

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD**

(This the 25th Day of April 2014)

Hon'ble Mr. Justice S.S. Tiwari, Member (J)
Hon'ble Ms. B. Bhamathi, Member (A)

Original Application No. 734 of 2005

1. Shri Allaudin S/o Shri Mosha Khan Resident of Q. No.1/D, City Station, N.E. Railway, Bareilly (U.P.)
2. Shri Mohd. Yamin Khan S/o Shri Mohd. Yasin Khan, Resident of 268, Mohalla Nawab Gali, Abdul Ahmad Gafu Ka Chouraha, Kasganj, District Etah (U.P.).
3. Shri Vishnu Sahai Saxena, S/o Shri Laxmi Shanker Saxena, Resident of 45, Mohalla Kunwarpur, District Bareilly (U.P.).
4. Shri Ami Chand S/o Shri Bhaggu Ram, Resident of 170-D, Railway Colony, N.E. Railway, Kasganj, District Etah (U.P.).
5. Shri S.P. Pradhan S/o Shri Jagdamba Prasad, Resident of Near Malukpur Bhatti C/o Shri Raja Bahadur Tail Malukpur, Bareilly (U.P.)
6. Shri Budh Pal S/o Shri Tikka Ram, Resident of Ganesh Nagar Colony, Bareilly (U.P.)

..... Applicants

By Advocate: Shri R.C. Pathak

Versus

1. Union of India through the General Manager, N.E. Railway (N.E.) H.Q., Gorakhpur (U.P.).
2. The Divisional Railway Manager (D.R.M.) N.E. Railway, Izzat Nagar, Bareilly (U.P.).
3. The Divisional Railway Manager (Personnel) D.R.M. (P) N.E. Railway, Izzat Nagar, Bareilly (U.P.).

4. Shri Chhidda Singh, Driver Goods, through the Station Manager, N.E. Railway, Pilibhit, (U.P.)

..... Respondents

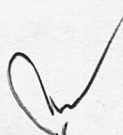
By Advocates: Shri A.K. Pandey
Shri A. Tripathi

O R D E R
(Reserved on 02.04.2014)

Delivered by Hon'ble Ms. B. Bhamathi, Member (A)

This O.A. has been instituted for the following relief/s:-

- (i) *"issue a suitable order or direction by way of Certiorari quashing the orders dated 28.02.2005, 28.02.2005 and 03.11.2004 issued by the respondent No.3 shown as Annexure Nos. A-1, A-2 and A-3 to this Original Application.*
- (ii) *Issue a suitable order or direction by way of mandamus directing the respondent No.3 and respondent No.2 to decide the case of applicant according to Rule and by a reasoned and speaking order.*
- (iii) *Issue a suitable order or direction by way of mandamus commanding the respondent No.3 to declare the applicants selected for promotion on the post of Driver Passenger Train to the applicant in the Test of Driver Passenger Train and declared suitable in cadre restructuring on the basis of their CR & Service Records with all consequential benefits.*
- (iv) *Issue a suitable order or direction by way of mandamus commanding the respondent No.3 to follow up the Rules, Policies and Railway Board Orders in the Test of Selection of Driver Passenger Train and not to leaving aside to the seniors and selected juniors to the applicants.*
- (v) *Issue any other such order or direction which the Hon'ble Tribunal may deem fit and proper under the circumstances of the case.*




(vi) To award cost to the applicants."

