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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No.1574 of 2005

Wednesday, this the 7th day of February 2007

**Hon'ble Mr. Justice Khem Karan, V.C.
Hon'ble Mr. M. Jayaraman, Member (A)**

Jai Prakash Narayan Upadhyaya, aged about 50 years, S/o Awdhesh Narayan Upadhyaya, R/o N2/270-J-1, Karaudi Susuwahi.

Applicant

By Advocate Shri Vinay Kr. Srivastava

Versus

1. Union of India through General Manager, North Central Railways, Allahabad.
2. Chairman, Selection Committee for Selection of Promotion from Group 'C' to Group 'B' to the post of A.C.M./NR against 70% quota, Northern Railway, New Delhi.
3. Chief Commercial Manager, Baruda House, New Delhi.

Respondents

By Advocate Shri Avnish Tripathi

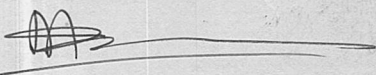
O R D E R

M. Jayaraman, Member (A)

Heard, Sri V.K. Srivastava, Counsel for the applicant and Sri A. Tripathi, Counsel for the respondents.

2. In this case, the applicant has prayed for quashing the impugned letter dated 08.12.2005, announcing the result of the candidates who qualified in the Written Test and eligible for viva voce and to issue directions to the respondents to permit the applicant to appear in the viva voce test for selection of A.C.M./N.R. Group-B against 70% quota.

3. The brief facts of the case here are that the applicant was appointed as Ticket Collector Group 'C' in the Department of Railways in December 1975 and he was promoted as C.I.T. in January 1989. The department conducted Departmental Examination for promotion as ACM/Northern Railway from Group 'C' to Group 'B' against 70% quota vacancy in 2004. The applicant appeared in the test but was not declared successful.




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The applicant sent a representation on 09.10.2004 to the Chief Commercial Manager, Northern Railway, alleging some irregularity in the examination so conducted against 30% quota vacancy and subsequently on 08.12.2005 the results were declared through letter dated 08.12.2005 announcing the names of the candidates, who were qualified for interview/viva voce test. The applicant's name did not figure in the said letter. Since the applicant is apprehensive that the results have been declared with a malafide intention excluding his name, he has filed the present O.A. with the prayer, as above.

4. The applicant has submitted that the advertisement referred to 12 posts for selection by promotion from Group 'C' to Group 'B' and ~~since~~^{through} according to Rules, candidates equal to 3 times the number of vacancies are entitled for appearing in interview, the respondents have declared only 12 candidates qualified for interview. Similarly, for 150 vacancy, 61 candidates have been called in an irregular manner for the Written Test; candidate at serial no.14 also has been wrongly included. The applicant also says that during Written Examination, the CCM Mr. Kamlesh Gupta and Mr. Ram Pyare came into the Examination Hall and gave certain instructions to lady invigilator, who in turn directed the applicant to write his name, date of birth, qualification, date of appointment and first and last questions solved by him, which the applicant complied. The applicant fears that the answer sheet was changed. The applicant has submitted that since he has done well and hope to get more than 60% marks, the percentage for qualifying, he ought to have been declared pass. For this purpose, he is seeking the intervention of the Tribunal to call for the answer books for verification and comparison. The applicant has also stated that due to enmity, Mr. Kamlesh Gupta, CCM has with malafide intention made the applicant fail the test. It is for these reasons, the applicant has prayed for quashing of the result dated 08.12.2005, as stated in paragraph 1 above.

5. The above pleadings have been opposed by the respondents by saying that in April 2004, a total number of 756 candidates were called for written test for selection to the post of ACM against 30% quota for the assessment period 2003-05 for filling up 7 vacancies including two reserved for SC and one for ST. The respondents have stated that the applicant has appeared in the said test held on 04.09.2004 but failed to obtain minimum



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60% marks in each papers i.e. 90 marks out of 150 in each paper and so he was not called to appear in the Viva Voce in September 2004. Subsequently, by the letter dated 20.07.2005, 61 candidates were called for written test against 70% quota for assessment year 01.04.2005 to 31.03.2007 for filling up 15 vacancies including two for S.C. and one for S.T. The Written Examination was conducted on 03.09.2005 and 01.10.2005. Since the applicant failed to secure minimum qualifying marks in the Written Test i.e. 90 marks out of 150 marks, he was again not called for Viva Voce/Interview. The candidates who had secured the qualifying marks i.e. 60% and above including Sri K.K. Tyagi as per Central Administrative Tribunal, Chandigarh Bench's direction as also the SC candidate were called for Viva Voce held on 05.01.2006. A total number of 4 candidates were placed in the provisional panel vide letter dated 12.01.2006 and in addition to above, two candidates from S.C. community were also promoted to Group 'B' purely on ad hoc basis for six months "in service training". The respondents have denied the allegation made by the applicant in his representation dated 09.10.2004. Since the applicant did not qualify i.e. did not obtain 90 marks out of 150, he was not called for viva voce/interview. With regard to the allegation about number of candidates called for viva voce, it is submitted that in all 13 candidates including 3 ST candidates who had secured qualifying marks were declared successful with general standard. Against 2 SC posts, none secured qualifying marks, therefore, 7 SC candidates were called with relaxed standard as per instruction for viva voce. That is how a total number of 20 candidates including 3 ST and 7 SC were called for viva voce.

