

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 18th day of August 1997.

Original Application no. 952 OF 1995.

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

Hon'ble Mr. D.S. Baweja, A.M.

J.P. Gupta, S/o Late Shyam Lal Gupta,
R/o Kashganj, District Etah.

(By Advocate Shri A.B.L. Srivastava) Applicant.

Versus

1. Union of India through General Manager
North Eastern Railway, Gorakhpur.

2. Divisional Railway Manager,
North Eastern Railway, Bareilly.

3. Divisional Commercial Superintendent,
Izatnagar, North Eastern Railway,
Bareilly.

4. Shri Vinod Kumar Saxena DTTI Bareilly City.

5. Shri Ramjeet Rai (Schedule Caste) DTTI Pilibhit.

6. Shri J.P. Chopra DTTI Bareilly City.

7. Shri Sher Singh (Schedule Tribe) DTTI Kashganj.

8. Shri S.P. Tiwari DTTI Bareilly City.

9. Shri S.P. Rastogi DTTI Bareilly City.

10. Shri Arun Kumar Saxena DTTI Bareilly City.

11. Shri Subash Chandra (Schedule Caste) DTTI Kashganj.

12. Shri B.P. Tripathi DTTI Bareilly City.

13. Shri C.M. Misra DTTI Kashganj.

14. Shri U.N. Dubey DTTI Fatehgarh.

Working Under D.R.M , Izat Nagar, Bareilly, North Eastern Railway.

..... Respondents.

(By Advocates Shri P. Mathur for respondents no. 1 to 3 and Shri G.C. Gherana for respondents no. 4, 5 7 , 14)

ORDER (RESERVED)

Hon'ble Mr. D.S. Baweja, A.M.

1. This application has been filed praying for the following reliefs :-

i) To quash promotion order dated 5.9.1995 for the post of Chief Travelling Ticket Inspector (CTTI).

ii) To direct respondents to cancel the entire selection procedure to hold fresh selection for the post of CTTI.

iii) To quash the list dated 24.5.1995 calling 29 persons for written test and thereafter the result declared on 18.7.1995 for respondents no. 4 to 14.

2. A selection for the post of Chief Travelling Ticket Inspector (CTTI) in the grade of Rs 2000-3200 was conducted by Divisional Railway Manager, North Eastern Railway Izat Nagar. 29 candidates were called for written test vide letter dated 24.5.1995 which included the applicant. The written test was conducted on 17.6.1995 and 24.6.1995. The result of the

written test was declared on 18.7.1995. The applicant did not pass in the same. Eleven candidates were declared successful. After conducting viva-voce test on 1.8.1995, panel of eleven candidates was notified vide letter dated 5.9.1995. Feeling aggrieved by being unsuccessful in the selection, the applicant has filed this application on 14.9.1995 with the reliefs detailed in para 1 above and impleading the eleven persons placed on the panel dated 5.9.1995 as respondents no. 4 to 14.

3. The applicant has laid the foundation of his case on the following grounds :-

i) The applicant alleges that in Varanasi Division of the same Railway for the same post, the promotions have been done based on seniority only while in Izat Nagar Division selection process has been followed. Thus the respondents have not followed uniform policy for promotion and, therefore, the panel declared vide letter dated 5.9.1995 is illegal.

ii) Ineligible persons have been included in the list of 29 persons vide letter dated 24.5.1995. The selection was for eleven general vacancies only and inspite of this, eight scheduled caste and scheduled tribe candidates were included in the list. Ten persons who had not completed 2 years of service in the lower grade of Rs 1600-2660/- as required for being eligible for promotion to the next grade were allowed to appear in the written test. Further the surplus staff of Loco Shed had been absorbed in the Commercial

Department and allowed seniority not from the date of absorption but counting the previous service in violation of the laid down rules. As such persons at S. No. 1, 2 and 5 of the list dated 24.5.1995 have been allowed to appear in the written test on the basis of wrong seniority. In view of these facts the entire list dated 24.5.1995 is illegal.

iii) Arbitrary and discriminating award of grace marks to some candidates to make them eligible for viva-voce test even though they had not passed in the written test.

iv) The whole selection has been manipulated violating the laid down rules with a malafide intention and to get the favourites selected. The question paper was leaked out and mass copying was allowed.

