

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH
ALLAHABAD

OA No.619 of 1994

ALLAHABAD, this the 31st day of October, 1995.

HON'BLE DR. R.K.SAXENA, JUDICIAL MEMBER

HON'BLE MR S.DAYAL, ADMINISTRATIVE MEMBER

1. Harish Chandra Srivastava,
R/O 5/2-A, Ramanand Nagar,
Allahpur, Allahabad.
2. Rajendra Kumar, son of late Ratan Chand Sharma,
R/O 731, Colonelganj, Allahabad.
3. Santosh Kumar Pandey, son of late R.N.Pandey,
860 Old Katra, Allahabad.
4. Ram Singh son of Shri Demri Singh, R/O
Village Sarjan, P.O.Samsabad,
District Allahabad. Applicants.

(through Mr G.D.Mukherjee, Advocate).

versus

1. The Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. The Chairman, Railway Recruitment Board, Allahabad. Respondents.

(through Mr A.K.Gaur, Advocate).

ORDER

PER Dr. R.K.SAXENA, MEMBER(J)

To challenge the select list dated 1.3.1994, this O.A. has been filed by the four applicants.

Briefly stated, the facts of the case are that Railway Service Commission, Allahabad had issued an advertisement of employment dated 13.11.1979 for filling in 1465 posts of Assistant Station Masters, Guards, Goods Clerk, Coaching Clerks, Signallers, Train Clerks, Office Clerks etc. In response to the said advertisement, about four lacs candidates had applied. On the basis of the written-examination and via-voce, the select list

according to merit, was prepared. Several complaints about the selection were made and it was alleged that selection was based on favouritism, nepotism and corruption. Shri B.P.Bhargava, the then Chairman of the Railway Service Commission made an inquiry into the allegations and made a report to the Railway Board. Several irregularities and illegalities were pointed out in the said report. The Railway Board then directed the then Chairman Shri V.K.Agarwal to look into the irregularities before the finalisation of the panel. It appears that Shri V.K.Agarwal declared the result by finalising the select list of 1386 candidates. It appears that those candidates who were on the top in the provisional list, were dropped on the assumption that they had indulged in mal-practices. It further appears that about 200 successful candidates had filed about 35 Writ Petitions in the High Court of Allahabad and one such Writ was filed at Lucknow Bench of the said High Court. On the creation of the Central Administrative Tribunal in 1985, those Writ Petitions were transferred to Allahabad Bench and Lucknow Bench, respectively of the Central Administrative Tribunal. All those 35 petitions were clubbed together and petition of Jagdish Prasad Phoolbhati etc. was made the main case. The Tribunal decided the matter on 16.9.1988 and dismissed the petitions. Feeling aggrieved by the judgment of the Tribunal, about 130 petitioners preferred S.L.P. before the Hon'ble Supreme Court. The said S.L.P. was admitted and was decided on 26.8.1993. It appears that during the course of arguments, it was suggested that the petitioners before the Hon'ble Supreme Court, could be considered as against 79 vacancies which were

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pooled up by the railway authorities. In that connection, the letter dated 26.8.1993 of the Railway Board in which offer of filling up of 79 vacancies on the basis of the method of selection as indicated, was filed. Their Lordships of the Supreme Court while disposing of the appeal, gave directions that those 79 vacancies should be filled in from amongst the appellants whose qualifications would be kept as Matriculation. It was further directed that the written-examination, viva voce and the psychological test, wherever applicable, shall be completed within six months from that date. The impleadment applications of those persons, who were parties before the CAT, were also allowed and the counsel for the appellants was directed to give the number of those applications to the Registry. The impleadment applications of those persons who had no doubt appeared in the original examination but did not challenge the same at any stage and were not parties before the CAT, was rejected and they were not given the benefit which was given while deciding the appeal of Jagish Prashad Phoolbhati and others.

