

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALIAHABAD BENCH, ALIAHABAD.

This the day of 24th April 1997.

ORIGINAL APPLICATION NO. 466 OF 1994.

CORAM : Hon'ble Dr. R.K. Saxena, Member-J

Hon'ble Mr. D.S. Baweja, Member-A

1. All Indian Scheduled Caste & Scheduled Tribes Railway Employees Association, N.E. Railway, Zone, Gorakhpur through its Secretary Sri Ram Sakal Ram, Ex-Hindi Assistant, C.P.O Office, N.E. Railway, Gorakhpur.
2. Sri Ram Lakan Prasad, S/o Late Tetaru, working as Chief Welfare Inspector, N.E. Railway Gorakhpur.
3. Sri Paras Nath Pasi, S/o Late Sadho working as O.S. Grade-I in the Office of Superintendent Printing & Stationery Office, N.E. Railway Gorakhpur.
4. Sri Ram Narain Prasad, S/o Late Sri Uttim, Office Superintendent Grade-I Chief personnel Officer's Office, N.E. Railway, Gorakhpur.
5. Jagar Nath Prasad, Working as Enquiry Inspector, Chief Vigilence Officer, N.E. Railway, Gorakhpur.
6. Chhabbi Lal, Prasad, Office Supdt. Grade-I, Chief Workshop Manager, N.E. Railway, Gorakhpur.

7. Sri Sita Ram, O.S. Grade-I, Chief Workshop Manager's Office, N.E. Railway, Gorakhpur.

.....Petitioners.

(By Advocate Shri Sanjay Kumar)

Versus

1. Union of India through the General Manager, N.E. Railway, Gorakhpur.

2. The Chief Personnel Officer, N.E. Railway, Gorakhpur.

3. Sri A.K. Mishra, the Chief Personnel Officer, N.E. Railway, Gorakhpur.

..... Respondents.

(By Advocate Shri V.K. Goel)

O R D E R

By Hon'ble Mr. D.S. Baweja, Member-A

1. This application has been jointly filed under Section 19 of the Administrative Tribunals Act, 1985 by All India Scheduled Caste and Scheduled Tribe Railway Employees Association, North Eastern Railway, Gorakhpur through its secretary and seven other applicants praying for the following reliefs :-

a) to issue direction to the respondents not to hold any viva-vode test and other proceedings for the post of Assistant Personnel Officer in pursuance of notification dt. 22.7.1993.

b) to quash the orders dated 17.3.1994 and the notification dated 22.7.1993.

2. The case of the applicant is based on the facts as follows. The notification dt. 22.7.1993 was issued by respondent no. 1 i.e., General Manager, North Eastern Railway, Gorakhpur, inviting applications for selection to Group 'B' post of Assistant Personnel Officer against 70% quota for the departmental candidates. Based on the applications received, the list of the eligible candidates was notified vide letter dt. 9.11.1993. The written test was held on 16.1.1994 and 23.1.1994. All the applicants appeared in the written test. The result of the written test was declared vide letter dt. 17.3.1994 and 14 persons were declared successful. However, none of the applicants qualified in the written examination. The viva-voce test was fixed on 22.3.1994. The present application has been filed on 22.3.1994 being aggrieved for not being declared successful in the written test. With a prayer not to proceed with the viva-voce test and to hold further proceedings of the selection.

3. The applicants have challenged the selection as wholly illegal, arbitrary, malafide and violative of Article 14 and 16 of the Constitution of India on several grounds. The main grounds advanced are as under:-

a) The notification was issued to fill up 15 unreserved vacancies, ~~but~~ there ~~has~~ short fall of three vacancies of Scheduled Caste (SC) and one of Scheduled Tribe (ST) category but the same have not been included in the notification ~~and~~ in violation of the extant rules with regard to reservation. Providing

of the training for SC/ST candidates also implied that reservation vacancies were existing and were required to be filled up.

b) In the letter dt. 9.11.1993, it was provided that the eligible Scheduled Caste and Scheduled Tribe candidates will be given 20 days of coaching to prepare them for the examination. However, no proper coaching was arranged inspite of making representation and one such representation dated 10.12.1993 brought on record.

c) Coding of the roll numbers was not done as per the instructions of the Railway Board vide letter dated 22.7.1988 according to which to maintain the secrecy of selection, the coding of the roll numbers was required to be done by the Accounts Department for the Group 'B' selection of the Personnel Department. In violation of the Railway Board instructions, the codification of the roll numbers was done by the Deputy Chief Personnel Officer (Gazetted) of the Personnel Department.

