

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL ADDL. BENCH,
Allahabad.

Dated This the ^{...} 2nd Day of January, 1997.

Coram: Hon'ble Mr. S. Das. Gupta, AM.
Hon'ble Mr T.L. Verma. JM.

Original Application No: ~~1055~~ 1055 of 1988.

1. Pancha Nand Shahi son of Sri Vishwanath Sahi,
points Man, Gorakhpur Junction, Gorakhpur.
2. Brijendra Singh son of Sri Poon Deosingh,
points Man, Gorakhpur, Junction, Gorakhpur.
3. Kameshwar Singh son of Sri Ram Anpha Singh,
Liverman, Gorakhpur Cantt.
4. Rajendra Son of Sri Lorik, Liverman, N.E.Rly,
Gorakhpur Cantt.

(C/A. Sri Janardan Sahai.) ...

Applicants.

V e r s u s.

1. Union of India through General Manager, N.E.
Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway,
Lucknow.
3. Virendra Kumar Srivastava, N.E.Rly, Gorakhpur
Junction.
4. Liyakat Ali-through Divisional Manager Lucknow,
N.E. Railway.
5. Lakhendra Sinha-Through Divisional Manager, N.E.Rly,
Lucknow.
6. Munna Pandey c/o Station Supdt. Railway Station,
N.E.Rly, Gonda.
7. Virendra Kumar Nigam. Through Divisional Rly Manager,
N.E. Railway, Lucknow.

... Respondents.

C/R. Sri V.K. Goel.

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C.D.R.:

(By Hon'ble Mr.S.Das Gupta. A.M.)

In this application filed under Section 19 of the Administrative Tribunal, Act, 1985 four applicants, who have jointly filed this application are aggrieved by inclusion of the names of the respondents 3 to 7, in panel notified by the order dated 26.3.1987 and have prayed that the said notification be quashed to the extent ~~that~~ it includes the names of the aforesaid respondents. They have also challenged the notification dated 8.12.1987 inviting applications from group(D) employees for fresh selection for various group (C) posts in the traffic and commercial Operating department. They have prayed that the said notification be quashed and they be promoted to group C posts of Trains Clerk etc,. The admitted facts in this case are that the notification dated 4.9.84 was issued by the Divisional Railway Manager, Lucknow calling for the applications from Class IV employees for the Selection test for promotion to the various groups (~~at~~) posts of Trains Clerks, goods clerks, Booking clerks, and Parcel clerks in the North Eastern Railways in the Commercial and operating department. All the applicants were candidates for the said selection. They appeared in the written test and thereafter, in the Viva-voce test. However, while their names were not included in the impugned panel, the names of 12 persons were included ~~in~~ the impugned panel notified in which list, five names were those of the respondents 3 to 7, who ~~do~~ not appear ~~in~~ the selection test at all. The claim of the applicants is that they had been selected in the said examination but they have been excluded in the panel due to illegal

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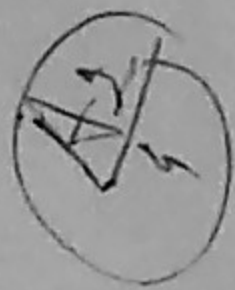
inclusion of the names of 5 respondents.

2. The respondents have filed detailed counter affidavit in which, it has been stated that the aforesaid five respondents had appeared in the earlier examination held in the year 1981-82 and were successful. However, their names could not be included in the panel ~~is~~^{as} on account of the shortfall of Scheduled Caste and Scheduled Tribes candidates, such candidates were included in the panel of to neutralise the shortfall. As a result, the names of those five respondents, though successful, were deleted from the panel. Therefore, the General Manager, vide his letter dated 11.5.1984 granted exemption to these five respondents from appearing in the subsequent selection on the basis of their success in the earlier examination. Their names were included in the panel prepared on the basis of selection test held in the year 1984 in which, the applicants had also appeared. Further case of the respondents is that the applicants did not succeed in the examination.

3. The applicants have filed rejoinder affidavit ~~for~~ⁱⁿ which they questioned the inclusion of five respondents in the subsequent panel on the basis of the result in the earlier test and have contended that ~~as~~^{only} because the names of these respondents were included in the panel ~~though~~, their names could not find place in the same.

4. We have heard the learned counsel for both the parties and perused the records carefully.

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5. During the course of hearing we put specific questions to the respondents with regard to the manner of inclusion of five respondents in the panel prepared in the year 1984 on the basis of the results for 1981-82 examination. The question was ~~that~~ on what authority, the General Manager had ~~to~~ grant exemption to these respondents from appearing in the selection test in the year 1984, and also, as to why the names of the five respondents have appeared at the bottom of the panel. In reply to the aforesaid queries the respondents filed a Supplementary Counter affidavit in which, it has been stated that in terms of Rule 20 of the Rules of promotion and selection of non-gazetted employees, the General Manager in special circumstances, relax or modify the provisions of these rules provided, these are not inconsistent with any rules made by the President Of India or by the Railway Board. It has been further stated that rule 123 and 124 of the Indian Railways Establishment Code, Vol-I confers powers on the General Manager to make rules in respect of Group (C) and (D) railway servants. It is stated that the General Manager thus, had powers to exempt the aforesaid respondents from appearing in the said examination and such exemption in ~~any~~ way, inconsistent within the rules framed by the President Of India, or by the Railway Board. Photostat copy of the extracts of the relevant rules were also annexed to this application. To this, the applicants also filed supplementary rejoinder affidavit in which, it is stated that though the General Manager is empowered to make the rules, the relaxation to exempt individual candidates is not provided in any rules, nor any such rules have been ~~framed~~, or if framed such rules would be

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~~It is~~ discriminatory and arbitrary, therefore, liable to be struck down under Article 14 of the Constitution Of India.