4. The official respondents have filed Counter reply through respondent no. 3. The official respondents no. 1 to 3 have strongly refuted the allegations of the applicants with regard to irregularities in the selection process. The respondents have explained that against eleven vacancies, 33 candidates were required to be called for the written test but only 29 candidates were available. It is also asserted that there was no reservation for the scheduled caste and scheduled tribe but the candidates belonging to the reserved categories have been included in the list on the basis of their own seniority. In respect of candidates with less than 2 years service in the lower scale, the respondents have explained that this has been done as per the extant rules and

such candidates if successful are to be promoted only after completion of two years of prescribed service. The respondents have also maintained that the seniority to the surplus loco shed staff absorbed in Commercial Department has been allowed as per the rules laid down. The respondents strongly refute the contention of the applicant that the question paper was leaked out and mass copying was done. The respondents contend that reference to promotion on Varanasi Division is irrelevant as the extant rules lay down selection process for promotion to the post of CITI. The respondents further contend that the entire selection has been done following the laid down rules. The applicant did not raise any objection at any time before the written test or soon after the written test. He made a representation only after the result of the written test was declared and finding him not successful. In view of these facts, the respondents pray that none of the grounds raised by the applicant survive. The respondents have also opposed the application on the plea that it attracts the principles of res-judicata as relief no. 1 in the present application is the same as included in O.A. no. 821 of 1995 filed earlier which was withdrawn by the applicant. Notices were sent to private respondents no. 4 to 14. Out of the same, respondent no. 4, 5 and 7 have jointly filed the Counter-reply. Respondent no. 14 has separately filed the Counter-reply. No reply has been filed by the other respondents. They also neither appeared in person nor through a Counsel. In view of these facts, we have proceeded ex-parte against respondent no. 6, 8, 9, 10, 11, 12 and 13.

6. In the Counter replies filed by respondents 4, 5 and 17 and 14, the averments made by the official respondents have been reiterated.

7. The applicant has filed the rejoinder reply for the affidavits of the official respondents, respondent no. 4, 5 and 7 and 14. While reiterating the contentions made in the original application, the applicant has narrated facts to lay down the foundation alleging malafide favouritism, nepotism and violation of the principles of natural justice.

8. As per order dated 21.5.1996, the official respondents were restrained from making any further promotion from the date till further orders. Respondent no. 4 - 13 had been already promoted from the panel at the time of passing of this order.

9. We have heard Shri A.B.L. Srivastava, Shri Prashant Mathur and Shri G.C. Gherana learned counsel for the applicant, official respondents and respondent no. 4, 5, 7 and 14 respective. The material brought on record has been carefully gone through.

10. From the submissions made by the applicant, it emerges that the applicant has made attack on two fronts. The first front is the inclusion of the ineligible persons in the list dated 24.5.1995 according to which the candidates have been called for written test and, therefore, praying for quashing of this list.

The second front is the irregularities in the conducting of the selection in respect of allocating of grace marks selectively, leaking of the question paper and mass copying etc. We will examine these two aspects hereafter to identify whether the selection process gets vitiated on account of any of these lapses.

11. In the list dated 24.5.1995, three defects have been highlighted by the applicant. The first one is the inclusion of the scheduled caste and scheduled tribe candidates in the list inspite of the fact that the promotion was to be done for eleven general posts and no reservation was to be provided. It is admitted fact that the selection was for eleven general category posts. The respondents have averred that for eleven vacancies to be filled, 33 candidates were required to be called for written test but against this only 29 eligible candidates were available. The respondents have also submitted that in the list of 29 eligible candidates, scheduled caste (S.C) and Scheduled Tribe candidates have been also included based on their own seniority and not because of reservation. The applicant in the rejoinder reply has not made any refutation of the seniority position indicated by the respondents. The applicant has only taken a plea that inclusion of the names of the candidates belonging to second S.T categories is against the law laid down by the Hon'ble Supreme Court in 'Virpal Singh Chauhan Vs. U.O.I' (ATJ 1995 (2) SC 569). The applicant has not brought the seniority list on record to support his contention. A seniority list at annexure A-5 has been brought on record by the applicant making an averment that except S. No. 1,2,3 of the list dated 24.5.1995, the rest of the candidates