d) The result of the written test was not declared for two years and the viva-voce has been fixed on 22.3.1994 in a great hurry by calling the candidates ~~to~~ telegraphically with malafide intention.

e) The applicants had done their papers well but they were not declared successful in the examination due to ulterior motive of the respondent no. 2, Chief Personnel Officer, North Eastern Railway, Gorakhpur. It is further alleged that

respondent no. 2 in connivance ~~of~~ ^{with} Deputy Chief Personnel Officer (Gazetted) using foul means/their own persons successful in the examination and thereby very junior and in-competent persons got through the written examination.

4. The respondents have opposed the application by filing counter reply through Shri Amitabh Khare, Deputy Chief Personnel Officer (Gazetted) on behalf of all ^{the} respondents followed by a Supplementary Counter reply. The respondents have submitted that total Group 'B' cadre of the Assistant Personnel Officers at the time of notification was 30 and as per the percentages laid down for reservation, 5 posts were to be reserved for the Scheduled Caste and two posts for the Scheduled Tribe, staff. Against this seven Scheduled Caste Assistant personnel Officers are already in the Cadre. Against the two posts of Scheduled Tribe, one Assistant Personnel Officer was available. Thus, there was a short fall of one Scheduled Tribe ~~from~~ ^{Officer} which was included to be filled up against 30% quota through limited departmental examination for which also notification was issued on 28.8.1993. Thus, in view of these facts, the respondents contend that there was no short fall against the reservation to be filled up and a notification dated 22.7.1993 was correctly issued to fill up 15 unreserved posts. The respondents further aver that in view of the above stated position, the contention of the applicants that since the coaching of the Scheduled Caste and Scheduled Tribe candidates was provided for the

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for this ~~unfilled~~ implied filling of reservation vacancies is for fetched and not tenable. As regards the maintaining of the secrecy and the codification of the roll numbers, the respondents have clarified that the Railway Board's letter dt. 22.7.1988 does not lay down instructions as this letter only forwards the ^{the} minutes of meeting. The detailed instruction have been laid down by the Railway Board vide letter dated 30.8.1984 and the procedures laid down as per this letter has been followed and there is no irregularity committed in codification of the roll numbers by Deputy Chief Personnel Officer (Gazetted). In respect of the training of the Scheduled Caste and Scheduled Tribe candidates it is asserted that the pre-selection coaching is mandatory ^{only for} selection to Group 'B' of the safety categories. However, at the local level, it was decided ^{to} give 20 days of on-job pre-selection coaching wherein the Scheduled Caste and Scheduled Tribe candidates could approach the nominated officers to seek guidance and for resolving their doubts. The training as laid down has been given. The allegations of malafide against the respondent no. 2, are emphatically denied as the same are malicious and only the candidates who had performed well have qualified in the written ^{examination}. It is further submitted that the applicants have filed the present application only after declaration of the result and after having participated in written test and having been ^{un}successful, their claim for the relief is therefore not maintainable. After holding the written test, the result was declared within two

months and not two years as alleged by the applicants. The respondents have also brought out that panel/have of 12 candidates been notified on 31.3.1994 and in compliance with the Tribunal's order dt. 23.3.1994 and all the candidates have been since promoted and posted as Assistant Personnel Officers. In view of these facts, the respondents contend that none of the grounds taken by the applicants sustain legally and the application being devoid of merit ~~and~~ deserves to be dismissed.

5. The applicants have filed rejoinder affidavit to the main counter affidavit. While controverting the submission of the respondents, the applicants have maintained that there was ^{three} short fall of/vacancies of the Scheduled Caste Category by giving the details that out of the seven Assistant Personnel Officers belonging to the Scheduled Caste Category in the cadre, five had been promoted on their own merit.

6. On 23.3.1994, an interim order was passed providing that the respondents shall not fill up ~~three~~ out of 15 posts which have been notified vide notification dated 22.7.1993. The interim order was extended from time to time and continued during the pendency of the original application till the pronouncement of the judgment.

7. We have heard Shri S. Kumar and Shri V.K. Goel learned counsel for the applicants and respondents respectively. We have given careful

thought to the arguments advanced during the hearing and the material brought on the record.