6. From the facts on record, it ^{has} ~~is~~ emerged that the respondents 3 to 7, appeared in Selection test 1981-82, and were successful but their names were deleted from the panel as the names of Scheduled Caste and Scheduled Tribes candidates were included in the panel to makeup the shortfall of the candidates of all those categories. These respondents admittedly did not appear in 1984 selection and yet, their names were included in the resultant panel by virtue of specific order in this regard issued by the General Manager exempting those respondents from appearing in the subsequent selection test. It is also clear from the averments that the applicants did not succeed in 1984 Selection test.

7. The question which squarely falls for our determination is whether the inclusion of the names of five respondents in 1984 panel was justified? Extra ct of rules annexed to the Supplementary Counter affidavit specifically provides that the General Manager is empowered to relax or modify any of the provisions of the rules regarding selection in special circumstances, provided, the same is not inconsistent with any rules framed by the President of India, or the Railway Board. Normal rule is that a person must appear in the selection test and succeed in the same for being empanelled. This rule has been deviated from in respect of five private respondents on the -

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authority of General Manager's order exempting them from appearing in the test. It is clear that the General Manager had exempted them from appearing in the test by virtue of the rules as indicated above. There is nothing on record to indicate that such exemption granted by the General Manager was inconsistent with any rules framed by the President of India, or the Railway Board. It is also clear that there existed special circumstances for grant of such exemption. Such special circumstances were that the respondents did actually succeed in the earlier selection test, but their names were deleted from the panel to accommodate Scheduled Caste and Scheduled Tribe candidates. We, therefore, do not find any irregularity in granting exemptions by the General Manager in favour of five private respondents.

8. The learned counsel for the applicant has sought reliance on the decision of the Hon'ble Supreme Court in 'Prem Prakash V/S: BOI' AIR 1984 SC 1831. We have carefully gone through the aforesaid decision. The facts of the case are different from the facts of this case before us and, therefore, the cited decision has no application to the controversy before us.

9. The respondents have also clarified ^{why} ~~where~~ these respondents were assigned bottom positions in the panel of 1984. It appears that the persons above them were in the higher scale of pay than those respondents and, therefore, such persons were placed above these respondents in the panel.

10. Respondents have specifically stated that the applicants did not succeed in the Selection test of 1984.

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Thus, whether or not they would have found a place in the panel of 1984, had the five private respondents not been included in the panel is a hypothetical question. Even if it was shown that the applicants would found a place but for the inclusion of five private respondents, we would not interfere in the matter as we do not find any irregularity in granting exemption to those who after appearing in the selection test were not included in the panel, though selected.

11. In view of the foregoing, we find no merits in this application and the same is accordingly dismissed. Parties shall however, bear their own costs.

J. H. Verma
MEMBER (J).

W. E.
MEMBER (A).

r.c.s.

Central Administrative Tribunal
Additional Bench At Allahabad
Date of Receipt 2-9-88
By Post 15-9-88
2/9/88

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH AT ALLAHABAD.

APPLICATION /PETITION NO. OF 1988

(Under Section 19 of the Administrative Tribunals)

Act of 1985

BETWEEN

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Filed
on 02-09-88
D
02/09/88
1. Pancha NandShahi son of Sri Vishwanath Sahi
points Man, Gorakhpur Junction , Gorakhpur.
 2. Brijendra Singh son of Sri Poon Deo Singh,
Points Man, Gorakhpur Junction, Gorakhpur.
 3. Kameshwar Singh son of Sri Ram Anu Singh,
Liverman, Gorakhpur Cantt.
 4. Rajendra son of Lorik , Liver Man, N.E.Railway,
Gorakhpur Cantt.

-- Applicants-Petitioners

AND

- noted
for 15-9-88
Sgt. Upadhyay
2/9/88
1. Union of India through General Manager N.E.
Railway, Gorakhpur
 2. Divisional Railway Manager, North Eastern Railway
Lucknow.
 3. Virendra Kumar, Srivastava, N.E.Railway, Gorakhpur
Junction.

कामेश्वर सिंह

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4. Liyakat Ali, through Divisional Rly Manager, Lucknow N.E. Rly.
5. Lakhendra Sinha through Divisional Rly Manager, Lucknow N.E. Rly.
6. Munna Pandey, C/o Station Supt. Rly. station Gonda, N.E.R.
7. Virendra Kumar Nigam through Divisional Rly Manager Lucknow N.E. Rly.

----- Respondents.

DETAILS OF APPLICATION.I. Particulars of applicants.

1. Pancha Nand Shahi Points Man, posted at Railway station Gorakhpur Jn.
2. Brijendra Singh, Points Man, posted at Railway station Gorakhpur Jn.
3. Kameshwar Singh, Liverman, posted at Railway station Gorakhpur, Cantt.
4. Rajendra Liverman, posted at Railway station Gorakhpur Cantt.

All the petitioners are Class IV Employees in the N.E. Railway and No. 1 and 2 are posted at Railway station Gorakhpur Jn. at Points man, and the petitioner no. 3 and 4 are liverman posted at Railway station Gorakhpur Cantt.

----- Applicants.

II Particulars of Respondents.

निदेशक रिज