

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

....

Original Application No. 1480 of 1998
this the 20th day of July 2001.

HON'BLE MR. S. DAYAL, MEMBER (A)
HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

1. Keshav Dattatreya Abhyanker, S/o Sri D.N. Abhyanker aged about 56 years, and working as Head Clerk in the office of the Chief Workshop Manager, Central Railway, Workshop, Jhansi.
2. Om Prakash Chaturvedi, S/o Sri Laxmi Narain, aged about 56½ years and working as Head Clerk in the office of the Chief Workshop Manager, Central Railway Workshop, Jhansi.
3. Om Prakash Tewari, S/o Sri Vithal Lal Tewari, aged about 54 years, and working as Head Clerk in the office of the Chief Workshop Manager, Central Railway, Jhansi.

Applicants.

By Advocate : Sri M.P. Gupta, & S.K. Misra.

Versus.

1. Union of India through the General Manager, Central Railway, C.S.T. (Mumbai), (Maharashtra)
2. Chief Workshop Manager, Central Railway Workshop, Jhansi.

Respondents.

By Advocate : Sri G.P. Agrawal.

With

Original Application No. 1129 of 2000.

1. P.K. Sahgal, aged about 46 years, S/o Sri O.P. Sahgal, R/o 20 Silwatganj, Jhansi.

2. J.P. Nayak, aged about 57 years, S/o Sri Baboo Prasad, R/o Railway Colony, Garhia Road, Jhansi.
3. Abdul Latif Khan, aged about 58 years, S/o Sri R/o Puliya No. 9 Jhansi.
4. Syed Goss, aged about 59 years, S/o Sri R/o Imam Bara, Gariah Phatak, Jhansi.
5. Devi Prasad Sharma, aged about 59 years, R/o Khera, Garia Phatak, Jhansi.
6. Khubi Ram, aged about 51 years, S/o Sri Harcharan Lal Misra, R/o Ratanpura, Nagra Jhansi.
7. B.K. Gupta, aged about 52 years, S/o Sri T.P. Gupta, R/o Deen Dayal Nagar, Khati Baba, Jhansi.
8. Sunder Lal, aged about 50 years, S/o Sri Patram, R/o Khusipura, Jhansi.
9. Har Prasad, aged about 53 years, S/o Sri Vishan, R/o Gurdwara, Sipri Bazar, Jhansi.
10. Imam Khan, aged about 54 years, S/o Sri Subrati Khan, R/o 136, Toriya Narsingh Rao, Jhansi.

Applicants.

By Advocate : Sri R.K. Nigam.

versus.

1. Union of India through General Manager, Central Railway, Jhansi.
2. Chief Workshop Manager, Central Railway Workshop, Jhansi.
3. Senior Personnel Officer, Central Railway, Workshop, Jhansi.
4. Sri A.K. Shandilya, Sr. Personnel Officer, Central Railway Workshop, Jhansi.

Respondents.

By Advocate : Sri G.P. Agrawal.

With

Original Application No. 1225 of 2000.

1. S.K. Saxena, aged about 47 years, S/o Sri B.D. Saxena, R/o 904, Khoti Baba, Dildarnagar, Jhansi.

2. R.S. Misra, aged about 58 years, S/o Sri Jagan Nath Misra, R/o Prem Nagar, Jhansi.
3. Harnam Singh, aged about 56 years, S/o Sri Sabarjeet Singh, R/o 570, Kund Patha Nandanpura, Jhansi.
4. Pratap Singed, aged about 57 years, S/o Sri Hardeo Singh, R/o 183/2, outside Datiya gage, Jhansi.

Applicants.

By Advocate : Sri T.S. Pandey.

Versus.

1. Union of India through General Manager, Central Railway, Bombay.
2. Chief Workshop Manager, Central Railway Workshop, Jhansi.
3. Senior Personnel Officer, Central Railway Workshop, Jhansi.
4. A.K. Shandilya, Senior Personnel Officer, Central Railway Workshop, Jhansi.

Respondents.

