

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

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Date of Order:

O.A. No. 381/90

R.K. Diwan

Applicant

versus

Union of India & 3 others

Respondents.

Hon. Mr. A.B. Gorthi, Member Administrative
Hon. Mr. S.N. Prasad, Member Judicial

(By Hon. Mr. S.N. Prasad, Member Judicial)

The applicant has approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 for setting aside the impugned order dated 12.4.90 whereby selection for the post of T.C.I.(I) is going to be held and to pass such other and further order to protect the interest of the promotees with regard to their seniority.

2. The facts of this case, in a nutshell, inter alia are that the impugned order dated 12.4.90 passed by General Manager (P), Northern Railway, New Delhi, whereby the procedure for selection for the post of T.C.I., has been indicated and on the basis of which the selection for the post of T.C.I. is going to be held on 12.5.90 (Annexure-1 to the application), under the railways, there is a Signal and Telecom Department and the post of T.C.I.(III) grade Rs 1400-2300

is to be filled in from amongst direct recruits, 50% and

50% from the promotees, and from T.C.I.(III) the next higher post is T.C.I.(II) and thereafter T.C.I.(I).

Writ petition No. 9940/81 was filed on behalf of the promotees. The relief sought for in that petition was for issue of a writ of mandamus commanding the opposite parties ~~not~~ to appoint any candidate by direct recruitment until the quota of 50% post of promotees in the post of T.C.I.(III) from 1975 was filled up and that writ petition was decided on 15.1.82, wherein it was observed that the test for appointing T.C.I. from amongst the promotees had already taken place and therefore, this was not a proper stage of granting relief and it was further observed that the Bench had no reason to think that the Railways would ~~not~~ take into account the quota prescribed for the promotees and bear in mind the rule of seniority which was to be applied. Despite such observation by the Tribunal in the above judgment dated 15.1.82, the authorities of the Railway issued a seniority list on 5.7.84 (Annexure II to the application) and a perusal of that seniority list would reveal that the Railways had adopted the procedure of giving seniority alternatively to the direct recruits and the promotees though not a single promotee had been appointed as T.C.I.(III) during the period ranging between 1975 to 1981 and on the other hand nearly 80 direct recruits had been appointed. Another writ petition No. 868/85 (R.K. Diwan and others vs. General Manager (P) N. Railway and others) was filed and ~~xxxxxx~~

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xxxxxx on 11.1.1985 by a Bench of this Tribunal xxxxxxxx the following order was passed:

"Meanwhile promotion to the post of Telecom Inspector Grade II, on the basis of seniority list amended shall not be made".

The above writ petition No. 868/1985 was received in this Tribunal after the advent of Administrative Tribunals Act, 1985 (under section 29) and was numbered here as T.A. No. 1307/1987 and that was decided by this Tribunal as per the order dated 22.2.89 wherein the Railways were ~ that ~ also directed the potential promotees during the period 1975-81 were denied their rightful claim for consideration to their promotion and were therefore, pushed down in the seniority list because of default of the Railway Department and the respondents were further directed that re-consideration of the seniority list should be done by the Railways within 3 months of the receipt of that order (Annexure -3). Besides clear and categorical direction in the order dated 22.2.89, as referred to above, the respondents did not act upon from proper perspective with the result the petitioner and a number of other promotees whose names occurred in the list of 5.7.94, would have been promoted long ago as T.C.I. (II) ^{and} would be eligible to participate in the selection for T.C.I. (I) which has been convened by the order dated 12.4.90 and as such it would be seen that holding of selection for T.C.I. (I) and the promotion to the

grade of T.C.I.(II) are both arbitrary and illegal and in direct violation of the directions of this Tribunal contained in the order dated 22.2.89 as referred to above and as such the applicant has approached this Tribunal for the reliefs sought for as indicated above.

3. In the Counter filed on behalf of the respondents, it has been inter alia, contended that in compliance of the aforesaid order dated 22.2.89 the representation of the petitioner was considered in the light of the observations made in the aforesaid judgment; and the position regarding compliance of the said order was also advised to the petitioner vide G.M.(P's) letter dated 31.5.89 (Annexure-4 to the petition). It has further been stated that the post of Telecom Inspector grade III Rs1400-2300(RPS) is filled in following manner:

	<u>Promotee</u>	<u>Direct</u>
1. Percentage fixed prior to 3.11.74 (para 161 of Indian Railway Establishment Manual)	33 1/3%	66 2/3%
ii. Percentage from 4.11.74 to 19.10.78 (Railways Board's letter No. E(NG) III-73/RCI/I dated 4.11.74)	50%	50%
iii. Percentage after 20.10.78 (Railway Board's letter No. E(NG)/76/RCI/5 dated 20.10.78)	20%*	30%**

20%* Intermediate apprentices quota from serving employees.
30%** Promotees.