8. The grounds challenging the selection have been detailed in para 4 above which will be considered one by one to identify whether any of the grounds advanced vitiate the selection process.

9. The first ground taken is with regard to non notification of the vacancies to fill up the existing short fall of Scheduled caste and Scheduled Tribe categories. The respondents have maintained that there was no short fall and the required number of posts were already filled up by the Scheduled Caste Officers as per the cadre and there was short fall of one post in respect of Scheduled Tribe which was included to be filled up against 30% quota. We have gone through the notification dt. 18.8.1993 for filling up 30% quota brought on record at Annexure-I to the counter affidavit. This notification provides for filling up one vacancy of Scheduled Tribe. The respondents have explained that since in the last selection, the vacancy of the Scheduled Tribe was filled up through 70% quota, for the present selection the short fall has been proposed to be filled up through 30% quota. We find substance in the submission of the respondents and thus in respect of the alleged short fall of one vacancy of the Scheduled Tribe, there is no merit in the contention of the applicants. As regards

the short fall of Scheduled Caste category, the applicants have stated that there was short fall of three vacancies which was required to be included in the notification dt. 22.7.1993. The respondents have stated that against the cadre of 30 Assistant Personal Officers, the quota for Scheduled Caste comes to five posts and all the five posts were filled up. The applicants in the rejoinder have contended that out of seven Assistant Personal Officers in the Cadre belonging to the Scheduled Caste category, five Officers had been selected on their own merit and there were only two Officers against reservation and this short fall of three. The names of five Officers have been disclosed by the applicants. The respondents have controverted this information by filing a Supplementary Written reply. Out of five names furnished by the applicants, the respondents have stated that all five Officers were selected against reservation ^{quota} as per the year of selection indicated. The applicants in rejoinder affidavit have not furnished any details with regard to selection of the Assistant Personnel ^{officer} named in the rejoinder reply. The details furnished by the respondents in the Supplementary Written reply, have also not been controverted by filing the Supplementary Rejoinder ~~Reply~~. Considering the details furnished by the respondents with regard working out of the vacancies and the short fall in the reserved categories, we accept the submission of the respondents and find no merit ⁱⁿ ~~for~~ the contention of the applicants. Further the applicant's presumption that training for Scheduled Caste / Tribe

candidates as per the letter dated 9.11.1993 implemented that posts against the reservation quota were required to be filled as far fetched and is not tenable.

10. The second ground advanced is that proper training has not been given to the Scheduled Caste / Scheduled Tribe candidates as provided for in the letter dt. 9.11.1993. The respondents have controv-
erted this by explaining that the pre-selection coaching for the Scheduled Caste and Scheduled Tribe candidates is mandatory only for the Group 'B' selection for the safety categories and respondents also contend that it was decided to give 20 days of coaching to the Scheduled Caste and Scheduled Tribe candidates as a local decision. For this purpose respondents have explained that Officers were nominated and the candidates were required to undergo on-job training and take the assistance of the nominated Officers to seek any guidance or for any clarification to assist them in preparing for the examination and the training accordingly was given. The applicants in the rejoinder reply in reply para 12 of the Counter reply have not specifically countered this submission, just a general statement has been made that the training had not been given properly without making any elaboration as to how it was not proper. Further, the applicants have not indicated whether the training was not proper at all centre or at few centres only. The pleading made is very vague, keeping in view the position it

explained by the respondents, we are unable to find any merit in the same.

11. The third ground is with regard to maintaining the secrecy of the selection in respect of coding and decoding of the roll numbers. The applicants allege that the coding and decoding was done ⁱⁿ ~~by~~ the Personnel Department by Deputy Chief Personnel Officer (Gazetted) in violation of Railway Board order dated 8.7.1988 according to which the codification in respect of Personnel Department was required to be done by the Accounts Department. The respondents have repelled this contention stating that the detailed instruction for codification have been laid down by the Railway Board vide letter dt. 6.9.1984. The respondents have further submitted that the Railway Board's letter dt. 8.7.1988 does not lay down any instructions as this letter only forwards the minutes of ^{the} meeting. We have gone through both the letters and observe that letter dt. 8.7.1988 forwards only the minutes of ^{the} meeting held by the Minister of Railways with the General Manager wherein it is recorded that the coding of the answer papers for the Personnel Department should be done by the Accounts Department and for the Accounts Department by the Personnel Department. This letter does not give any reference to the earlier detailed instructions laid down vide letter dt. 30.8.1984 and also does not mention whether this supercedes all ^{the} earlier instructions. In view of this we are unable to accept the

