had noticed the irregularities. Therefore, it is submitted that no show-cause notice was required to be given. In our view, however, the submission of the learned counsel has no merit. The Tribunal had examined the report of the Committee while deciding O.A. no. 1149/96 and observed as below :

" Out of the 25 candidates who passed in the written test only in respect of one candidate irregularity of writing name in the answer sheet and in respect of 3 candidates, unstamped papers in the answer sheets made available. We find that out of 4 Code nos. Y-9 Y-10, R-11, Z-22 candidate with Code no. Y 9 has not come through on the final panel. R-11 has written his name in the answer sheet and his answer sheets were also found to contain unstamped papers. Thus, the irregularities including use of different ink were found in respect of Code Y10, R11 and Z 22 who are the applicant no. 9,11 and 13 respectively in the present application. Nothing adverse was found in respect of the other applicants placed on the final panel."

6. The code number of the present two applicants is not disclosed either by the applicants or by the respondents. However, the code as mentioned in the Tribunal's aforesaid order and in the report of the Committee (copy Annexure SCA-I). The mal-practice was noticed in respect of three candidates appearing code no. Y-10, R-11 and Z-22 and their names as disclosed in the Tribunal's order are Anil Kumar Garg, Shiv Mangal and Om Prakash, who were applicant nos. 9,11 and 13 respectively ⁱⁿ of O.A. no. 1149/1996. The other persons against whom the Committee observed was having code no. Y-9, whose name was not in the final panel. The report also shows that there were complaints against code no. 25 and code no. R-11 whose names disclosed in the Committee's report are S/sri D.K. Singh and Mohan Kumar. The committee found that no records of irregularities have been observed on their answer sheets. These two persons were ^{figured} in the final panel prepared subsequently. The committee's report, which was examined in the

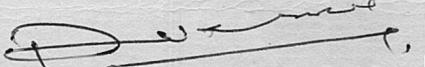


earlier O.A. disclosed nothing adverse against the present two applicants. Hence, it was for the respondents to show the reasons for non-inclusion of their names in the subsequent panel. If after the Tribunal's order in O.A. no. 1149/96 any adverse material was found against the present two applicants, it was necessary to issue a show-cause notice and to provide an opportunity of being heard. In absence of the same, the name of the present two applicants could not have been deleted from the panel, as ^{adverse} Nothing has been brought-out on record, nor even in the reply of the respondents, and, therefore, the principles of natural justice has been violated, hence the O.A. is to be allowed.

7. In view of the above discussions, the O.A. is allowed. The respondents are directed to ~~xxxxx~~ issue show-cause notice incase any material adverse to the applicant for non-inclusion in the panel ~~of the applicants~~, is available and after considering applicants' reply, pass an appropriate orders. Incase no adverse material is available against the applicants, the respondents shall include their names in the final panel dated 13.2.1998 at appropriate place in order of merit. Incase the merit gets disturb, the respondents shall give opportunity to the affected persons and after following ~~the aforesaid~~ due ^{I shall be} procedure, the name of two applicants ~~are~~ included in the final panel. They shall be given appointment with all consequential benefits admissible under the rules.

Costs easy.


MEMBER (A)


VICE CHAIRMAN

GIRISH/-