included in the list are from this seniority list at A-5. We have perused the seniority list at A-5 and observe that this gives the seniority position as on 1.4.1978. Further the list is not complete and only gives an extract. On comparing this seniority list with the list dated 24.5.1995, we find that some of the names of the general candidates in the list dated 24.5.1995 are not appearing in the list at A-5. Similarly two reserved category employees at S.N. 97 & 98 are not included in the list dated 24.5.1995. In view of these observations, it is not clear whether the seniority list at A-5 is the valid list or the eligibility list has been prepared from some other seniority list prepared subsequently. In the absence of the relevant details being submitted by the applicant, we have no reasons to disbelieve the assertion of the respondents that the reserved category candidates have been included in the list dated 24.5.1995 on their own seniority which is what is held in the judgement of Virpal Singh Chauhan. The second defect pointed by the applicant is that those who had not completed two years of the service in the lower grade as per the eligibility criteria laid down have been allowed to be included in the list dated 24.5.1995. Respondents have countered this by stating that as per extant rules such candidates if successful and placed on the panel are allowed to be promoted only on completion of two years service in the lower grade. We have gone through para 215 (a) of I.R.E.M Volume I quoted by the respondents and agree with the contention of the respondents that there is no irregularity committed in including the names of such candidates in the list in whose case

the condition of two years service will stand fulfilled at the time of actual promotion. Thus this plea of the applicant is without any basis. The third irregularity in the list dated 24.5.1995 mentioned by the applicant is that the Loco Shed staff had been absorbed in the Commercial Department by allowing the seniority not from the date of joining in the Commercial Department but by counting their previous service. We have considered the averments made by the applicant in support of this contention. We find that except indicating the names, no material has been brought on record. The applicant has not linked the copy of the order according to which such candidates have been absorbed in the Commercial Department. The copy of the seniority list indicating the interpolation of the loco shed staff names in the list has not been also brought on record. The respondents have on other hand controverted this averment of the applicant stating that absorption of loco shed staff has been done by following the extant rules. We also note that seniority list in which the names of the loco shed staff have been included has not been challenged for quashing. In view of these facts, we are unable to appreciate any merit in the pleading of the applicant. Concluding we hold that none of the irregularities pointed out survive calling for quashing this list.

12. Now we take up the irregularities in the selection process. The first ground is that grace marks have been given to some candidates selectively to make them eligible for viva-voce test even. During the hearing, we asked the applicant the basis of making of this

assertion. The learned counsel of the applicant drew our attention to the letter dated 18.7.1995 (A-7) vide which the result of the written test and those called for viva-voce test has been notified. We had directed the respondents to make available the proceedings of the selection. On perusal of the proceedings of the selection and the letter dated 18.7.1995, we find that the allegation made by the applicant is misconceived and shows lack of understanding of the rules. In the list dated 18.7.1995, the candidates marked with (x) have been called for viva-voce test by adding notional marks for seniority. The learned counsel for the respondents asserted that this has been done as per the relevant rules and the same were shown to us. In fact we find that these rules have been brought on record by the applicant himself at RA-5. Under the heading "IV Allotment of Marks" in para 3 it is provided as under :-

"However candidates securing 60% marks or more in the aggregate in Written Test and for seniority shall also be called for viva-voce test. For this purpose the assigning of marks for seniority at the stage of determining the eligibility for calling for interview will be on notional basis..... ." We have carefully gone through the list of the candidates called for viva-voce list and find that those marked with (x) have been called for viva-voce by adding notional marks of seniority as per the rules laid down and extracted above. The applicants appears to have mistaken the notional marks of seniority as grace marks. In view of what is stated above, the allegation made by the applicant has no basis and is without merit.

13. The second ground alleging irregularities in the selection process is that the whole selection was manipulated, question paper was leaked out and the candidates were allowed to copy from the books. The applicant has also averred that he had brought out these irregularities in his representation dated 24.7.1995 (A-10). These are the submissions made in the original application. However in the rejoinder reply, the applicant has alleged malafide, favouritism and nepotism. The applicant has raised several new grounds in support of these allegations in the rejoinder reply which have been either taken in the original application nor in his representation dated 24.7.1995 made alleging irregularities in the selection. Both the counsel for the official as well as private respondents during arguments ~~axxkhexzaunaxaxaxkhexappkisank~~ pointed out that averments made in the rejoinder and which formed the basis of arguments of the counsel of the applicant during hearing are not in reply to any contentions made in the Counter replies. The counsel for the respondents also contended that rejoinder affidavit is meant to supplement Original Application and not become the original application as has happened in the present case. We are inclined to agree with the submission of the respondents. We, however, still propose to go into the merits of the issues raised based on the arguments advanced by the either side. The applicant has pointed that the irregularities in the selection procedure in respect of (a) the composition of the selection Committee was decided without the approval of General Manager is a violation of Rule 202-1 of Indian Railway Establishment Manual (I.R.E.M) Volume I (b) Shri K.L. Pandey who acted as Chairman of the

