

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 7th DAY OF DECEMBER, 1994

Original Application No. 1144 of 1994

HON. MR. JUSTICE B.C. SAKSENA, V.C

HON. MR. S. DAS GUPTA, MEMBER(A)

Kiran Prakash Tewari, son of
Shri Shiv Kishore Tewari, aged
about 40 years, presently
posted as Asstt. Town Engineer
(North), N.E. Railway, Gorakhpur

.... Applicant

BY ADVOCATE SHRI B.P. SINGH

Versus

1. Union of India through General
Manager, N.E. Railway, Gorakhpur.
2. Railway Board, Rail Bhawan,
New Delhi through its Secretary
3. Advisor, Management Services
Railway Board, Rail Bhawan
New Delhi.
4. Chief Personnel Officer, N.E.
Railway, Gorakhpur.
5. Deputy Chief Personnel Officer
(Gazetted) North Eastern Railway
Gorakhpur. Respondents

BY ADVOCATE SHRI K.D. PANDEY

O R D E R

JUSTICE B.C. SAKSENA, V.C.

Through this O.A the applicant challenges
an order of the Railway Board dated the 28th March, 1994
refusing to interpolate the applicant's name in the A E N
Group 'B' panel formed on the basis of Limited Departmental
Competitive Examination in May, 1989. The order of the

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Railway Board was communicated by the Deputy Chief Personnel Officer through his letter dated the 5th April 1994. Copy of the aforesaid two orders are Annexure A-1 and A-2.

2. The facts in brief are that the petitioner while working as Chief Vigilance Inspector, was sent on deputation with Rail India Technical and Economic Services w.e.f. 30th April 1988. He remained on deputation till 1st July, 1990 in Iraq. That after 3.6.77, 75% of the posts of Asstt. Engineer Group 'B' are filled up through normal selection. Employees working in the Engineering Department in the grade Rs.1600-2660 and above are eligible to appear. The zone of eligibility is determined on 3 X Formula that is to say three times of no. of vacancies. 25% of the vacancies are filled by the Limited Departmental Competitive Examination (For short L.D.C.E). Against this quota, any employee working in the Engineering Department in the grade minimum of which is Rs.1400 and who has completed a minimum of 5 years service in that grade is eligible to appear against the 75% selection. Seniority cum suitability is the criteria, while for the L.D.C.E merit is the criteria. A notification dated 21.9.88 was issued inviting application from eligible employees for 10 vacancies against 25% quota reserved to be filled by L.D.C.E. The applicant alleges that Railway Board's letter dated 30.7.86 provides that that it is imperative that adequate notice be given to all employees including employees away on deputation of the proposed L.D.C.E. No notice was given and therefore, the applicant could not appear in the L.D.C.E held on 10.4.89 and a panel of four persons only was declared

on 17.5.89.

3. The applicant's further case is that after declaration of the panel and coming to know of the same he came to India on his own expenses and made a representation on 16.10.89 to the Chief Engineer N.E. Railway that he may be examined as an absentee candidate since he was not given any information.

4. The respondents in their counter affidavit have indicated that the representation was forwarded to the Railway Board and the Railway Board by letter dated 25.6.91 filed as Annexure RA-1 to the counter did not agree with the proposal of the Chief Engineer. It is further stated that another notification dated 14.9.89 for filling up 10 vacancies against 25% quota was notified. The applicant received the information and he submitted his application to appear at the selection, but the Chief Manager RITES for administrative reasons did not spare the applicant.

A panel of 6 persons was declared vide notification dated 9.7.90. After return of the applicant he submitted a representation dt. 12.10.90 that an absentee examination be held for him in continuation of the examination held on 6.4.90 against the notification dated 14.9.89. In the counter affidavit it has been stated that the respondents have issued another notification dated 6.1.92 inviting applications for 5 vacancies against the 25% quota to be filled up through L.D.C.E. The applicant was declared successful at the said examination and a panel was declared on 12.5.93 and the applicant was assigned Sl. no.3 in the panel. The applicant was promoted as Asstt. Engineer on the basis of his being empanelled. Thereafter the applicant submitted a representation dated 10.12.93 with a request that his name be interpolated in the panel dated 17.5.89 or he may be granted proforma seniority w.e.f. 1989. The Deputy Chief Personnel

Officer with the approval of the General Manager forwarded the case of the applicant to the Railway Board for granting of proforma seniority to the applicant w.e.f. May 1989. The request was rejected by the impugned order.