2. The summary of the pleadings of the applicant is as follows:-

The applicants 1 to 6 were appointed as Engine Cleaner between 1966 and 1976 and promoted on the post of Fireman Grade II between 1975 and 1978. They were promoted as Fireman between 1976 and 1985. Some of them also got promotion as Driver Goods. The seniority list in respect of Driver Goods, Fireman and Diesel Assistant along with pay fixation order was issued for these periods from time to time. On 6.1.2004, Railway Board issued orders for restructuring of Group 'C' and Group 'D' cadres, which included the cadres of the applicants also. While implementing the restructuring orders, the respondent No.3 after conducting the examination announced the results vide impugned order dated 11.11.2004 regarding Driver Passenger Train, where all the applicants participated and were declared unsuccessful. The applicants gave representation alleging bungling in the conduct of the examination and stating that the selection process was irregular, because they should have been promoted on the basis of the scrutiny of service records and confidential reports etc. as per the provisions of the restructuring scheme. On these grounds, the representations sought for selection on the post of driver passenger train and for grant of benefit of restructuring in the pay scale of Rs 5500-9000, which are still pending. By impugned order dated 28.2.2005, the above claims of applicant Nos. 1 and 3 were rejected, while juniors to the applicants were selected. Hence this O.A.



3. The case of the respondents is that the applicants have challenged the order dated 28.2.2005 by which the representation of the applicant Nos. 1 and 3 for promotion to the post of Passenger Driver has been rejected by the competent authority. They have also challenged the letter dated 11.11.2004 by which list of candidates who were selected in the written test held for selection of such candidates has been disputed. The applicants were given notice to appear in the selection examination for the post of Driver Passenger (5500-9000) which is re-designated as Loco Pilot Passenger -II (5500-9000) vide notification dated 30.06.2004. In the written examination held on 11.9.2004 and absentees' written examination held on 29.9.2004, the result of all the applicants were declared on 11.11.2004, in which all the six applicants had failed. They represented for selection to the post of Driver Passengers (5500-9000), stating that they should have been promoted on the post on the basis of service records and confidential reports under the restructuring scheme as per the Board's circular. Railway Board vide letter dated 9.10.2003 and 6.1.2004 issued the orders of restructuring which had to be implemented w.e.f.1.11.2003. In the light of the Railway Board's Circular, memorandum dated 25.3.2004 was issued which stated that the sanctioned post of Passenger Drivers were reduced as result of restructuring after 1.11.2003. Hence, as per para 4.5 of the Railway Boards letter dated 6.1.2004 benefit of restructuring is not applicable for the post of Driver Passenger (5500-9000) and Driver Goods (5000-8000). As per Board's



circular benefit of restructuring is given only to those posts, which were increased after restructuring. These posts were to be filled on the basis of service records and confidential reports as per the modified procedure. This procedure was not applicable in the case of applicants as the number of passenger driver posts, to which cadre the applicants belonged had been reduced. Rest of the posts were to be filled by selection under normal procedure i.e. through conduct of examination and not on the basis of service records etc. This procedure, as per Board's circular was applicable to the applicants and that was implemented, which has now been challenged in the OA. The Railway Board's instruction issued on 12.8.1993 and 8.10.1993 prior to restructuring pertains to assessment of confidential report of Non gazetted staff w.e.f. 1.3.1993 and these orders were not applicable in normal selection. The applicants' promotion pertains to normal selection procedure. Hence, the Railway Board Circular referred above are not applicable in the applicants' case. Para 21, 22, 23, 24, 26, 27, 29, 30, 33, 34, 37, 38, 39 of the CA have countered corresponding paras of the applicant in O.A, as being incorrect, based on record.

4. In the Rejoinder Affidavit, the applicant has admitted certain typographical errors pointed out in Paras 23 and 33 of CA and admitted the contents of Para 25 and 34 of the CA, while reiterating the averments made in respect of remaining paras as in the O.A. Reiterating the allegation that the examination for selection was bungled, the applicants have again prayed that the records regarding




the test for selection of Driver Passenger Train be called for and scrutinized by this Tribunal.

5. We have gone through the O.A., Rejoinder Affidavit of the applicant and also annexures A-1 to A-30 accompanying the O.A.

6. We have also gone through the Counter Affidavit filed by the respondents and also annexure CA-1 to CA-7 accompanying the CA.

7. We have heard the learned counsels on behalf of the applicant and respondents and perused the facts and circumstances of the case.

