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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 6th day of July 2007

Original Application No. 961 of 2005

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. P.K. Chatterji, Member (A)

1. Pavan Kumar (SC), S/o Shri Jeet Mal, R/o Railway Quarter No. T-82-A, Near K.G.K. College, Line Par Moradabad (UP) presently working as Sr. Train Clerk under Control Northern Railway, Moradabad. (UP).
2. Rajesh Kumar Verma, S/o late Sri A.N. Verma, R/o Him Giri Colony, H. No. D-12 Opposite Over Head Tank Moradabad. Presently working as Senior Train Clerk under Control Northern Railway, Moradabad. (UP).
3. Yash Pal Singh Raina, S/o Shri Kunwar Singh, R/o Railway Quarter No. H. 223 B Railway Hawathala Colony Moradabad. Presently working as Senior Train Clerk under Control, Northern Railway, Moradabad.

... Applicants

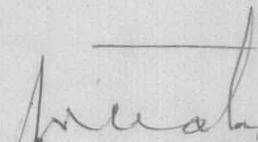
By Adv: Sri R.C. Pathak

VERSUS

1. The Union of India through General Manager, Northern Railway HQ Baroda House, New Delhi.
2. The Divisional Railway Manager (DRM), Northern Railway, Moradabad. (UP).
3. The Senior Divisional Personnel Officer, Northern Railway, Moradabad. (UP).
4. The Chief Controller, Northern Railway Moradabad (UP).
5. Shri Pramod Kumar, Senior Train Control Under Station Supdt. Northern Railway, Chandausi.
6. Shri Sawar Singh, Senior Train Clerk under Station Supdt. Northern Railway, Moradabad.

... Respondents

By Adv: Sri A.K. Sinha



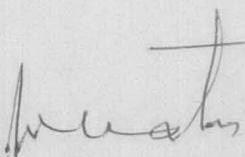
ORDER

By Hon'ble Mr. P.K. Chatterji, AM

The three applicants in this OA are working as Chief Train Clerk in the pay scale of Rs. 5000-8000 in the office of the Chief Controller, NR, Moradabad. On 24.11.2004 respondent No. 2 issued their promotion order placing the applicants at Sl. Nos. 1, 2 and 4 in the seniority list. A notification was issued by respondent No. 2 on 08.12.2004 for submission of application forms against 60% quota for selection on the post of Goods Guard in the pay scale of Rs. 4500-7000 from different categories including the categories of the applicant. On 28.03.2005 Divisional Commercial Railway Manager, Northern Railway Moradabad issued notification for selection for the post of Goods Guard giving a list of employees who were to attend the written test and the names of the applicants were at Sl. No. 37, 39 and 41. The written test was held on different dates on 17.04.2005, 24.04.2005, 01.05.2005 and 08.05.2005.

2. The result of the written test was declared by Respondent No. 2 on 29.07.2005. It was seen by the applicants that although juniors to the applicants namely respondent No. 5 and 6 were declared passed, the applicants' names did not figure in the list. The applicants made a representation to respondent No. 2 on 01.08.2005 against the selection, but in vain. Being aggrieved the applicants have filed this OA challenging the notification dated 29.07.2005 (Annexure A-1) on the following grounds:

- a. The list declared by respondent No. 2 was arbitrary and irregular. The candidates selected were by unfair means, corrupt practice and manipulation.



b. Only 4% of the questions were objective type questions. While as per Railway Board's instruction 50% questions are to be objective type questions. The circular of the Railway Board regarding the selection is annexed as Annexure A-5 page 37 of the OA.

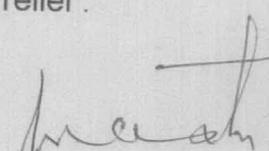
c. According to the instructions of the Railways candidates belonging to SC/ST category are to be imparted training for 3 to 4 weeks to enable them to prepare for such examination. However, applicant No. 1 i.e. the only SC candidates amongst the applicants, was not imparted training.

d. According to the seniority list from Senior Trains Clerk to Chief Trains Clerk the names of the applicants appeared at Sl. Nos. 1, 2 and 4. Inspite of that they were not granted promotion while their juniors were given the promotion with arbitrary and malafide intention.

3. With these submissions the applicants have sought the following reliefs:

- i. Issue direction quashing the order dated 29.07.2005.
- ii. Direction to respondent No. 2 to decide the representations of the application according to rules and by a reasoned and speaking order.
- iii. Issue direction to respondent NO. 2 to declare the applicant selected for promotion to the post of Goods Guard on the basis of the test held.
- iv. A suitable direction to respondent No. 2 to follow the rules, policies and Railway Board's order for the test for selection of Guard Goods.

4. Besides the applicants also asked for the interim relief :

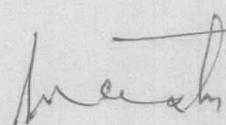


- i. a direction by way of mandamus staying the operation of order dated 29.07.2005.
- ii. to issue suitable direction to respondent No. 2 to place records pertaining to the written test alongwith the answer book and question papers.

Upon considering the prayer the Tribunal had directed the respondents to place the records pertaining to the examination, although no order staying the operation of the circular dated 29.07.2005 was issued by the Tribunal. The records have been produced by the respondents.