selection Committee was also entrusted with the setting up of the question paper contrary to the provisions made in para 204 (4) of I.R.E.M Volume-I. (c) Evaluation of answer sheets was done by Shri B.C. Tiwari, a junior Administrative grade officer and he was not competent and authorised to participate in the selection (d) the question paper did not contain objective type questions upto about 50% of the total marks as per the extant rules, (e) decoding of the roll numbers before evaluation of the answer books was not done as per instructions laid down in Railway Board's letter dated 30.3.1985 and this secrecy was not maintained. We have carefully considered these irregularities. So far as the irregularities (a) & (b) above are concerned after going through the paras of I.R.E.M relied upon, we find that the applicant is placing reliance on the wrong rules. These referred paras concern selection to Group 'B' posts and are not relevant to Group 'C' selection. For the other irregularities, the applicant except making these allegations has not brought any supporting evidence on record. In fact the applicant through a Misc. Application made a prayer for directing the respondents to produce the original records covering the question paper answer sheets of all the 29 candidates and tablution sheet giving the marks. Considering the facts of the case and the pleadings made in the original application, this prayer was not allowed. The applicant has not brought the question paper on the record stating that the question paper was not given but dictated in the examination Hall. If the procedure was against the rules, it is not understood as to why the applicant did not disclose in the original application or in his representation. As regards the decoding of the

roll numbers, it is expected to be confidential action and applicant has not revealed the source of this information. In fact from the pleadings of the applicant in the rejoinder reply and the thrust of the arguments during the hearing, the applicant expected the Tribunal to undertake a roving inquiry on the allegations made by the applicant by calling of the records. The Tribunal cannot undertake such an inquiry when the applicant makes averments on assumption and surmises and then makes prayer to the Tribunal to verify the same. We are afraid that we are unable to undertake such an inquiry and go into the merits of the allegations in the absence of the specific details. In this view of matter, we have no hesitation to hold that there is no merit in the irregularities pointed out.

14. The applicant has also contended that the question paper was leaked out and mass copying was allowed. The respondents have strongly refuted these allegations. We have carefully considered the averments of the applicant. As regards the leakage of the question paper, the applicant has not brought any documentary evidence on record to establish this fact. We also note that the applicant has brought out this fact in his representation dated 24.7.1995 after the result was declared after a period of almost one month after the written test was held. If the question paper was leaked out and the applicant felt aggrieved then it is not understandable as why he did not bring this fact to the notice of the concerned authority.

immediately instead of waiting for the result to be declared. We feel that this allegation has been made to lend support to his plea for quashing the selection after having failed in the same. We are, therefore, inclined to agree with the submission of the respondents. In respect of mass copying, the applicant has not given any details in the original application. However, from his representation dated 24.7.1995, we find that he has alleged that Shri B.C. Tiwari Assistant Commercial Superintendent helped and three candidates namely Shri C.M. Misra, Shri Tripathi and Shri U.N. Dubey (who are the respondents in the application) by allowing them the use of books and also by giving dictation to them. The applicant has not made any averment whether he raised any objection against the same in the examination Hall. He also did not complain against this immediately after the written test was conducted. In the rejoinder reply also where detailed averments have been made with regard to irregularities in the selection process no such allegations have been made. No allegation of malafide has been made against Shri B.C. Tiwari. He has not been also made party by name. In the light of these facts, we are unable to appreciate any merit in this allegation.

15. The applicant has also alleged manipulation of the selection. Except making this statement in the original application, the application has not come out with any details to support his contention. In the rejoinder, the applicant has gone further to allege malafide, favouritism and nepotism. The applicant has made these allegations in general without naming the persons responsible for the same. No one has been

made as respondents by name. As indicated above, the applicant has not laid down the ground for these allegations in the original application. In the rejoinder reply some averments have been made on this context, we have carefully considered the same and find that these ground are too flimsy to demonstrate any malafide, favouritism and nepotism. Mere making of such allegations is not suffice. Adequate material needs to be brought on record when selection is challenged on such grounds. The respondents have strongly refuted these allegations and considering the facts and material on record we are convinced that there is no merit in these allegations.