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contention of the applicants that Railway Board's instructions have been violated in maintaining the secrecy of the evaluation of the answer books. Further the applicants have not elaborated ^{as to} ~~that~~ how the secrecy of the evaluation of the answer books have been affected and their case has been prejudiced. Thus there is no merit in this ground. ^{as to} ~~that~~

12. The fourth contention is that the result of the written test was declared after two years and the date for Viva-Voce test was fixed in a great hurry with malafide intention. This contention is not based on the facts. The last written examination had been conducted on 23.1.1994 and the result had been declared on 17.3.1994 i.e., after a period of two months only. Therefore, the contention of the applicant that the result of the examination was declared after two years is factually incorrect and allegation of malafide ~~allegation~~ based on this therefore does not survive.

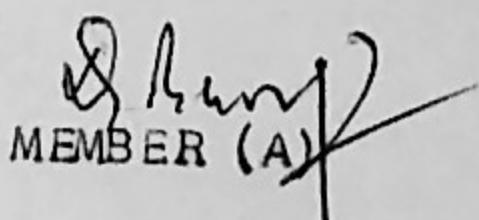
13. The last ground is ^{the} allegations of malafide against the Chief Personnel Officer respondent no. 2 who has also been made a party by name as respondent no. 3. It is alleged that the Chief Personnel Officer in connivance with Deputy Chief Personnel Officer (Gazetted) using ~~faulty~~ means got their own persons successful in the examination whereby juniors and incompetent persons qualified in the written examination. We have gone through the pleadings made by the applicant for the alleged malafide and find that the ~~same~~ are vague and not supported

by any evidence on the record even to have a suspicion of malafide. The applicants have not disclosed the names of the juniors and incompetent candidates who have been declared passed in the written examination due to malafide action of the Chief Personnel Officer. A mere statement is not enough and the specific names of those who have been favoured should have been disclosed. Further, whether the candidate who was successful in the written examination is competent or incompetent is to be born by the performance in the examination and not by the judgment of the applicants. The applicants have contended that they had done well in the written test. This contention is ⁱⁿ on the realm of their own assessment. In a selection, it is relative ^{merit} ~~ment~~ which matters. The applicants have not come out with a case as to how they have not been declared successful. We find it difficult to appreciate this contention. In view of these considerations, we fail to find any merit in the allegations of malafidies against the Chief Personnel Officer.

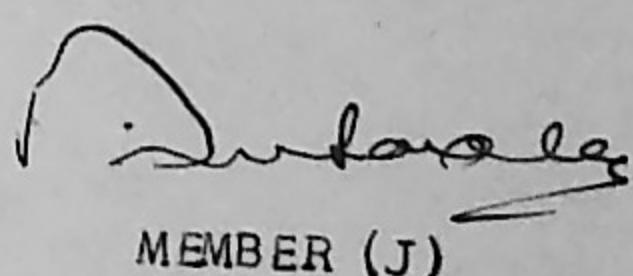
12. In the light of the above deliberations, we do not find any merit in any of the grounds advanced which could vitiate the selection process. Further it is noted that the notification for the selection was issued on 22.7.1994 and ^{the written examination was conducted on} 23.1.1994. The result ^{16.1.94} ~~and~~ was declared on 13.3.1994 and the present application had been filed on 22.3.1994. It is obvious that the present O.A has been filed after the applicants were

unsuccessful in the written examination. Out of the grounds advanced for assailing the selection, two grounds with regard to the reservation and training were already existing before the written examination. The 3rd ground with regard to coding of the roll numbers ^{had} also occurred before the declaration of the result of the written test. Though from the material brought on the record, it is noted that the Association has been representing on this issue but inspite of this, the applicants chose to appear in the written examination. There was period of two months between the written examination and the declaration of the result. The applicants however waited for the result without agitating the matter for seeking legal remedy in case they failed to get any reply from the administration. The applicants having appeared in the written examination and taken a chance cannot agitate the matter for seeking the legal remedy pointing out infirmities in the selection process when finding unsuccessful in the examination.

13. In view of the above facts, we are unable to find any merit in the application and the same is dismissed. The stay order dated 23.3.1994 is vacated. No order as to costs.


MEMBER (A)

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MEMBER (J)