

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD


ALLAHABAD THIS THE 30<sup>th</sup> DAY OF APRIL, 2003

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A  
HON'BLE MR. A.K. BHATNAGAR, MEMBER-J

ORIGINAL APPLICATION NO. 1005 OF 1998

1. Krishna Chandra Chaubey,  
aged about 44 years,  
S/o Shri Ram Naresh Chaubey,  
(Posted as Peon, Engg-Dept,  
Chief Engineer Office),  
R/o Vill: Khajegarhwa,  
Pipra-ram-ghar,  
District-Deoria.
  
2. Raghunandan Singh,  
aged about 44 years (44)  
S/o Sri Keshav Singh,  
(Posted as Khalasi, Engg.-Dept.,  
G.M.:Gorakhpur)  
R/o Vill:Lagrabar,  
Post Jivshara,  
District:Sant Kabir Nagar)
  
3. Shahnawaj Ahmad,  
aged about 30 years,  
S/o Sri Shahnawaj Ahmad,  
(Posted as Peon, Office of Executive  
Engineer, Idge),  
R/o Vill/Post Kundail Niyamat Ali,  
PS Ubhaon, District-Ballia. ....Applicant  
(By Advocate Shri A.K. Ojha)

Versus

1. Union of India,  
through General Manager, Karmik,  
North-Eastern Railway,  
Gorakhpur.
- 

2. Chief Engineer,  
North Eastern Railway,  
Gorakhpur.
3. Mishri Lal
4. Bhagwan Chand
5. Jaleshwar
6. Phooldeo Bhagat.
7. Virendra Pratap.
8. Vishnu Sharan Srivastava.
9. Ravindra Nath.
10. Murari Lal Meena.
11. Subhash Chandra

Respondent Nos.3 to 11, through General  
Manager (Karmik) North-Eastern Railway,  
Gorakhpur.

.....Respondents

(By Advocate: Shri A. Sthalekar & Shri K.C. Sinha)

ALONGWITH

ORIGINAL APPLICATION NO.951 OF 1998

1. Ram Kewal  
aged about 38 years,  
son of Sri Banwari,  
resident of Mohalla Makha,  
Post Jungle, Beni Madhav,  
District-Gorakhpur.
2. Ganga Ram,  
aged about 30 years,  
son of Shri Siya Ram,



resident of Village: Suga Nagar,  
Dummar, Post Bishunpur Bisram,  
District : Balrampur.

.....Applicants

(By Advocate Shri R.K. Dja)

Versus

1. Union of India,  
through General Manager,  
Karmik, North Eastern Railway,  
Gorakhpur.
2. Chief Engineer,  
North Eastern Railway,  
Gorakhpur.
3. Mishri Lal
4. Bhagwan Chand.
5. Jaleshwar
6. Phooldeo Bhagat.
7. Virendra Pratap
8. Vishnu Sharan Srivastava,
9. Ravindra Nath
10. Murari Lal Meena
11. Subhash Chandra

Respondent nos. 3 to 11, through General  
Manager (Karmik), North Eastern Railway,  
Gorakhpur.

.....Respondents

(BY Advocate Shri A. Sthalekar & Shri K.C. Sinha)

.....4/-



O R D E R

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

In both these O.A. 's the facts and the reliefs claimed for are similar. Therefore, both the O.A.'s are being decided by a common order. The leading O.A. ~~being~~ is 1005/98.

O.A. No. 1005/98

In this O.A. filed under section 19 of Administrative Tribunals Act 1985, the following reliefs have been sought:-


"i) a direction be issued to the respondents to conduct fresh test confining the impugned test only to the employees working at the Head Quarters, entitled for promotion from Group 'D' to Group 'C' clerical (Office Staff) as required under/against 33 1/3% quota alone.

ii) a direction be issued declaring the impugned result/select panel contained in annexure:1 to the compilation:1, dated 20.8.98, passed by the respondent no.1 to be invalid, null and void.

iii) any other direction, as may be deemed fit and proper by this Hon'ble Tribunal.

iv) award costs to the applicants for the application."