5. The respondents denied all the allegations by the following submissions:

- a. There was no irregularity, mala fide in the order. All other candidates who appeared for the test did not have anything to say against the manner of conducting the test. Even the applicants appeared in the test without any protest or representation and, therefore, according to the doctrine or promissory estoppels and acquiescence they are barred from agitating the matter now.
- b. The promotion to the post of Goods Guard was a selection and, therefore, the applicants had to qualify in the written test for which a minimum of 60% marks was necessary. None of the three applicants could qualify in the written test.
- c. The seniority of the applicant in the feeding cadre had nothing to do with the promotion which is through a process of selection. They do not get selected automatically by virtue of seniority without qualifying in the test.



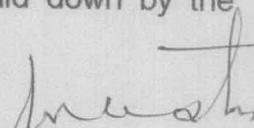
d. Regarding the compulsory training of SC/ST candidates it has been stated by the respondents that sufficient number of SC/ST candidates did not volunteer for such training. The logistic of holding of such training being rather heavy, it was not considered necessary to organize the training of such a long duration as practically none volunteered except applicant No. 1. However, he had attended the written test without any protest.

e. The respondents have not contradicted that the instructions of the Railway Board required about 50% of the questions to be objective type. However, it has been stated by them that a good number of question required very short answer and could be treated as objective type.

f. Finally the respondents have stated that there was no basis of the allegation that private respondents were selected through unfair means and malpractices. This was an expression of frustration on the part of the applicants for failing in the qualifying test.

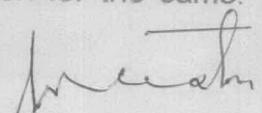
6. We have perused the respective submissions, heard the arguments. We have also perused the records of the examination such as question papers, answer sheets, service records etc. We are convinced that the applicants do not have enough evidence to prove that there was any malafide in the selection. It is not sufficient to merely say so without producing sufficient evidence. The fact that a few persons junior to the applicants were selected also does not go to show that they were selected by dubious means. The promotion as Guard Goods is a process of selection and not promotion on the basis of seniority alone.

7. The point which requires consideration is whether the question paper was set in accordance with the guidelines laid down by the



Railway Board. We have perused the instructions of the Board which say that there will be 45% to 55% objective type questions. We find on a perusal of a question paper submitted by the respondents there are question of 40 marks which require short answer of about a line or even less. These questions perhaps may not be termed as objective type, strictly speaking in accordance with its true meaning. By objective type question we generally mean such questions in which several alternative answers are given and the examinee has to tick the right one. But gradually the term objective type question has come to acquire the connotation of a question which can be answered in one or few words. Perhaps the person who set the question paper had this idea regarding the meaning of objective type question and for that reason he had set questions of about 40 marks requiring very short answer. These questions were accepted without demur or protest by the candidates including the three applicants. On the basis of this question paper test was held, result was declared on 29.07.2005 and a large number of candidates got selected and given promotion. The question which has been put by the learned counsel for the respondents is whether the selection should be cancelled on this ground two years after the selection so as to upset the career prospects of so many and also throwing out of gear the operation of the Railways.

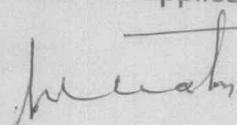
8. The other point regarding training of SC/ST candidates applies only in respect of applicant No. 1. We have gone through the arguments put forth by the respondents' counsel. It is stated by the respondents that they could not organize the training as there were not enough volunteers for the same. Even applicant No. 1 had accepted this position and did not make any representation for the same. He



appeared in the test and only after he failed to qualify he was raising all these objections. It is also stated that there were other SC candidate who got selected inspite of the fact that the training could not be imparted. We are of the view that the fact that there were not enough volunteers for the training would not automatically authorized the respondents not to hold the training what ever be the logistical requirements. However, the question put forth by the respondents that the applicant accepted the position without any protest and raised the issue only after failing to qualify in the written test, his altogether not too irrelevant

9. We have considered all the rival submissions and the points made during the arguments. The question which has to be answered is whether the deviation form the guidelines of the Railway Board regarding the conduct of the selection was of such magnitude as to warrant canceling the selection which took place two years before and on the basis of which 35 persons got promoted and were working since then in the higher posts. If the deviation was of such serious in nature the applicants would have felt constrained to walk out of the test. They did not do so before the test nor after the test until the results were declared. Only after the results were declared they started agitating the matter after finding that they failed to qualify. The arguments on promissory estoppels which the respondents have stated are also not to be discounted.

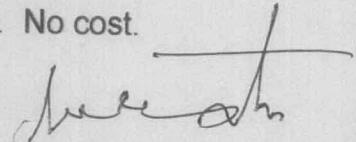
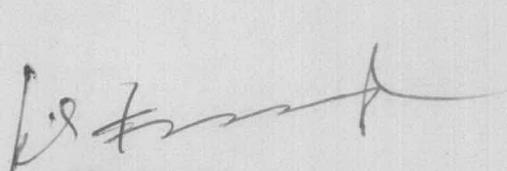
10. For above reasons we are not able to provide the relief as prayed for. The OA is, therefore, disallowed. We find that there are contradictions in the relief sought for also. While the applicants have sought for a direction on respondent No. 2 to promote the applicant as



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Goods Guard they have also asked for a direction for disposing their representation. This OA is therefore finally disposed of with direction that respondent No. 2 will consider the representations dated 01.08.2005 of the applicants which are pending before them, take a decision as admissible under the rules and intimate the applicants of the decision so arrived at. This may be done within period of four months from the date a certified copy of this order is received by the respondents. No cost.

/pc/


Member (A)
Member (J)