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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 489 of 1987

Mohd. Islam	.....	Applicant.
	Versus	
Union of India & others	....	Respondents.

Hon'ble Ajay Johri, A.M.  
Hon'ble G.S. Sharma, J2M.

(Delivered by Hon. A. Johri, A.M.)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant's case is that on 1.7.1985 options were invited from eligible staff for being considered for the post of Traffic Inspector (TI) in the grade of Rs.1600-2660. On the basis of this option a seniority list was prepared in August, 1985 and another list in October, 1985 and his name stood at Sl.No.1 in Group 'A'. The staff were asked to attend the selection and some of the staff, who were in group 'B' were asked to keep in readiness. However, on an agitation by one of the recognised Unions, a decision was taken by the Divisional Railway Manager (DRM) to hold the test de novo. When the new test was held the vacancy position had also changed and there were only two vacancies available. As such only two staff were called from group 'A' for the selection on 8.11.1985. But this selection was cancelled by an order dated 30.7.1986 by DRM. The cancellation of the selection was agitated through an application before this Tribunal by the aggrieved parties and the Tribunal decided that the cancellation ordered by DRM was correct and dismissed the application of the two <sup>who</sup> ~~two~~ were selected in the earlier selection. On 2.9.1986 DRM again asked for fresh options from the eligible persons in the various seniority groups. The applicant filed an appeal before DRM on 2.9.1986 requesting that the selection may be arranged on the old seniority which was circulated in August and October, 1985. The applicant's

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representations were not considered, but in one of the representation made through the Union the respondents advised that the suitability test for the post of TI had been finalised and the select list has been issued on 23.4.1987 and two persons have already been selected. The applicant's allegation is that in terms of para 212 of the Indian Railway Establishment Manual the post of TI being a non-selection post it should have been filled by promotion on the basis of record of service and a senior person should not have been passed over. According to him, in the present case this rule has been violated and para 320 of the Manual has also been ignored, inasmuch as no weightage was given for his seniority and service record. According to him, he has already been promoted in the grade of Rs.1600-2660 as Station Master (SM) in June,1986 and had he been selected as TI he would have got a good prospect for promotion to the next grade. He has further alleged that since the seniority list published in August,1985 was not cancelled and only the <sup>32</sup>panel of the Inspectors was cancelled and he had given his option earlier the selection should have been done in accordance with his earlier option and seniority list. He has, therefore, prayed that the orders (Annexures '5' and '10' to the application) be quashed and directions be issued to the respondents to make fresh selection on the basis of seniority list dated 6.8.1985.

2. In their reply the Government-respondents have said that in accordance with the channel of promotion chart, which is annexed as Annexure 'RA-1' to the reply, the <sup>2</sup>post of TI which is a non-selection post is filled from amongst the various categories of <sup>Staff</sup> staff on the basis of options given by the staff. At the time of conducting of the suitability test there were three vacancies and in order to fill up these vacancies options were called on 1.7.1985. After scrutiny of the applications three persons were called for the suitability test on 21.8.1985. The applicant occupied the position at Sl.No.1 amongst the three candidates called for the selection. Since the

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test could not be held on account of certain procedural lacunae. DRM ordered de novo action and the applicant along with other persons were called for the test on 8.11.1985. Finally two persons were selected and the applicant did not find his place in this list. This test was challenged and ultimately DRM cancelled the select list. They have further said that after quashing and cancelling the test it was decided by DRM to hold a fresh suitability test ab initio and a notification was issued on 2.9.1986 to this effect inviting fresh options. The last date of receipt of this option was 16.9.1986. It was open to the applicant to send his option but he did not opt for the new test. The respondents have denied that the applicant represented on 15.9.1986. Actually a representation dated 15.9.1986 was received by <sup>3/</sup>their office on 27.10.1986 under the Union's letter of 20.10.1986 and a suitable reply was sent to the Union on 10.11.86. When the earlier test was quashed by DRM, the Headquarters' (HQ) office had advised on 25.2.1986 and 3.9.1986 that the suitability test for the post of TI was to be conducted on seniority-cum-suitability basis by perusal of records only. Accordingly, therefore, say the respondents, in their reply, on the basis of the option which were received in response to the new notification, the suitability was determined and on the basis of the same two persons were placed on the select list on 2.9.1986. The respondents' case is that the fresh test were held ab initio and since the applicant had not opted his case was not considered.

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3. We have heard the learned counsel for the parties and have also seen the rejoinder affidavit filed by the applicant. The main contention raised by the learned counsel for the applicant was that the vacancies arising in a particular year should have been considered, according to the eligibility of that year and that since the results were only cancelled the options which had been given earlier should have been taken into consideration and no fresh option should have been obtained. While the case of the respondents was that the applicant has not opted in response to the advertisement

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made for the fresh selections and, therefore, he has no case. It is not under dispute that the selection for the post of TI had to be done from amongst those, who opted for being considered for the post. In the circular issued by the Railway on 2.9.1986 consequent to the cancellation of the earlier suitability test it has been mentioned that a fresh suitability test was to be conducted ab initio and accordingly fresh options were invited from amongst those, who were below 50 years of age on 31.8.1986 and were willing to be considered for the post. These options were to be submitted by 16.9.1986. It is not under dispute that this circular was widely circulated. Therefore, it cannot be said that the applicant was not in the knowledge of this circular. In any case that is not his plea either. What the applicant has said in his representation to DRM (Annexure '6' to the application) is that in terms of HQ Office letter the selection has to be made according to seniority-cum-suitability and as per Establishment Rules, seniority mark is 60% to the first candidate and remaining 40% is to be distributed among other candidates and instead of arranging selection on <sup>or old</sup> ~~senior~~ seniority fresh options have been invited which will result in throwing the applicant out of the field which is great injustice to him. He had, therefore, requested that the selection be held on the old seniority list. The applicant has not given any date on the copy of this appeal. The applicant has further in the next representation (page 40 to the paper book) insisted that since he had given the option earlier the same option should be considered and his name should be taken into consideration according to that option. We are not able to appreciate the insistence of the applicant in regard to the seniority list that was prepared out of the optees as a result of the notification of 1.7.1985. In his application also no ground has been taken that the applicant became ineligible in terms of the second notification issued on 2.9.1986 on the ground that he had crossed the age of 50 years or any other ground.

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4. The fact in the above case remains that DRM had issued a fresh notification on 2.9.1986 and invited fresh options and the applicant did not submit his fresh option which he should have. We do not find any merit in his plea that only the earlier option should have been taken into consideration. It is also not his plea that on the basis of the notification of 1.7.1985 he was eligible but on the basis of the notification of 2.9.1986 he did not become eligible and, therefore, he did not opt in response to the notice. We, therefore, do not find any merit in his application now.

5. Annexure '5' to the paper book is the notification, which was issued by DRM on 2.9.1986, which the applicant is praying should be quashed. We find nothing unreasonable or illegal in this notification. Similarly he has asked for cancellation of Annexure '10' to the paper book. Annexure '10' to the paper book only indicates the action taken on item no.84 of the Divisional PNM held with URMU. This only advices the Divisional Secretary, URMU that keeping in view the guidelines given by HQ suitability test has since been finalised and select list has been issued. Cancelling of this reply has no meaning.

6. Therefore, in the facts of the case the fresh selection held by DRM on 2.9.1986 cannot be said to have been made in violation of any of the rules of seniority or selection.

7. On the above consideration, we dismiss this application with costs on parties.

*[Signature]*  
MEMBER (J).

*[Signature]*  
MEMBER (A).

Dated: February 25<sup>th</sup>, 1989.

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