It appears that in pursuance of the directions and the decision¹ given by their Lordships of Supreme Court, the railway authorities held the test for 79 posts from amongst the applicants before the Hon'ble Supreme Court and the select list dated 1.3.1994 Annexure-3 was prepared. It is this select list, which has been again challenged by the applicants on the grounds that the result of the selection was based on pick and choose method. The posts of Inquiry Clerks were never advertised. The candidates, who were graduate also

appeared and those candidates who were only matriculates were put in disadvantageous position. The final list, which was prepared after the interview was tampered with by adding some names and deleting the name of others. It was also averred that psychological test was required to be undergone by the candidates who had applied for the post of A.S.M. but the said test was made applicable to all irrespective of their choice. The result was that on account of the psychological test, those who were ^{lower} in rank on the basis of the written-examination, were placed on higher position and the applicants were deprived of the ^{benefit} ~~same~~. It is also pointed out that the names of Shri Sher Mohammad and Shri Satyendra Pal Singh who were not applicants before the CAT and Shri Rakesh Sinha who was not a party before the Hon'ble Supreme Court, were declared ~~un~~successful. It is also contended that five Scheduled Caste Candidates were selected on the basis of quota system although the posts were meant for general candidates. Hence this O.A. has been filed challenging the select list and seeking directions to restrain the appointment on the basis of the said list which may be quashed.

The respondents contested the case. The fact that applications for several posts were invited, the written test was held and some of the candidates were called for interview and that complaint about favouritism, nepotism and corruption were made about the selection process are admitted to the respondents. It is also admitted that the matter went up to the Hon'ble Supreme Court, where while disposing of the S.L.P. certain directions for filling in the post of 79 vacancies which were ^Q padded up, from amongst the appellants before Supreme Court

are also admitted. It has been contended that the Railway Board had written a letter Annexure-III of the Counter-reply to the Government-advocate and the said letter dated 26.8.1993 was produced before the Hon'ble Supreme Court. In this letter, it was made clear that 79 vacancies which were earmarked for Ex-servicemen, were available from the category of Assistant Station Masters, Goods Clerk, Coaching Clerks, Signallers, Train Clerks, Ticket Collectors, office Clerks and enquiry-cum-reservation Clerks. It is denied that other than those who were appellants before the Hon'ble Supreme Court, were allowed to appear in the test. It has been specifically mentioned that the names of Shri Satyendra Pal Singh and Sher Mohammad were at Sr.Nos.136 and 139 of the list which was given to the respondents indicating the names of the other appellants before the Hon'ble Supreme Court. It is also clarified that Rakesh Sinha was allowed to appear in the examination on the directions given by the Tribunal in the order dated 10.12.1993 passed on Misc.Application No.2417/93 in OA No.179/93 Virender Kumar and others vs. Union of India.

As regards the psychological test being held, it was averred that for the post of Assistant Station Master it was expected that the incumbent should have good memory and should be fully acquainted with the working procedure of the railway and also to ensure the safety to human life and as such the psychological test was made necessary. It is also pleaded that the reservation quota of Scheduled Castes was observed and the short-fall of the candidates was made good by taking general

category candidates. While denying the contents of para 4(u) of the O.A., it was clarified that the candidate bearing Roll No.221722 was inadvertently left out of the result sheet dated 25.2.1994 and was therefore subsequently included. Similarly, the name of the candidate who was wrongly included was deleted.

The applicant has filed rejoinder, in which the facts which were narrated in the O.A. were re-iterated. It is, however, contended that in the list Annexure-I to the counter-affidavit, the names of two candidates have been shown twice. One of them Shri Ajai Kumar Sharma whose name is at Sr. No.1-A and at Sr.No.119. Similarly, the name of Shri Mehndi Hasan Abidi figures at Sr.No.131 and 140. It is also contended that the names of Shri Arun Kumar Chaurasia (Roll No.290357) and Shri Raja Ram Maurya(Roll No.258959) did not find place in the list Annexure-I of the counter-reply but they were called for test. We have heard the learned counsel for the parties and have perused the record.

The ~~crux~~² of the matter is whether the selection for 79 posts, was done by the respondents in accordance with the directions given by the Hon'ble Supreme Court in the judgment dated 26.8.1993 in Civil Appeals No.4617 and 4618/93 arising out of S.L.P.Nos.14868/88, 200090/90 and 9223 of 1991 titled Jagdish Prashad Phoolbhati etc.etc. vs. Railway Board, Railway Board, New Delhi. In these judgments, their Lordships of the Hon'ble Supreme Court had mentioned that the railway authorities were prepared to ~~pool~~^{up to} 79 vacancies to afford an opportunity to the appellants to compete for the jobs.

