

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Allahabad : Dated this 16th day of October, 2000

Original Application No.989 of 1994

CORAM :-

Hon'ble Mr. Rafiquddin, J.M.

Hon'ble Mr. S. Biswas, A.M.

1. AnilKumar Dutta S/o SK Dutta.
2. Nuruddin Ansari
3. Mahendra Dube S/o Markandey
4. Ravindra Prasad S/o D.S. Prasad
5. Anil Kumar Sinha S/o D.N. Sinha.
6. Tribhuwan Ram S/o Biltan Ram.
7. Tej Narain Chaubey
8. Jakarias Horo S/o Markhus Horo

All Class IV employee posted under SS/Mughalsarai
District Varanasi.

(Sri SK Dey/Sri SK Mishra, Advocates)

. Applicants

Versus

1. Union of India through the General Manager,
E.Railway, 17, Netajee Subhas Road, Calcutta-1.
2. Divisional Railway Manager, Eastern Railway,
Mughalsarai.
3. The Assistant Personnel Officer, Eastern Railway,
Mughalsarai.

(Sri AV Srivastava, Advocate)

. Respondents

O R D E R (O_r_a_l)

By Hon'ble Mr. Rafiquddin, J.M.

The applicants are aggrieved by the order dated
26-4-1994 whereby the panel dated 30-3-1992 has been
cancelled by the respondents. The applicants also seek

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direction to the respondents to promote them to the post of Train Clerk in terms of panel dated 30-3-1992. The applicants are regular Class IV employees and are posted ~~in different~~^{at} Railway Stations, (Eastern Railway, Mughalsarai, ~~They~~ were empanelled for the post of Trains Clerk vide panel dated 30-3-1992 after written and oral examinations. The applicants were empanelled at Serial Nos. 11, 14, 17, 22, 27, 29, 8 and 28 by panel dated 30-2-1992, a copy of which has been annexed as Annexure-1 to the OA. ~~They were also sent for training~~^{Ry} The applicants were also called for training at Zonal Training School, Dhanbad in connection with training from 15-4-1992 to 5-5-1992 and were declared successful except applicant no. 7 vide letter dated 21-7-1992 (Annexure-2 to the OA). However, the applicant no. 7 ^{claims} ~~he~~ is entitled to be given two more chances to complete the training. ^{disputed}

2. It is ~~not~~^{disputed} that despite their empanelment and successful completion of training, the applicants were not posted as Train Clerks whereas 21 other persons who completed training on 30-5-1992 were posted as Train Clerks. The applicants made representations on 12-7-1992 and 9-2-1994 and they were also given assurance by the respondents for promotion in the near future but without any reason the Assistant Personnel Officer, Eastern Railway, Mughalsarai, respondent no. 3 vide letter dated 26-4-1994 had notified that the life of the panel in question has since expired. Consequently, the respondents ~~have~~^{could be} not promoted on the basis of panel in question which was duly approved by the D.R.M. Eastern Railway Mughalsarai vide order dated 26-4-1994.

3. We have heard counsel for the parties and perused the record carefully. ^{Ry}

4. Learned counsel for the respondents has argued on the basis of pleadings contained in the CA that the promotion on the basis of panel in question could not be made because as per vacancies available only 3 persons could be posted. In terms of Rule 220 of the Indian Railway Establishment Manual Vol II currency of the panel is only for two years. Since within the currency of panel no further vacancy accrued or for that matter no short term vacancy, the applicant could not be promoted and posted as Train Clerk. It is, however, admitted that at that time in view of administrative exigency, some posts of Trains Clerk were rendered surplus and surrendered. Consequently, the applicants excluding the applicant no.7 could not be promoted. Learned counsel for the applicants have, however, pointed out that the D.R.M. Mughalsarai vide his letter dated 9-5-1996 intimated the existence of 19 vacancies of Train Clerks in the Mughalsarai Division. Thus, the plea taken by the respondents of non-availability of vacancy is without any basis.

5. Learned counsel for the applicants has also drawn our attention to the order dated 3-12-99 passed by the Patna Bench of this Tribunal in OA No.229/1994. The persons who were also included in the panel in question were applicants ^{and were} granted relief by directing the respondents to consider the matter afresh and issue appropriate order in respect of promotion of the applicants. It is ^{urged} ~~held~~ that the applicants of the OA before the Patna Bench and the present applicants are similarly situated having been empanelled in the same panel and hence they are also entitled for the same relief granted by the Patna Bench. It is further stated that the respondents have even complied with the orders of the Patna Bench by promoting the applicants

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before the Patna Bench vide OM No.129/2000 dated 30-3-2000. As regards non-availability of vacancy it has been pointed out by the learned counsel for the applicants that the respondents vide Office Order No.1069/91 dated 18-1-1995 have promoted on ad hoc basis 12 Class IV employees on the post of Train~~ing~~ Clerk~~s~~ and similarly by OM No.134/95 dated 8-2-1995 have promoted 24 Train~~ing~~ Clerk~~s~~ as Goods Guard~~s~~ and as a result ~~these~~^{these} aforesaid vacancies are also available. The respondents have also ^{/not} denied these facts by filing any affidavit in rebuttal. The Patna Bench has also considered this aspect of vacancies and has observed that the respondents have diverted these posts by appointing 21 candidates on compassionate ground against vacancies of promotional quota for which the applicants are entitled.

6. Considering all these facts, we find force in the OA and the same is disposed of with the direction to the respondents to consider the matter of promotion of the applicants to the post of Trains Clerk on the basis of the panel dated 30-3-1992 excluding applicant No.7 Sri Tej Narain Chaubey. The promotion of the applicants shall be granted from the ~~date~~^{date} the vacancies of Trains Clerk are available. This exercise shall be carried out within three months from the date of communication of this order. There shall be no order as to costs.

S Bis *Rajiv Mehta*
Member (A) Member (J)

Dube/