

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

O.A.No./XXXXXX 1135 of 1998

Date of decision 26<sup>th</sup> Nov. 98

Brahmanand Mishra and others

Applicant(s)

C/A Sri Sudhir Agrawal,

COUNSEL for the  
Applicant(s)

Versus

Union of India and others

Respondent(s)

Shri RA. Kan Gaurthar

Counsel for the  
Respondent(s)

C O R A M

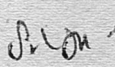
Hon'ble Mr. S.L. Jain

V.C./Member( )

Hon'ble Mr. G. Ramakrishnan

Member ( )

1. Whether Reporters of local papers may be allowed to see the judgment? yes
2. To be referred to the Reporters or not ? yes
3. Whether their Lordship wish to see the fair copy of the judgment ? no
4. Whether to be circulated to all Benches ? no

  
( SIGNATURE )

MANISH/



CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

DATED: THIS THE DAY 26<sup>th</sup> OF NOVEMBER 1998

Coram : Hon'ble Mr. S. L. Jain JM  
Hon'ble Mr. G. Ramakrishan AM

ORIGINAL APPLICATION NO. 1135 OF 1996

1. Brahmanand Mishra son of Bhuvneshwar,  
presently working Storeman in the office  
of Sr. Section Engineer (W)/T, Northern Rly,  
Allahabad resident of 565-D Smith Road,  
Allahabad.
2. Krishna Murari son of Gulab Chandra  
presently serving as Storeman in the office  
of Sr. Section Engineer (W)/III, Northern Rly  
Allahabad, resident of 737 E, Lalit Nagar  
Railway Colony, Allahabad.
3. Ramendra Prasad son of Ram Murti Ojha,  
presently serving as MCC in the office of  
Divisional Railway Manager, Allahabad  
resident of 773-A Lalit Nagar, Railway  
Colony, Allahabad.
4. Radha Raman Bag son of Hari Bag, presently  
serving as Storesman under Sr. Section Engineer  
(W) Northern Railway, Aligarh.
5. Jwala Prasad son of Jagdish Prasad presently  
serving as Store Clerk in the office of  
S.E.(C)/1 Northern Railway Allahabad.
6. Rajendra Chaudhary S/O Ugra Narain,  
presently working as MCC under S.E./P.W./  
Khuraj.

*[Handwritten signature]*



7. Shanker Lal son of Ghamandi Lal,  
presently serving as Storeman in the  
office of S.E./P.W./Northern Railway  
Allahabad.
8. Gopal Kumar son of Shambhu Ram  
presently serving as Storeman in the  
office of S.E./P.W., Northern Railway,  
Allahabad.
9. Kaptan Singh son of Maharaj Singh  
presently serving as Storeman in the  
office S.E./P.W., Northern Railway,  
Allahabad.
10. Shobha Kant Lal son of Krishna Lal Das  
presently serving as Record Sorter in the  
office of General Manager, Railway Electri-  
fication, Northern Railway, Allahabad.
11. Vijay Kumar Dubey son of Rameshwar Dubey  
presently serving as Office Khalasi in the  
office of Divisional Railway Manager,  
Northern Railway, Allahabad.
12. Laxmi Narain son of Ram Swaroop presently  
serving as Storeman in the office of S.E./  
P.W., Northern Railway, Allahabad.
13. Salahuddin son of Karim Bax, presently  
serving as Storeman in the office of  
S.E.(W) Northern Railway Allahabad.
14. Babu Lal Mina son of Kanhaiya Lal,  
presently serving as Storeman in the  
office S.E.(P.W.)Northern Railway  
Allahabad.
15. Ram Kishore Vishwakarma son of Ram Sunder  
presently serving as Storeman in the  
office of S.E.(W) N.RLY. MIRZAPUR