It was also mentioned in the judgment that Mr Attaf Ahmed, learned Additional Solicitor General had placed on record the letter dated 26.8.1993 wherein the railway authorities had offered to fill 79 vacancies on the basis of the method of selection indicated in the said letter. The learned counsel for the respondents before us pointed out that Annexure-3 is a copy of the letter, which was placed on record before the Hon'ble Supreme Court. This letter is addressed to Shri C.V.Subharao, Government Advocate and a reference of S.L.P.(C) No.14968 - Jagdish Prasad phoolbati & others vs. Railway Board and is dated 26.8.1994, leaves no doubt in our mind that this is the letter, which has been referred to in the judgment by the Hon'ble Supreme Court. It is mentioned in this letter that 79 vacancies were available in the year 1981-82 and were earmarked for Ex-Serviceman including the posts of Assistant Station Masters, Guards, Goods Clerks, Coaching Clerks, Signallers, Train Clerks, Ticket Collectors and Office Clerks. In para 5, it was clarified that the vacancies in the categories of Assistant Station Masters (Rs.1200-2040) and Office and Accounts Clerks (Rs.950-1500) could be made available. It was further mentioned in para 6 that the qualification for the post of Assistant Station Masters, Enquiry-cum-Reservation Clerks was matriculation but was subsequently raised to graduation. It is also mentioned that for the selection to the post of Assistant Station Master, a candidate will have to qualify in the psychological test apart from written test and interview. What we ^{want to} infer from this letter is that 79 vacancies were pooled up from different categories of posts such as Assistant Station Masters, Guards, Enquiry-cum-Reservation Clerks

etc. etc. The contention of the learned counsel for the applicants that there was no advertisement for the post of Enquiry-cum-Reservation Clerk and the appointment being made on that basis, was against the directions of the Hon'ble Supreme Court. We are unable to agree with these contentions. The position was made clear before their Lordships of Hon'ble Supreme Court that the vacancies for which test was held and the selection of which was in dispute in the S.L.P., were filled in. Anyhow, some of the vacancies which were ~~not~~ reserved for Ex-Servicemen and related to various categories of posts, were pulled up and the letter dated 26.8.1993 was put on record in the S.L.P. It is, therefore, not correct to say that certain posts, particularly the post of Enquiry-cum-Reservation Clerk was not included and no selection could be made for that post. We are of the view, on looking to the Annexure-3 of counter-reply that the posts of Enquiry-cum-Reservation Clerk were included and the respondents were quite competent and legally entitled to fill up those posts.

It is also the case of the applicants that some of the candidates, who were neither parties before the Central Administrative Tribunal nor before the Hon'ble Supreme Court, were allowed to appear in the examination in violation of the directions given by the Hon'ble Supreme Court. In this connection, a specific reference of Shri Satyendra Pal Singh, Shri Sher Mohamed and Shri Rakesh Sinha has been made in the O.A. The respondents, on the other hand pointed out that

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the names of these persons were mentioned in the list of the petitioners, which was furnished to them by the Registry of the Supreme Court. It is further mentioned in para 4(a) and(1) at page 4 of the counter-reply that the names of Shri Satyendra Pal Singh and Shri Sher Mohamed are at Sr.Nos 136 and 139 of the list. We have also verified and find those names at Sr.Nos.136 and 139. The name of Shri Rakesh Sinha was included because a direction was given by the Tribunal in the order dated 10.12.1993 of MA No.2417/93 in OA No.1791/93. In this way, the stand taken by the applicants that persons other than those who were petitioners, were allowed to appear in the examination, is demolished. In the rejoinder, it has been again pointed out that the name of Shri Ajay Kumar Sharma has been mentioned at Sr.No.1-A and at Sr.No.119. It is true that the name of Shri Ajay Kumar finds place at two places. The question, however, arises is whether the respondents are responsible for this mistake. The Hon'ble Supreme Court had directed the counsel for the appellants before the said Court to furnish the list of the appellants/petitioners in the office of the Registrar and it appears that the list Annexure-1 with the counter-affidavit was transmitted to the respondents by the Registry of the Hon'ble Supreme Court. Thus, if there was any repetition of the name of a particular person, the responsibility does not rest on the respondents.