2. The facts, giving rise to this O.A. are that on 02.07.1997, the circular was issued by General Manager (P) notifying the selection by promotion for nine posts in Group 'C' Clerks in the pay scale of Rs950-1500/- from amongst the employees working as class IV and Record-Keepers in Group 'D' in the Head Quarter unit of the Engineering Department at Gorakhpur against 33 1/3% quota. Out of nine posts seven were to be filled up by General Candidates and one each were reserved for scheduled caste and Scheduled Tribes. The main conditions for the promotion from Group 'D' to 'C'



was the ability of typing, 30 words per minute in English and 25 words per minute in Hindi. There were some relaxations for physically handicapped persons. The written, typing and oral tests were to be held as per the syllabus of the test. Later on on 11.03.1998 a circular was issued containing the names of the eligible employees. As per applicants the promotions were to be made from Class IV employees (Office staff of the Chief Engineer Head Quarter Unit). However, the list of the eligible employees included others from other units i.e., 'Works and Way Staff (Line-Staff). The applicants have alleged manipulation by respondents. The written test was held on 29.03.1998 and the result was declared on 07.05.1998, 34 candidates were declared successful. An interview was held for 34 successful candidates on 15.07.1998 and the result was declared on 28.08.1998 in which respondent nos 3 to 11 were declared successful *and the names of the applicants did not appear.*


3. Aggrieved by this the applicants have filed this O.A. which has been contested by the respondents by filing counter affidavit. Assailing the action of the respondents the applicant's counsel submitted that in the Limited Departmental Competitive Examination (In short LDCE) for promotion for nine posts in Group 'C' was held on 29.03.1998 in which the ineligible candidates were allowed to appear. The learned counsel for the applicants submitted that the post of L.D.C. was meant for only those Group 'D' staff who have no avenue of promotion which means that the posts of L.D.C. were meant for the Group 'D' staff of Head Quarter office only and were not meant for the Line Staff and others who have different sets of AVC's meant for promotion from Group 'D' to Group 'C'.

*A*

4. The learned counsel for the applicant further submitted that vide letter dated 11.03.1998 a revised list of eligible employees to participate in the said promotion test was issued adding a new clause i.e., the successful candidates shall have to qualify the type test within two years otherwise they would be demoted. This was obviously to favour a group of employees.

5. The learned counsel for the applicant further submitted that it is a clear cut case of discrimination against the office staff of Head quarters because only one single opportunity of promotion is there for office staff Group 'D' whereas for the Line Staff (Works and Way Staff), there are two different opportunities, one their own AVC and the other L.D.C.E.. The learned counsel for the applicants further submitted that for nine posts only  $9 \times 3 = 27$  candidates should have been called for interview whereas respondents illegally called 34 candidates. The perusal of the impugned order dated 28.08.1998 (Annexure A-1) would reveal that mostly the persons from Line Staff have been selected for promotion from Group 'D' to 'C' and thus, gross in-justice has been done to the Staff of Head Quarters Office.

6. Resisting the claim of the applicant Shri A. Sthalekar, counsel for Official respondents and Shri Ashish Srivastava, learned counsel for the respondent no.11 submitted that selection was open for all eligible candidates, as per notification and not only for a special group. The learned counsel for the respondents further submitted that the applicants have not challenged the notification. This notification is for all eligible Group 'D' staff and the



respondent nos.3 to 11 appeared in the selection as they were eligible. The applicants also appeared in the same selection and they have challenged the panel only after <sup>its result</sup> was declared <sup>and</sup> because they did not find their names in the select panel. The applicants cannot challenge the select panel subsequently after they appeared in the selection. The respondent's counsel has placed reliance on the judgement of Hon'ble Supreme Court in the following cases:-


(i) AIR 1986 SCC 1043 Om Prakash Shukla Versus Akhilesh Kumar Shukla and Others.