DW / — C/O



16. Mithai Lal son of Ram Kumar presently serving as Storeman in the office of S.E.(W)/Spl I, Kanpur
  17. Pradeep Kumar Issar son of Krishna Lal Issar, presently serving as Storeman in the office of S.E.(P.W.), Northern Railway, Allahabad.
  18. Ram Kumar Pal son of Ram Lal Pal presently serving as Office Khalasi in the office of Assistant Electrical Engineer (G) Northern Railway, Kanpur.
  19. Mohan Lal son of Ram Lakhan, presently serving as Head Peon in the office of Divl. Railway Manager, Northern Railway, Allahabad.
  20. Banshi Lal son of Durga Deen, presently serving as Peon in the office of Divisional Railway Manager, Northern Railway Allahabad.
  21. Kailash Prasad son of Gauri Shanker presently serving as Peon in the office of Divisional Railway Manager, Northern Railway, Allahabad.
- - - - - Applicants

C/A Shri Sudhir Agrawal

Versus

1. Union of India through General Manager Northern Railway, Headquarters office, Baroda House, New Delhi.
  2. General Manager, North Central Railway, Headquarters office, North Central Rly, Allahabad.
- JMS



3. Divisional Railway Manager,  
Northern Railway, Allahabad.
4. Divisional Personnel Officer(1),  
Northern Railway Allahabad.
5. Divisional Operating Manager,  
Northern Railway, Allahabad.
6. Senior Statics Analyser, Northern Railway  
Allahabad . - - - - - Opp. Parties  
Respondents

C/R xxxxxxxxxxxxxxxxxxxxxxxxx

Shri A.K.Gaur.

ORDER

By Hon 'ble Mr. S. L. Jain JM

This is an application under section 19 of the Administrative Tribunals Act, 1985 to quash the impugned order dated 23.9.1998 passed by the respondent no.3, to declare the result of viva-voce as recommended by the Selection Board.

2. There is no dispute between the parties in respect of the following facts :-

a/ respondent no.3 issued letter dated 17th July, 1997 to fill up the post of Office-cum-Typist in the quota of promotion in the pay scale of Rs.950-1500 and the said post are to be filled up by selection. The applicants were said to be eligible as per allegation in the O.A., applied for the said post, respondent no.3 constituted the Selection Board in which respondents 4, 5 and 6 were nominated as Members of the Selection Board by the competent authority

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b/ the applicants were called for written test on 18.4.1998 and 25.4.1998

c/ the applicants appeared in the written test conducted on 18.4.1998 and 25.10.1998 and the result was declared by the Selection Board on 9.6.1998, applicant were declared successful and they were asked to appear in the Viva-voce test conducted on 30.6.1998. Applicants appeared before the Selection Board in viva-voce test on 30.6.1998.

d/Thereafter, the Selection Board prepared a Select list and sent it for approval of the competent authority that is to say the Divisional Railway Manager, Allahabad.

e/ Respondent no.3 did not agree with the recommendation of the Selection Board and passed the order dated 23.9.1998 to take denovo action from the stage of written test in the above selection.

f/ Respondent no.3 has fixed 31.10.1998 which was adjourned from time to time.

3. The applicants' case in brief is that the order passed by the respondent no.3 is without jurisdiction and contrary to para 219-K and 214(IV) of the Indian Railway Establishment Manual, Volume I. Thus the action of the respondent no.3 being illegal and without jurisdiction, hence this O.A. for the said reliefs :

4. Respondents have defended their action on the ground that para 214 (IV) of the Indian Railway Establishment Manual, Volume I does not relate with the selection procedure. The said provision is only for non selection post which is to be filled up by

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any suitable candidates. In the present case selection procedure was adopted. The competent authority has ordered to take denovo action from the stage of written examination because some persons who were not eligible were called and appeared in the examination and selection. On proper scrutiny of the application, it was found that some in-eligible candidates appeared in the selection which was detected later on. Representations of the applicants were received and replied to the General Manager, North Central Railway, Allahabad. Action of the respondents is said to be inaccordance with law and prays for dismissal of the O.A. with costs.