It is also mentioned in the rejoinder that the names of Shri Raja Ram Maurya and Arun Kumar Chaurasia were shown in the list of the

successful candidates although their names do not find place in the list furnished by the Registry of the Hon'ble Supreme Court. On perusing the list, it is revealed that the name of Shri Arun Kumar with different Roll No. is mentioned at Sr.No.75 but the name of Shri Raja Ram Maurya, of course, does not find place in the list. The question, therefore, arises whether the selection process may be declared null and void for this reason alone. It may not be forgotten that these two persons, namely, Arun Kumar and Raja Ram Maurya have not been impleaded as respondents. They have been deprived of saying anything in connection with their appointment. Setting aside the entire selection process will ultimately result in the removal of those two persons from service. Unless those persons had an opportunity of hearing, the order resulting in their removal from service would be violative of the principles of natural justice. For this reason, even this ground is not tenable.

It has been also argued that the entire selection process is vitiated because the respondents had introduced psychological test and as a matter of fact all the candidates who had applied for the post, other than Assistant Station Master, were also compelled to go through the psychological test. It has been emphasised on behalf of the respondents that psychological test was obligatory only to those candidates who were seeking appointment as Assistant Station Masters. The respondents have brought on record the preferential

choice of the posts by some of the candidates, namely, Harish Chander Srivastava, Virendra Kumar, S.R.Pandy and Ram Singh through Annexure-VII. What appears from this process is that the respondents had tried to ascertain about the preferential choice for the posts and through Annexure-VII, it is exhibited that all these candidates had given choice for the posts of Assistant Station Masters, Inquiry-cum-Reservation Clerk and Office Clerk. On the other hand, the applicants could not produce any document, which may go to suggest that a person who had not opted for the post of Assistant Station Master, was also compelled to undergo the psychological test. Therefore, we do not find any substance in this allegation also.

It is also argued that for certain posts, minimum qualification was matriculation, which was subsequently raised to that of graduation and by allowing the graduates, the applicants were put in disadvantageous position. We have gone through the judgment of the Hon'ble Supreme Court and we do not see any ~~prohibition~~ provision for graduates being candidates of the test. What direction was given by the Hon'ble Supreme Court was that the minimum qualification which earlier was matriculation, should be allowed to the appellants. It meant that though the educational qualification was raised to graduation, the appellants before the Supreme Court who were only matriculates were also allowed to appear

in the test. If those, who were matriculates only could not fare well in comparison to the graduates, no blame can be thrown on the respondents. Thus, this argument is also not tenable.

It is also canvassed before us that the respondents had committed mistake by allowing the selection of the candidates belonging to SC and ST. We find this argument fallacious. For filling in 79 posts, the candidates were only those persons who were the appellants before the Hon'ble Supreme Court or in some cases the petitioners before the C.A.T. and whose applications for impleadment were allowed. If some of the appellants or petitioners belonged to the category of Schedule Castes or Schedule Tribes, the respondents were helpless. It is true that the preference was given to the candidates of the category of Schedule Castes and Schedule Tribes and this fact has been asserted in the counter-reply also. The learned counsel for the respondents contended that it was done because the general order was to fill in the vacancies from the candidates belonging to Schedule Caste and Schedule Tribe category. In the light of this averment, which has not been controverted, we do not see any ground to hold the process of selection illegal or null and void.

The learned counsel for the respondents came with the case that the selection was done in accordance with the directions given by the Hon'ble Supreme Court; and thus, the applicants should have approached the Supreme Court if they thought that there was any violation of those

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directions. We are unable to agree with this view. The applicants had every right to approach this Tribunal and the Tribunal had the jurisdiction to look into the grievance relating to service matter. On this ground of reasoning, the plea of the learned counsel for the respondents is rejected.

On the careful consideration of the facts and circumstances of the case, we are of the view that the applicants have failed to establish any ground on the basis of which the selection may be declared violative of the directions given by the Hon'ble Supreme Court or in any manner illegal. Thus, we do not find any merit in the case. The O.A. is dismissed leaving the parties to bear their own costs.

S. Dayal
(S.DAYAL)
MEMBER(A)

R. K. Saxena
(DR.R.K.SAXENA)
MEMBER(J)

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