4. In view of the above it would be seen that only 30%

posts are to be filled by promotees and 20% from Intermediate quota and from eligible serving staff. The next promotion of Telecom Inspector Grade III Rs 1400-2300(RPS) is as Telecom Inspector grade II Rs 1600-2660 (R.P.S) and it would be obvious from the perusal of Annexure -4 as referred to above that the directions given in the aforesaid judgment dated 22.2.89 have been complied with in accordance with extant rules and regulations and the above grounds of the applicant are not tenable in law. In view of the above circumstances the application of the applicant is liable to be dismissed with costs.

The applicant has filed his rejoinder affidavit wherein he has reiterated almost all those allegations and facts as mentioned in his main application.

We have heard the learned counsel for the parties and have thoroughly gone through the records of the case.

The learned counsel for the applicant while drawing our attention to the pleadings of the parties and to the papers annexed thereto has argued that the respondents have not complied with the directions of this Tribunal as contained in para 7 of the judgment and order dated 22.2.89 passed in T.A. no. 1307 of 1987 'R.K.Diwan and others Vs. G.M.(P) Northern Railway and others', and has further argued that instead of complying with the directions of this tribunal as per order dated 22.2.89, as referred to above, from proper perspective and in accordance ~~is~~ with the relevant and extant rules, the respondents are trying to take the quota from ancient

time i.e. since 1974 which is nearly 10 years earlier, and a correct analysis and appreciation of the position is that it is the percentage of the direct recruits and the promotees which has to be taken after the quota of each category has been put in as 50% and the quota of promotees short fall by nearly 80 during 1975 to 1981 and as such the promotees are entitled to be given the seniority in accordance with the quota reserved for them and not in the manner the seniority has been given as if there has been no short fall from the promotees' quota; and has further argued that the respondents are again trying to confuse the entire matter by dividing the 50% quota of promotees into 30% and 20% from intermediate Apprentices and as such the application of the applicant be allowed and the relief sought for ~~be~~ be granted..

The learned counsel for the respondents, while drawing our attention to the pleadings of the parties and the papers annexed thereto and particularly para 7 of the judgment dated 22.2.89 passed by this Tribunal, as referred to above, has argued that a careful perusal of Railway Board's Letters dated 4.11.74 and 20.10.78 (Annexures 'C' & 'B' respectively of the counter affidavit of the respondents) and G.M. (P) Northern Railway, letter dated 31.5.89 (Annexure A-4 to the application) reveals that there has been complete compliance of the directions of this Tribunal contained in para no. 7 of the judgment dated 22.2.89, in accordance with the relevant rules and regulation and there is no arbitrariness or illegality in the impugned order dated 12.4.90 and the allegations and grounds taken by the applicant are misconceived, fallacious and false; and has further argued that a perusal of the order dated 15.1.82 passed in Civil Misc. Writ Petition No. 9940/81, as referred to in para 4 (d) of the application shows that the said Writ No. 9940 of 1981 was dismissed by the High Court of Judicature at Allahabad ~~vide~~

vide Annexure 'A' to the counter, which is attested copy of that judgment dated 15.1.82, and has further argued that the contempt petition filed by the applicant has also been dismissed and as such the application of the applicant being devoid of merit and force, should be dismissed.

This is important to point out that a perusal of the letters of the Railway Board dated 4.11.74 and 20.10.78 (Annexure 'C' & 'D' as referred to above, shows that the matter regarding recruitment of Signal/Block and Telecom. Inspectors G.III in the Signal and Telecom Department was discussed at the P.N.M. Meeting with the A.I.R.F. held on 16/17.8.78 when it was agreed that same pattern as in the Mechanical and Electrical Departments would be introduced in S & T Department and provision made for intake of intermediate apprentices and accordingly the vacancies of Telecom Inspectors Grade III should be filled in the following manner - (i) By direct recruitment 50%.

(ii) By promotion of Departmental staff 30% and

(iii) From amongst Departmental staff having the qualification required by direct recruitment 20% and it further shows that Telecom. Inspector recruited as Intermediate apprentice against item -

(iv) Above will be given training for the same period as direct recruits.

This fact should also not be lost sight of that Annexure 'A' to the counter reply of the respondents shows that Civil Misc. Writ Petition no. 9940 of 1981 was dismissed by the High Court of Judicature at Allahabad with certain observations as specified therein.

We have carefully perused para 302 of the Indian Railway Establishment Manual and Annexure IV to the application which is in a very detailed manner depicting the entire position prior to 3.11.74 and the latest as well.

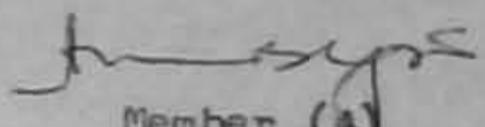
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After considering the entire material on record and all the aspects of the matter and circumstances of the case, we find no merit in the application of the ~~the~~ applicant..

In the result the application of the applicant is dismissed without any order as to costs.



Member (J)



Member (A)

Dt: ~~May~~, 1992. ✓

30 June 92

(DPS)