5. On persual of annexure A-3 placed at page 25 and 26 in the last 3 lines, it is mentioned that

" UPROKI KARAMCHARIYON KI SUCHI MEIN ASHIRIT  
SAHI KARAMCHA-RIYON KA NAM ANHIGH HAI  
PATARIA KI SAHI SHARTEIN PURN HONE PAR HI  
UN KA NAM VICHARNIA HOGA "

Thus the eligibility<sup>which</sup> was to be determined before examination but, but was left to be determined at the later stage

5. The applicants' counsel has relied on para 219 K of the Indian Railway Establishment Manual, which is as under :-

" The list will be put up to the competent authority for approval . Where the competent authority does not accept the recommendations of a Selection Board, the case could be referred to the General Manager, who may constitute a fresh Selection Board at a higher level, or issue such other orders as he considers appropriate. "

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6. It is true that where the competent authority does not accept the recommendations of the Selection Board, the case can be referred to the General Manager, who may constitute a fresh Selection Board at the higher level or issue such orders if he considers appropriate. The said provision is to be read alongwith the provision contained in para 219 of the Indian Railway Establishment Manual.

7. In O.A.957/96 Hanuman Prasad and others Versus Union of India and others decided on 15.7.1996, against which S.L.P. 16901/96 decided on 6.9.1996 is said to have been dismissed. It has been held that Chapter II applies to promotion from cadre 'D' to 'C'. Chapter II of Indian Railway Establishment Manual also applies to Selection post also.

8. The learned counsel for the applicant has relied on the writ petition 38406 of 1996 Amar Nath Singh V/s Union of India and others decided by the Hon'ble High court of Allahabad on 19.12.1997. By perusal of the said judgment, it cannot be disputed that action of the respondents is subject to judicial review.

9. He has also relied on O.A.1150/96 decided by this bench on 16.9.1997 in case Mangla Manda and others V/s Union of India and others. We agree to the submission of the learned counsel for the applicant that if a selection, cancellation thereof is challenged then judicial review will determine whether the selection was cancelled for bonafide and valid reasons or it was arbitrary.

10. In AIR 1986 SC page 1680 S.Govinda Raju versus K.S.R.T.C. and another, the Apex court has held that once a candidate is selected and his name is



entered in the Select list for appointment in accordance with regulations, he gets a right to be considered for appointment as and when vacancy arises. Removal of his name from the Select list have serious consequences. He forfeits his right in employment in future. The principle of natural justice would be attracted and the employees would be entitled to an opportunity of explanation. The same view is expressed in AIR 1997 SC page 593.

11. Thus if the selection is cancelled, all the candidates in the Select list are entitled to know the cause for cancellation.

12. On perusal of the O.A., the only cause shown for cancellation of the selection is that some ineligible candidates appeared in the examination, if the care was taken at the initial stage on 11.3.1998 for scrutinising the applications, while issuing annexure-2 and the matter was not left to be decided at the later stage, all the problems must have not arisen.

13. In view of 219 K of Indian Railway Establishment the competent authority has no option except to refer the case to the General Manager, when he does not accept the recommendation of the Selection Board. The action of respondent no.3 in not accepting the recommendation of the Selection Board is justified but his action to cancel the recommendation is without jurisdiction.

14. It is for the General Manager, in view of the circumstances above either to cancel the whole selection constituting a fresh Selection Board at a higher level or issue such orders as he considers appropriate.

15. In the result, O.A. is allowed. Order dated 23.9.1998 passed by respondent no.3 is quashed, responder no.3 is ordered to refer the case to the General Manager

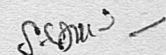
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under provision 219-K of the Indian Railway Establishment Manual for needful orders.

16. This is a fit case where the respondents have acted in an un-usual manner which led to this situation, hence the respondents are ordered to <sup>pay</sup> ~~pay~~ the cost of the petition Rs.650/- (Rs.500/- as legal Practitioner fee and Rs.150/- other expenses) to the applicants.

  
Member(A)

  
Member(J)

SQI