8. At the outset, it is noted that on 17.1.2008, the coordinate Bench of this Tribunal had observed that the applicants, having challenged the promotion order dated 11.11.2004 by which certain persons had been given benefit of promotion, have not impleaded all the selected persons except respondent No.4 as party. Vide order dated 17.11.2011, the co-ordinate Bench observed that no notice could be issued to private respondent No.4, since the applicant had not filed copy of the O.A.. The co-ordinate Bench further observed that the earlier order as regards impleadment of other persons who got the benefit of promotion vide order dated 11.11.2004 has not been complied with by the applicants. The counsel for the applicant argued before the Bench that no promotion was given to the applicants, hence, there was no need to implead the other selected persons. The Bench reiterating the



need for compliance of the order directed the applicant for impleadment of such persons. The applicants neither moved an application for setting aside the order dated 17.1.2008 nor complied with the orders of the Bench. No view can be taken by this Bench regarding the claim of applicants without hearing the persons who have received the benefits of promotion. Those selected for promotion have to be heard, because they are potentially affected promotees. Hence, they are necessary parties and indispensable for a decision in this case. Their non impleadment despite two orders of Co-ordinate Bench of this Tribunal dated 17.1.2008 and 17.11.2011 is an obstruction to the proper adjudication of this case. The Hon'ble Apex Court in the case of **Rashmi Mishra vs. M.P. Public Service Commission and others [(2007)2 Supreme Court Cases (L&S) 345]** has held that all the selected candidates were necessary parties/proper parties as the result could have affected them. The Hon'ble Supreme Court held that '*result of the writ petition could have affected the appointees. They were , thus, necessary and/or in any event proper parties*'. The Hon'ble Supreme Court concluded that appellant had not impleaded the selected candidates as parties, therefore he is not entitled for any relief.

9. The applicants have approached this Tribunal after they appeared but failed in the written examination. They had not represented their case before the examination, in other words, the applicants filed their representation only after realising that they had not cleared the examination and were declared unsuccessful. Hence,

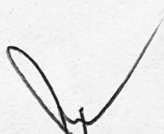


their case is not maintainable in view of following settled law arrived by way of several judgments of Hon'ble Apex Court.

- (i) (1986) *Supreme Court Cases (L&S) 644; Om Prakash Shukla vs. Akhilesh Kumar Shukla & Ors.*
- (ii) 2010 (6) *JT 33 State of Orissa and anr. Vs. Rajkishore Nanda & Ors. Etc.*
- (iii) 2009 (3) *SCC page 227 Amlan Jyoti Borooah vs. State of Assam and Ors.*
- (iv) 2008 (4) *SCC 171 Dhananjay Malik & Ors. vs. State of Uttaranchal & Ors.*

These judgments have unanimously held that that if a candidate appeared and participated in the selection process, in this case the examination conducted by the respondents, without any protest, they are estopped from complaining that the selection process was vitiated or that another selection process should have been offered/availed. Applying the judgments to the present OA, we conclude that the representation moved by the applicants was an after thought and the relief prayed for cannot be granted nor can the selection process be now questioned. Hence, the aforesaid prayer of the applicants being prima facie questionable, no useful purpose would be served by calling for the records by this Tribunal.

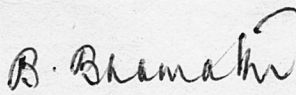
10. We have gone through the Railway Board's circular and it is apparently clear that the instructions of the board has been fully carried out in letter and spirit while conducting the selection process pertaining to the applicants. They were eligible for being considered for

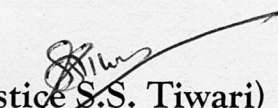


grant of benefit under restructuring scheme only after clearing the examination-based selection process and not through the normal selection process of mere scrutiny of service records. They have not cleared the exams and hence the promotion and pay scale in the post of driver passenger as sought for under the restructuring scheme was rightly rejected.

11. In view of the forgoing, we have no grounds to interfere with all the three impugned orders as the case of the applicants lacks merits and is liable to be dismissed

12. Accordingly, the **O.A is dismissed**. No costs.


(Ms. B. Bhamathi)
Member-A


(Justice S.S. Tiwari)
Member-J

Sushil