By Advocate : Sri G.P. Agrawal.

With

Original Application No. 1272 of 2000.

1. Harnam Singh, aged about 56 years, S/o Sri Sabarjeet Singh, R/o 570 Kundpatha Nandanpura, Jhansi.
2. Pratap Singh, aged about 57 years, S/o Sri Hardeo Singh R/o 183/2 outside Datiya Gate, Jhansi.

Applicants.

By Advocate : Sri T.S. Pandey.

Versus.

1. Union of India through General Manager, Central Railway, Bombay.
2. Chief Workshop Manager, Central Railway Workshop, Jhansi.
3. Senior Personnel Officer, Central Railway Workshop, Jhansi, and 13 others.

Respondents

By Advocate : Sri G.P. Agrawal, & Sri R.G. Soni.

With

Original Application No. 1512 of 2000.

1. Keshav Dattatreya Abhyanker, aged about 58 years, S/o D.N. Abhyanker, working as O.S. Gr.II in the office of the Chief Workshop Manager, Central Railway Workshop, Jhansi.
2. Om Prakash Chaturvedi, aged about 58 years, S/o Sri Laxmi Narain working as O.S. Gr.II in the office of the Chief Workshop Manager, Central Railway Workshop, Jhansi.
3. Om Prakash Tewari, aged about 56 years, S/o Sri Vthal Lal Tewari working as O.S. Gr.II in the office of the Chief Workshop Manager, Central Railway Workshop, Jhansi.

Applicants.

By Advocate : Sri M.P. Gupta.

Versus.

1. Union of India through the General Manager, Central Railway, C.S.T., Mumbai (Maharashtra).
2. The Chief Workshop Manager, Central Railway, Workshop, Jhansi.

Respondents.

By Advocate : Sri G.P. Agrawal.

O R D E R (ORAL)

S. DAYAL, MEMBER (A)

These five C.A.s which have been heard together as they are related to the selection on the post of Office Superintendent Grade-II (O.S. Gr.II in short), which have been carried-out in the year 1998 and 2000 and they are being disposed of by a common and consolidated order.

2. In O.A. No. 1480 of 1998 the relief sought is for a direction to the respondents not to fill the vacant post of O.S. Gr. II on the basis of the combined selection test held on 27.10.98. Further relief is that directions be issued to the respondents to fill the vacant post of O.S. Gr. II on yearly basis by considering only such of the persons as were eligible for a particular year.

3. In O.A. no. 1129 of 2000, the applicant has sought/setting-aside the panel proceedings held on the basis of the letter dated 27.9.2000. A further relief is sought for maintenance of status quo in respect of the applicant nos. 1 to 5 who were officiating as O.S. Gr. II.

4. In O.A. No. 1225 of 2000 the relief sought is for setting-aside the panel and posting order dated 27.9.2000 and 13.10.2000. A further direction is sought to the respondents to regularise the applicants on the post of O.S. Gr. II.

5. In O.A. No. 1270 of 2000, the relief sought is for setting-aside the second selection dated 19.6.2000 and 10.7.2000 and reversion and promotion order dated 3.11.2000 as well as cancellation order dated 13.11.1999. A direction is also sought to the respondents to regularise and confirm the applicant on the post of O.S. Gr. II in pursuance of the first selection held on 27.10.98 and 30.10.98.

6. In O.A. No. 1512 of 2000 the relief sought is to restrain the respondents from conducting the selection test for the accumulated 32 posts of O.S. Gr. II. A further direction is sought to the respondents to conduct the selection test for the post of O.S. Gr. II yearlywise by calling only such candidates to appear who were eligible to appear for that particular year only. It is also prayed not to promote any person upon the post of O.S. Gr. II

till the issue of clubbing of vacancies is decided.

