

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
A L L A H A B A D

Dated : Allahabad this the 29th day of February. 1996.

CORAM : Hon'ble Mr. S. Das Gupta, Member-A
Hon'ble Mr. T. L. Verma, Member-J

Original Application No. 180 of 1992.

1. Sunil Kumar Srivastava son of Sri Dhruv Narain Srivastava, Resident of House No.254-A, Mohalla Dairy Colony, Gorakhpur.
2. Pramod Kumar Srivastava, Son of Shri Balram Lal Srivastava, Resident of House No.258, Shakti Nagar Colony, Arogya Mandir, District Gorakhpur.
3. Ravendra Nath Srivastava, son of Shri Kripa Nath Srivastava, resident of Ruhi Niwas, Auriya Munwa, Basarapatpur, District Gorakhpur.
4. Har Ram Gupta, son of late Sri Hira Lal Gupta, Resident of Care of Sarvjit Lal Dairy Colony, Naweshykhana, District Gorakhpur.
5. Ajai Kumar Nath Tiwari, son of Shri Ram Naresh Nath Tiwari, resident of Ashok Nagar, Basarapatpur, District Gorakhpur.
6. Sunil Kumar Srivastava, son of Shri Man Mohan Prasad Srivastava, Resident of House No. T/16, Mohalla Chhepra Railway Colony, Chhapra, District Bihar.

.....Applicants.

(BY ADVOCATE SHRI G. C. BHATTACHARYA)

Versus

1. Union of India through its Chairman, Railway Board, Rail Bhawan, New Delhi.
2. Director Establishment (TRI MPP)
Railway Board, New Delhi.
3. Chairman, Railway Recruitment Board, Gorakhpur.

4. General Manager (P), North-Eastern Railway,
Gorakhpur.

5. Chief Personnel Officer, Norther Eastern Railway,
Gorakhpur.

.....Respondents.

(BY ADVOCATE SHRI LAL JI SINHA)

O R D E R(Reserved)

(By Hon. Mr. T. L. Verma,
Member-J)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed for issuing a direction to the respondent Nos. 1 and 2 to accord permission to enlarge the panel of 1986 of Assistant Station Masters of N. E. Railway, Gorakhpur in terms of request made by Shri R. S. Jain the then Chairman, Railway Recruitment Board in his D. O. letter dated 12.5.87 and 2.12.1987 and D. O. letter dated 27.8.1988 of Shri N. K. P. Thakur the then Chairman, Railway Recruitment Board, Gorakhpur and for issuing further direction to the Chairman, Railway Board, Gorakhpur to recommend the names of the applicants as candidates selected for the post of Assistant Station Masters for filling the existing vacancies, and for issuing direction to G. M. (P) and C. P. O. N. E. Rly/Gorakhpur to appoint the applicants as Assistant Station Master with consequential benefits and seniority.

2. The facts of the case briefly stated are that the General Manager, N. E. Railway, Gorakhpur sent an indent of 250 posts of A. S. Ms. to the Railway Recruitment

Board, Gorakhpur in the year 1984. The Railway Recruitment Board held written/interview/psychological test for selecting candidates for the post of A. S. Ms. After holding the examination, 291 candidates were recommended for appointment on the said post. It is stated that out of the aforesaid 291 candidates only 150 candidates were called for appointment and of these only 120 turned up for training. Thus 130 vacancies of A. S. Ms. remain unfilled. It is stated, had the Railway Recruitment Board recommended the names of the candidates to the extent of 50 percent more, than the number of posts indented, they would have been appointed on these vacancies. The further case of the applicant is that on realising the mistake committed by the Railway Recruitment Board, Sri R. S. Jain, the then Chairman of the Recruitment Board by his D. O. dated 12.5.1987 and D. O. dated 2.12.1987 requested the Railway Board to accord permission for ~~substituting~~ enlarging the panel of candidates for appointment on the post of Asstt. Station Masters. When the Railway Board failed ^{to} respond to the aforesaid requests of Shri Jain, another D.O. letter was sent by his successor Shri N. H. P. Thakur reiterating the request made by Sri S. K. Jain in his D.O. letters dated 12.5.87 and 2.12.87. The Railway Board declined to accede to the request by its letter dated 2.5.1988 (Annexure-1 to the C.A.). The decision of the Railway Board not to accede ^{to} the request of the Chairman, Railway Recruitment Board, it is stated, is contrary to the instructions issued by the Railway Board in its circular No. E (NG) II-81/RSC/25 dated 14.4.1982. Hence this application for the reliefs mentioned in para 1 of the order.

3. The respondents have contested the claim of the applicants, inter-alia, on the ground that this application is barred by limitation inasmuch as advertise-

ment for recruitment was made in the year 1984 and the appointment was finalised in the year 1986 and this application challenging the panel and the appointments on the basis thereof has been filed 6 years later in 1992 and that Railway Recruitment Board has no power to send 50% more candidates against the indent unless authorised by the Railway Board. Hence request made by the Chairman, Railway Recruitment Board, ~~therefore~~, was not competent, and therefore, has rightly been rejected by the Railway Board.