5. A short question of law rises in the facts of the present case. We have already noted that the Railway Board had issued the letter dated 30.7.86 on the subject Limited Departmental Competitive Examination. The Railway Board also issued a letter dated 18.6.87. The applicant placed his reliance on clause 10 of this letter which reads as under:-

10." Consideration Employees on deputation:-

In cases where employees eligible to take the selection not likely to return in a few months time, the selection held in their absence should be finalised without waiting for their return. On their return they should be called for the first selection held thereafter and on the basis of their performance in the selection they should be considered for proforma inclusion in the panel framed during their absence abroad,. If an employee is thus included in the panel no arrears would be payable to him and entitlement to pay in Group 'B' would commence only from the date of

his actual officiating promotion. For the panel thus enlarged Board's approval should be obtained. In respect of eligible employees who are on deputation to offices/establishments within the country, it should be ensured that adequate advance notice is given to such employees and they are considered at the selection without fail."

The provision contained in the said letter finds place in Rule 206.1. of Chapter II of the Indian Railway Establishment Manual Vol-I.

6. The stand of the respondents is that promotion against the 25% quota to be filled up through L.D.C.E is governed by the Railway Board's letter dated 30.7.86 Copy of which is Annexure A-4. It is their further case that para 206 of the Manual based on Railway Board's letter dated 18.6.87 governs the selection against the 75% vacancies to be filled up by normal selection.

7. After having gone through the contents of Railway Board's letter dated 30.7.86 we are inclined to uphold the stand of the respondents. The said letter deals specifically with Limited Departmental Competitive Examination and it provides that candidates away on deputation and who get empanelled in the first L.D.C.E held after their return cannot be considered for their interpolation in the earlier panel of L.D.C.E formed in their absence. The provision of Para 206 to our mind is clearly a general provision. The settled principle of interpretation is that a special provision will over-ride the general provision. Since the Railway Board's letter dated 30.7.86 is the special provision governing L.D.C.E

to that extent para 206 would not apply.

8. The learned counsel for the applicant strenuously urged that para 206 is based on the Railway Board's subsequent letter dated 18.6.87 and in the Manual no other provision incorporating the provisions contained in Railway Board's letter dated 30.7.86, is to be found. He therefore, submits that Para 206 being the Extant provision should apply and consequently, the applicant after qualifying at the first selection held on his return ~~he~~ was entitled to be considered for proforma inclusion in the panel framed during his absence abroad.

9. The learned counsel submitted that the provisions in the Railway Establishment Manual being a statutory, any letter of the Railway Board contrary to the provisions in the Manual will not apply. There is a basic fallacy in the submission. The provisions in the Establishment Manual are based on Railway Board's letters. The Railway Board's letter dated 30.7.86 cannot be ignored. The applicant ~~will~~ ^{is} ~~has~~ ^{is} placing reliance on the Railway Board's ^{letter} dated 30.7.86 and has indicated in the O.A that the notice for an L.D.C.E is directed by the said letter to be issued to all employees eligible including employees away on deputation. Since the other part of the said letter which provide that no supplementary examination will be held of an L.D.C.E and the employees who get empanelled in the first L.D.C.E after their return from deputation cannot be considered for interpolation in the earlier panel of L.D.C.E of their absence goes against the applicant. ^{for}

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purposes of seeking interpolation in the earlier panel he invokes to his aid the provision of Para 206 of the Manual based Railway Board's letter dated 18.6.87. The Railway Board's subsequent letter of 1987 only provides that eligible employees who are on deputation to offices/Establishments within the country should be ensured that adequate advance notice is given to such employees and they are considered at the selection without fail. The applicant was on deputation outside the country and this would not apply to him. In fact ~~in~~ the opening part of clause 10 of the letter/^{dated}the 18th June 1987 categorically provides that in cases where employees eligible to take the selection are abroad on deputation/secondment and are not likely to return within a few months time, the selection held in their absence should be finalised without waiting for their return. If this provision is to apply the grievance of the applicant that he was not intimated about the L.D.C.E held on 10.4.89 ^{will lose force. bel} The applicant in a way is raising self contradictory pleas.

10. Apart from the conclusions indicated hereinabove we find that it would not be appropriate to accept the applicant's contention and claim for interpolation in the panel declared on 17.5.89, for the reason that as noted hereinabove, two panels have been framed and the grant of reliefs prayed for will adversely effect atleast 12 candidates who have been placed in the three panels which had already been declared. The said officers have not been

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impleaded as respondents in this O.A and it would be inequitable to grant any relief to the applicant which will have adverse effect on the rights of others who have not been impleaded.

11. On the conspectus of the discussion hereinabove, we find no merit in the O.A. It is accordingly dismissed. There will be no order as to costs.

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(S. DAS GUPTA)
MEMBER (A)

B.C. Saksena
(B.C. SAKSENA)
VICE CHAIRMAN

Dated: December, 1994

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