7. All the applicants belong to the cadre of Head Clerks in the Central Railway and claimed eligibility for promotion to the post of O.S. Gr. II. Some of the applicants have been promoted to the post of O.S. Gr. II on adhoc basis. After holding the selection in the year 1993, the respondents held the next selection in the year 1998 clubbing the post of O.S. Gr. II, which had fallen vacant from the year 1994 onwards. The selection held in the year 1998 was cancelled in the year 1999 and another selection was held in the year 2000. Thus, the vacancies from 1994 to the year 2000 got clubbed and were filled-up by one selection. One of the applicants has challenged the selection held in the year 1998 on the ground that the selection was held for the vacancies of the year 1994 to 1998 in that selection and thus, clubbing was done, which is not permitted by law.

8. We have heard the arguments of Sri T.S. Sri R.K. Nigam Pandey and M.P. Gupta for the applicants and Sri Lalji Sinha as well as Sri G.P. Agrawal for official respondents and also Sri R.G. Soni for private respondents.

9. The learned counsel for the applicants have challenged the order of cancellation of the selection held on 27.10.98 and 30.10.98 by order dated 13.11.99 on the ground that it was cancelled by an authority which was not competent to do so. The learned counsel for the applicants in this connection argued that Chief Workshop Manager (C.W.M. in short) who cancelled the selection did so against the provisions of Indian Railway Establishment Manual (I.R.E.M. in short). The learned counsel for the applicants have invited attention towards para 219-K of

I.R.E.M. in which it has been provided that the list will be put up to the competent authority for approval. Where the competent authority does not accept the recommendations of a Selection Board, the case could be referred to the General Manager, who may constitute a fresh Selection Board at a higher level, or issue such other orders as he considers appropriate.

10. We do not find this contention of the learned counsel for the applicants acceptable on two counts. First is that the list on the basis of the selection test held on 27.10.98 and 30.10.98 claimed to have been drawn-up by the respondents is a fact which has not been established and the selection was cancelled after written examination and viva voce. Therefore, the provisions of para 219-K of I.R.E.M. would not be attracted. Secondly, the learned counsel for the applicants have also advanced their contention that the selection should be held year-wise and the selection held in the year 1998 violated this very requirement.

11. The learned counsel for the applicants have further stated that the cancellation order dated 13.11.99 regarding the selection for the post of O.S. Gr. II held on 27.10.98 and 30.10.98 was made without any reason and also without any opportunity, which is contrary to the provisions of para 216-A(b) of I.R.E.M.

12. We do not find any provision of para 216-A(b) of I.R.E.M. applicable to the case of cancellation. The respondents have stated that the selection was cancelled on account of vigilance enquiry and on the recommendations of Deputy General Manager (Vigilance). In such a situation, we do not agree with the proposition that the candidates who appeared in the selection was to be given a notice before

Ans

cancellation or that order has to give a detailed reasons for such cancellation. The candidates for selection had acquired no vested rights and circumstances of cancellation after vigilance enquiry is a valid enough ground for cancellation.

13. The learned counsel for the applicants have invited attention to the provisions of para 216 of I.R.E.M., which provides as under :

"216- In regard to selection posts, it is essential that all the selections are conducted annually in a regular manner. However, where holding of the next selection becomes necessary before a gap of one year on account of the panel getting exhausted, the earlier selection not throwing up adequate number for empanelment/promotion etc., the same may be held after a minimum time gap of six months from the date of approval of the panel finalised as a result of the first selection. This condition of six months restriction between selections will not, however, apply to general selections which are conducted by calling options from serving employees fulfilling the prescribed eligibility conditions."

14. The learned counsel for the applicants have further contended that by clubbing of vacancies after 1993, the interest of the applicants have been adversely affected because zone of consideration increased and persons far juniors to the applicants also came within the zone of consideration thereby making the selection of the applicants harder than it could have been the vacancies have not been clubbed.

15. The learned counsel for the respondents have filed Counter, Supplementary Counter reply in which they have mentioned the yearwise position of vacancies. It is stated that a selection was held on 6.9.93/10.9.93 in which none of the applicants were eligible to be called as they were not within the zone of consideration. The result of the said selection was declared on 31.8.95. It is further stated that this was a result of restructuring for eight vacancies as on 1.3.1993. Since the selection is not challenged before us, therefore, the facts regarding

he

l are germane
the selection ~~was~~ not germane to the present controversy.