16. One of the grounds taken by the applicant is that on the same Railway for the same post, the promotions have been done by the process of treating as non selection posts based on seniority and fitness while on the Izat Nagar Division it has been treated as a selection post. The applicant has not brought on record any document on record to support this submission. The applicant has also not linked any rules according to which the action taken by Varansi Division was in order. The applicant has also not averred that the selection done by the Izat Nagar Division was against the rules. The only plea taken is that of discrimination by following different policy in the various Divisions of the same Railway. Since the applicant has not specifically stated that selection done by the Izat Nagar Division is not as per rules and he has also not brought the relevant rules on the record, we have no reasons to disbelieve the stand of the respondents. Looking from the other angle also, if for a moment the contention of the applicant is accepted, then an

irregular action against the rules will not give right to the applicant to seek relief based on similar violation of the rules by the Izat Nagar Division. Discrimination cannot be pleaded on the basis of action taken against the rules for claiming similar benefit by violating rules. Keeping these observations in view this plea taken by the applicant is also not tenable.

17. From the deliberations above, it is clear that the applicant appeared in the written test without raising any ~~ha~~ objection against the list of the eligible candidates dated 24.5.1995. He also did not represent about the irregularities in the conducting of the written test as soon as the test was over. He made first representation only on 24.7.1995 i.e, after the result of the written test was declared. It is thus obvious that the applicant appeared in the written test taking a calculated chance. Only on being unsuccessful and the result being not palatable to him, he has turn around to contend that eligibility list was illegal and selection was manipulated alleging malafide action, favouritism and nepotism. In this connection, we refer to the judgements cited by the respondents (a) V.R. Gopenathan & others Vs. U.O.I((1989) 11 ATC 178). This judgement relying on the judgement of the Apex Court in "Prakash Shukla Vs. A.K. Shukla" has held that applicants having appeared in the selection could not challenge the list taken on after being

unsuccessful. (b) C.P. Kalra Vs. Air India and others (1994) ATC 10 (Supreme Court). Here it is held that a selection process cannot be interfered with vague allegations made by the unsuccessful candidate. In this view of the matter also, the applicant has no case to challenge the selection.

18. The counsel of the applicant has cited a large number of case laws during the hearing in support of thrust of his arguments that the selection vitiated by procedural lapses and other irregularities deserves to be quashed. Some of the cited judgements are (i) Phool Singh of State of Haryana (1994 SCC (L&S) 1240) (ii) Krishnan Yadav Vs. State of Haryana and others (1994 SCC (L&S) 937) (iii) Union of India and others Vs. Anand Kumar Pandey & others (1994 SCC (L&S) 1235) (iv) Naresh Dutt Vs. U.O.I (1995 (2) ATJ 310) (v) Mahuya Sen Gupta and others Vs. U.O.I (1995 (2) ATJ 521) (vi) K. Venogopalan Navi Vs. Chief General Manager Telecom Kerala Circle and others (1995 (1) ATJ 383). We have gone through these judgements. In these judgements findings are recorded that the selection process was vitiated by irregularities, favouritism, arbitrariness and mass scale copying etc. and accordingly the entire selection was quashed. In the present case we have carefully considered the grounds taken by the applicant praying for quashing of the selection and recorded our findings above that none of the irregularities and lapses are sustainable which could vitiate the selection. In view of this, what is held in the cited case laws is not of much help to this case of the applicant. In view of this, we are not undertaking case by case review of what is held

in the individual cases.

19. The respondents have also opposed the application on the plea that it is hit by the principle of res-judicata. The respondents have contended that the applicant had earlier filed O.A. no. 821 of 1995 in which the relief no. 2 is virtually the same as relief no. 1 in the present application and O.A. no. 821 / 1995 had been withdrawn without any permission to file fresh application. The applicant has brought on record the order dated 26.9.1995 passed by the Tribunal permitting withdrawal of O.A. no. 821/1995. On perusal of the same, we note that in the order it is recorded that since the applicant has already filed another O.A., the permission to file fresh O.A. would not be necessary. In view of this order, we are unable to accept the plea of res-judicata raised by the respondents. This objection, therefore, is not sustainable.

20. In view of the above discussions, we come to the conclusion that there is no merit in the application and the same deserves to be dismissed. The application is accordingly dismissed with no order as to costs. The stay order dated 21.5.1996 is vacated.

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MEMBER (J)

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