6. With regard to the specific allegation made by the applicant as to the number of candidates to be called, it is submitted that as per the Rules, the candidates are called as per the details given below: -

Vacancy	Number of Employees called
1.	5
2.	8
3.	10
4.	12 (4+above 3 times the number of vacancies)

It is further submitted that for four and above, three times the total number of vacancies are taken into



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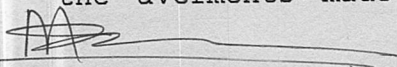
consideration and also equal number of candidates who failed twice in the earlier two selections against 70% quota vacancies figuring in the zone of consideration are also called to take part in the selection. So far as the present selection is concerned, the respondents have submitted that for filling up the 15 vacancies of A.C.M., besides calling a total number of 16 employees, who failed twice in earlier two selections, were also called to take part and that is how $45+16=61$ employees were called. With regard to serial no.14 Sri Amar nath, the respondents have stated that he belongs to Commercial department and since the post is of A.C.M. namely Assistant Commercial Manager, the staff working in the Commercial department was also called to appear in the selection. Though the applicant also belongs to Commercial department and was also called for Written Test but he failed to obtain the qualifying marks. As already explained, the respondents would like to reiterate that answer sheets with code numbers without names of the candidates are sent to Senior Administrative Officer for evaluation and so the Evaluating Officer never comes to know the identity of the answer book. The respondents have, therefore, denied the allegation made in this regard. With regard to allegation about the visit of Chief Commercial Manager, it is stated by the respondents that he made a routine round in the examination hall which was part of his duty and that no direction was given to the lady invigilator regarding the applicant. It is further stated that all the candidates who appeared in the Written Test were asked to write their names, designation, roll number, date of examination and subject for which the examination was conducted and no directions were issued to anybody to write his date of birth, qualification, date of appointment and first and last question solved, as alleged by the applicant. The respondents have asserted that the selection has been held as per procedure laid down by the Railway Board and the Selection Committee has no role to play with regard to the answer sheet of any examinee including that of the applicant. They have further stated that the results have been declared purely based on the examination without any influence. They have also stated that as a result of viva voce conducted on 05.01.2006 against 70% quota a total no. of four employees found place on the panel, were declared on 12.01.2006 and have been promoted in the Group 'B'. In addition two employees belonging to reserved category have been promoted on ad hoc basis for six months vide letter dated 16.01.2006.

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7. In the rejoinder reply, the applicant has reiterated his stand and assailed that his answers to all the questions in both the tests are correct and he hopes to secure more than 90 marks and so he would also be eligible for the promotion.

8. We are not impressed by the pleadings made by the applicant in this O.A. It is possible that the applicant might feel that he has done very well in the examination and hope to get more than 90 marks but as explained by the respondents there seems to be a fool proof system maintaining secrecy for evaluation of the answer books by the Senior Administrative Grade Officer and maintaining confidentiality of the whole matter. Hence, regardless of what the applicant might feel about himself, unless there is some material to show that the test has been conducted in an irregular manner or there is malafide intention on the part of anybody against the applicant, it would not be possible to interfere in the matter. With regard to the specific allegation made by the applicant that enough number of candidates were not called for interview, we find that as per the Railway Establishment Rules regarding promotion to Group 'B' post, extract of which has been attached as annexure no.2 to the O.A., we find that by and large the respondents have conducted the examination strictly in accordance with the instructions contained therein. The applicant is on very weak wicket when he claims that 3 times number of vacancies should have been called for interview and that number of candidates actually called for by the impugned order, is not correct. On page 115 of the extract of aforesaid Rules, which has also been mentioned by the respondents in their submissions, the number of employees to be called for selection i.e. Written Examination will be in accordance with the sliding scale in order of seniority i.e. to say for one vacancy 5 employees will be called, for 2 vacancies 8 employees, for 3 vacancies 10 employees and for 4 vacancies and above, employees equal to 3 times will be called. Since this provision refers to selection procedure immediately after eligibility, it goes without saying that this refers to the number of employees to be called for written test and not for viva voce, as wrongly claimed by the applicant. Following the above provision only, the procedure regarding the written test, qualifying marks etc. have been explained and rules laid down, so we do not find any thing wrong in the number of candidates actually called for written test. Obviously, it is clear from the averments made by the respondents that they have called



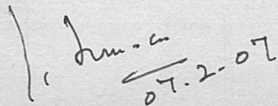
(14)

only those candidates for Viva Voce who have qualified in the Written Test obtaining the minimum qualifying marks prescribed namely 60 out of 100 (90 out of 150) as the case may be. The other allegations made by the applicant do not seem to be based on any evidence or facts but only based on his anxiety/feelings/emotions, which for obvious reasons, cannot be entertained.

9. In view of the above, we do not find anything wrong in the selection procedure adopted by the respondents and we do not see any warrant to interfere in the matter. Accordingly, the O.A. fails and is dismissed with no order as to costs.



Member (A)


Vice Chairman

/M.M./