16. The learned counsel for the respondents in his Supplementary Counter reply have also shown that there were 14 vacancies in 1994 which included five future vacancies and one anticipated vacancy and 11 of the applicants in these five O.As were eligible namely S/Sri S.K. Saxena, Pratap Singh, R.S. Misra, K.D. Abhyankar, Sayyed Gaush, J.P. Naik, P.K. Sahgal, O.P. Chaturvedi, D.P. Sharma, Abdul Latif Khan & Harnam Singh. It is stated that in the year 1995 there were 23 vacancies which consisted of eight future vacancies and two anticipated vacancies. In that year, some more applicants became eligible for consideration. It is mentioned that on 1.1.96 there were 25 vacancies which consisted of three future vacancies and one anticipated vacancy and 15 of the applicants were eligible for the said vacancies. In 1997, there were 23 vacancies and 16 of the applicants were eligible for consideration. In the year 1998, there were 25 vacancies and 17 of the applicants were eligible for consideration. The respondents have not given the vacancies as on 1.1.1999. In 2000, there were 32 vacancies and all the 17 applicants in the aforesaid 5 O.As were within the zone of consideration as they were in 1998. It is the contention of the respondents that the interest of the applicants were not jeopardized because they were also considered in the year 2000 when the selection for 32 vacancies was held, but they could not be selected having appeared in the selection test held in 2000. They are now stopped from claiming any relief and cannot challenge the selection held in the year 2000.

17. We have considered the facts mentioned in O.A. no. 1272 of 2000 in which S/Sri Harnam Singh & Pratap Singh had made a representation against illegal cancellation of the order dated 13.11.99 and the illegal selection to be held on 9.6.2000 and 10.7.2000. This letter addressed to

C.W.M. is dated 5.6.2000 and it has been mentioned that they discussed the issue of cancellation of second selection to be held on 19.6.2000 and 10.7.2000 because so many juniors had been called in the said selection, but Sri A.K. Shandilya refused to cancel the said selection and the applicants seriously apprehended that they shall be declared un-successful. On assurance given by C.W.M. that the selection would be held fairly, the applicants appeared under protest in this selection, on assurance that the applicants shall be regularised and confirmed on the post of O.S. Gr. II in continuation of the previous selection held on 27th October '98 and 30th October '98. The respondents have denied the receiving of any representation and called it a manufactured document.

18. We have, however, to consider the main issue of impact of clubbing of vacancies on the said selection. In Supplementary Counter reply filed by the respondents, it is quite clear that the zone of consideration of candidates would have been smaller in the year-wise vacancies had been worked-out and year-wise selection were conducted as required under the Rules. The reasons for not conducting the said year-wise selection given by the respondents are that there were cases pending due to which the seniority list could not be considered as valid and hence the selection was not held. There is no contention advanced by the respondents that there was any interim injunction on selection for the post of O.S. Gr. II. The reasons that the seniority list could not be acted-upon are not convincing that it could not be taken as final due to apprehension that it could be challenged by the candidates on the ground of communal roster or any other reason. Such a challenge even if made could not prevent the respondents from carrying-out the selection on the basis of the then existing seniority list. We have the benefit of seeing the seniority list of Head Clerks/ Head Time Keeper of 1.1.1993, 1.1.1994, 1.1.1995, 1.1.1996,

and 1.4.1997 which are annexed to the Supplementary Counter reply as Annexure nos. II, III, IV, V, VI & VII and thus the ground of non-finalisation of seniority list is clearly not tenable.