4. We have heard the learned counsel for the parties and perused the record. The appointments pursuant to the recommendation made by the Railway Recruitment Board in the year 1984, admittedly, were finalised in the year 1986. It is also admitted fact that names of the applicants were not included in the panel recommended by the Railway Recruitment Board for appointment to the post of A. Sm Ms. The cause of action, if any, for challenging the panel prepared by Railway Recruitment Board for the alleged omission had arisen in 1986. The applicants appear to have submitted representation to the General Manager, N.E.Railway, Gorakhpur on 3.7.1989 and thereafter on 8.1.1990 against their non-inclusion in the panel. If the date of first representation i.e. 3.7.1989 is taken to be the date for reckoning the period of limitation, then also this application ought to have been filed in July, 1990. The application, admittedly has been filed in February, 1992 more than 1½ years after the cause of action had arisen. There is apparently no explanation on the record to justify such a delay in filing this application.

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5. The then Chairman, of Railway Recruitment Board Sri

R. S. Jain sent his first D.O.Letter on 12.5.1987 for permission of the Railway Board to enlarge the panel. His successor Shri N.K. P. Thakur wrote another D.O.letter to the same effect on 28.7.1988. The aforesaid communications were replied by the respondents by letter of 2.5.88 whereby request of the Chairman, Railway Recruitment Board to enlarge the panel, was rejected by the Director Establishment(T & MPP), Government of India, Ministry of Railways(RB)

6. It would thus appear that the request to enlarge the panel had been finally declined in July,1988. The period of limitation normally would have started running from the date the request of the Chairman, Railway Recruitment Board was rejected by the Railway Board in July, 1988 and the said decision of the Railway Board should have therefore, have been challenged by the aggrieved person/persons within a period of one year from that date. Even if the representation dated 3.7.1989 is taken to be the starting point of the limitation for the purpose of challenging the decision of the Railway Board, this application should have been filed on or before 3.7.1990. We have noticed above that no explanation for delay in filing the application has been given, therefore, we find this application as barred by limitation.

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7. Even otherwise, also there is no merit in the claim of the applicants. It is settled law that no right is created in favour of a person merely by appearing at the examination in response of an advertisement inviting applications, for appointment on certain post. Railway Board had made an indent to the Railway Recruitment Board

for recruitment of 250 posts of A.SMs. The Railway Recruitment Board held written as well as psychological and viva-voce test for selection of suitable candidates. Panel prepared by the Railway Recruitment Board after holding the required test did not ~~fix~~ ^{include} the names of the applicants. No malafide has been alleged against any in ~~xxx~~ non-inclusion of the names of the applicants, in the panel. We have, therefore, no alternative, but, to hold that the applicants did not secure enough marks in the selection test so as to be placed in the list of selected candidates. There is absolutely no material as may suggest that their names would have been included in the panel had the Railway Recruitment Board recommended names of 350 candidates in terms of Railway Board Circular (Annexure-A-1) We, therefore, find that there is no foundation for the claim of the applicants.

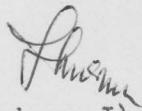
8. The other question that was canvassed by Sri G. C. Bhattacharya, learned counsel for the applicants, is that the panel recommended by Railway Recruitment Board and the appointment made are vitiated for non-compliance with the instructions contained in the circular of the Railway Board, Annexure-A-1), and also for non compliance of the request made by the Chairman, Railway Recruitment Board by their successive D.O. letters dated 12.5.87, and 2.12.1987 and 28.7.1988. The relevant portion of the circular of the Railway Board, Annexure-A-1, provides that:-

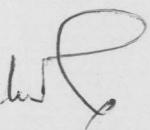
"The Ministry of Railways have also decided that Railway Service Commissions should recommend to the Zonal Railways panels for the category of A.SMs. to the extent of 50% more than the number included in the indents placed by the Railways in order to cater for drop-outs and other similar unforeseen contingencies."

From the plain reading of circular of Railway Board extracted above, it is clear that it was for the Railway Recruitment Board to have recommended the names of 50% more than the number of candidates indented. We are astonished as to what prompted the successive Chairman of the Railway Board to make such a request, ^{Subsequently} when the Commission, on its own, was in a position to recommend the names of 50% more than the number of candidates while making the recommendation initially. After the recommendation had been made, in our opinion, the Recruitment Board became functuous officio and should not have suo-moto initiated such a request. It was squarely for the Railway Board to have sent the requisition for recommending more names to take care of ~~bring~~ ^{due} out for other analogous reason. The Railway Board, not only ~~this~~, did not make such request, but actually ~~declined~~ to comply with the requests made by the Chairman of the Railway Recruitment Board. We are in agreement with the arguments of the learned counsel for the respondents that the post of Assistant Station Masters being post of ^{possible} safety category, it envisages that best ~~position~~ candidates are selected for such posts. In the circumstances, ~~discretion~~ discretion lay with the Railway Board to call for more names from Recruitment Board for appointment on the said post. In addition to the above, test for recruitment of Assistant Station Masters for 90 vacancies has in the mean time been held and finalised. In this view of the matter also, we are of the view that directions as prayed for by the applicants in this application can not be issued because there are no vacancies against which the applicants can be appointed.

9. In view of the above, and having regard to the fact that two more panels of Assistant Station Masters have

already been finalised and results declared, the prayer of the applicant to enlarge the panel on the basis of recruitment test held in 1986 can not be allowed. In the result this application is dismissed leaving the parties to bear their own costs.


(Member-J)


(Member-A)

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