(ii) AIR 1991 SCC 2248 Sardara Singh and others Versus State of Punjab and others.

7. We have heard counsel for the parties, carefully considered their submissions, and perused records.

8. The main question before us is to examine if the respondent nos,3,5,6,8,9,10 and 11 were eligible to appear in the selection or not, On the ground taken by the applicants that they have a separate AVC for their promotion annexed as Annexure RA-1, RA-2, RA-3 to the rejoinder affidavit. In order to decide the issue we have perused the circular dated 02.07.1997 filed as annexure A-1 to compilation No. II. The perusal of the circular leaves no doubt, in our <sup>mind</sup> opinion, that the selection was open for <sup>the</sup> entire Group 'D' staff working under/Engineering Department of Gorakhpur.

9. The contention of the applicant's counsel that this



selection was only meant for the Group 'D' staff of the Head Quarters has no substance. We also do not find any illegality in the circular dated 11.03.1998 releasing the revised list of eligible employees to participate in the said promotion test and mentioning that the selected employees shall have to qualify the type test within two years otherwise they would be demoted. This notification was issued on 11.03.1998 prior to holding of the written test on 29.03.1998. In case the applicants had any grievance in regard to this clause they should have agitated then and there before they appeared in the selection test.

10. Admittedly the applicants appeared in the selection test without any protest and, therefore, they cannot challenge the illegality of this clause after the declaration of the select panel in which the names of the applicants do not appear.

11. The contention of the applicants as averred in para 4(XIII) that the number of candidates who qualified in the written test for oral examination should have been three times the number of vacancies i.e.,  $9 \times 3 = 27$  and not 34 ~~which~~ has also no substance.

12. The Hon'ble Supreme Court in the case of Om. Prakash Shukla (Supra) held as under:-

"Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates



who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not responsible for the conduct of the examination."

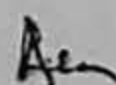
The Hon'ble Supreme Court in the case of Sardara Singh (Supra) held as under:-

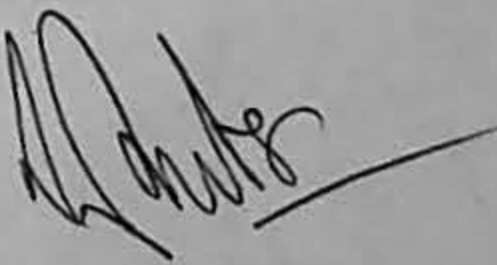
"It is next contended that the appellants have now become over-aged and that they are 22 in all. Therefore, directions may be given to the Government to relax their age qualification and given appointments to them. We find no justification to give such a direction. Admittedly, the appellants have taken the chance for selection and they were not selected on the basis of comparative merits. Therefore, merely because appellants are carrying on the litigation, there cannot be any justification to give direction to the Government to consider their cases by relaxing the age qualification for appointment as Patwari. It is not in dispute that hundreds of candidates who could not be selected would in that event seek similar relief. Under these circumstances we do not find any cause to add to the selection and appointments of the candidates as Patwaris. The High Court, though for different reasons, has rightly dismissed the writ petitions. The appeals are accordingly dismissed, but without costs."

13. Applying the ratio by the Hon'ble Supreme Court in the above cases we have no hesitation to observe that the applicants who appeared in the selection without protest <sup>h</sup> can not challenge the validity of the L.C.D.E. subsequently.

14. For the reasons stated above, we do not find any error of law committed by the respondents and, therefore, no good ground for interference. The O.A. <sup>h</sup> is devoid of merit <sup>h</sup> and <sup>h</sup> liable to be dismissed. The O.A. <sup>h</sup> <sup>h</sup> No 1005/98 and 951/98 <sup>h</sup> are accordingly dismissed as <sup>h</sup> it lacks merits.

15. There will be no order as to costs.

  
Member-J

  
Member-A