19. The learned counsel for the applicants have placed before us a decision of Allahabad High Court in the case of Smt. Shakuntala Shukla Vs. State of U.P. & Others (1998) 2 UPLBEC 1093) in which the Hon'ble High Court considered the promotion from the post of Sub-Inspector to the post of Inspector by selection and held that the vacancies which occurred from 1991 to 1997 should not have been clubbed, but should have been taken the vacancies of each year separately and should have considered the persons eligible in that particular year only that they should not have clubbed all the vacancies together, otherwise the chances of selection of the senior persons get reduced. The learned Judge of the High Court had relied-upon the decisions of the apex court in the case of Syed Khalid Rizvi Vs. Union of India & Others (1993 Suppl.(3) SCC 575) and Union of India & Others Vs. Vipin Chandra Hira Lal (1996 (6) SCC 721). In both the cases, it was held that selections should ordinarily be held every year and the clubbing of the vacancies of several years in a combind-select is illegal. The learned counsel for the respondents have chosen to rely-upon the decision of Principal Bench in O.A. no. 634/92 which declared the selection held for the post of Ticket Collector in the railway by bunching of the vacancies as illegal. However, they have not reverted the candidates, who have already been selected and appointed, nor subjected to any fresh selection. The name of such persons were directed to be interpolated for the purposes of inter-se seniority in the year-wise panels of the year in which they have come in the zone of consideration on the basis of the marks obtained by them. It is also provided that framing of yearwise panels duly incorporating the names of the persons who were already in service on the above basis.

If the respondents found that they have more persons on the select list than the number of vacancies available, none of the persons, who were already promoted, and they have to be adjusted against the future vacancies. The Union of India had challenged this decision in Civil Appeal No. 1426-1427 of 1995 before the Apex Court. The Apex Court affirmed the order passed by the Principal Bench in O.A. no. 634/92.

20. The learned counsel for the applicants contended that the applicants should be regularised as they have been working on adhoc basis for a number of years. We find from the order of adhoc promotion in O.A. no. 1225 of 2000 that all the four applicants were promoted on adhoc basis w.e.f. 3.1.94 and adhoc promotions were made subject to the stipulation that promotions were temporary and on adhoc basis and promoted employees have no right to continue on their posts.

21. We find that all the applicants had appeared in the selection for promotion held in the year 1998 and 2000, but had not qualified in the year 2000. The claim that they had qualified the selection in the year 1998 cannot be verified as no select list of 1998 was prepared. Hence, we do not consider it necessary to issue any direction to the respondents to consider the cases of the applicants for regularisation outside the rules.

22. The learned counsel for the respondents have mentioned that the present O.As are not maintainable as all the persons selected in the selection held in the year 2000 have not been impleaded as respondents. We find that in O.A. no. 1272/00 13 persons included on the select list have been impleaded and they are represented by the learned counsel Sri R.G. Soni, who has filed their Counter affidavit in this case. Since the issue in this case is of holding

ll

selection as per the provisions of I.R.E.M. and the selections held in the year 1998 and 2000 were not in accordance with the said provision, therefore, we do not consider that there is any infirmity in the applications filed by the applicants on account of non-impleadment of all the persons on the select list. Since the clear law incase of such selection is that they have to be held annually than reduce the expansion in the zone of consideration and adverse impact on the choice of senior persons could have been selected, we set-aside the selection held on 10.7.2000 and set-aside the order dated 3.11.2000. We, in line with the order of Principal Bench in the case of R.N. Gautam & Others Vs. Union of India & Others, provide for following :

(i) Pending the holding of selection on the basis of yearwise vacancies and framing of yearwise panels, the candidates who have already been selected and appointed should not be reverted.

(ii) Such candidates would not be subjected to any fresh selection.

(iii) The name of such persons would be interpolated for the purpose of inter-se seniority in the yearwise panels of the year in which they would have come in the zone of consideration and qualified. After framing of yearwise panels duly incorporating the names of the persons who are already in service on the above basis, if the respondents find that they have more persons on the select list than the number of vacancies available, none of the persons who are already promoted shall ~~not~~ be reverted and ^{they are} shall be adjusted against the future vacancies.

(iv) The respondents shall carry-out the aforesaid directions within a period of four months from the date of communication of this order.

23. All the five O.As stand allowed as above.
The parties shall bear their own costs.

Sd -
J.M.

Sd -
A.M.