

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 29th day of October 2003.

Original Application no. 1281 of 2003.

Hon'ble Mrs. Meera Chhibber, Member (J)  
Hon'ble Mr. D.R. Tiwari, Member (A)

Abdhesh Kumar Tiwari, S/o Sri R.C. Tiwari,  
R/o 282, C.P. Mission Compound, Jhansi.

... Applicant

By Adv : Sri O.P. Gupta

Versus

1. Union of India through G.M. North Central Railway,  
Allahabad.
2. Divisional Railway Manager (P), Jhansi.
3. Ajay Sehgal, S/o Sri M.L. Sehgal,  
R/o F-199, Railway Colony West, Jhansi.

... Respondents


By Adv : Sri K.P. Singh

ORDER

By Hon. Mrs. Meera Chhibber, JM.

By this OA, the applicant has sought for direction to respondent no. 2 to declare the final result on remaining vacant post of general category also, as notified on 2.1.2003 by ignoring the candidature of respondent no. 3 at present, and if applicant has succeeded in above selection by obtaining more than 60% marks, he may be declared successful and his name may be included in the panel dated 22.8.2003, by giving all consequential benefits of empanelment. He has also prayed that candidature of respondent no. 3 in above selection may be cancelled in view of the fact that he does not fulfil the eligibility condition as stated above.

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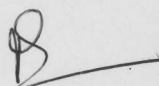
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2. Today, when the matter came up, learned counsel for the applicant submitted that he shall be challenging the candidature of respondent no..3 in the selection by getting himself impleaded in OA no. 256 of 2003 filed by respondent no. 3. Therefore, for the time being he is not pressing ~~subsequent~~ <sup>the said B</sup> relief of this OA. He is given liberty to file application in OA no. 256 of 2003 and to take this submission in that OA.

3. It is submitted by learned counsel for the applicant that vide notification dated 2.1.2003, 8 vacancies for the post of Loco Inspector were notified, out of which 03 posts were meant for general category, 04 posts were meant for SC category and one post for ST category. List ~~for~~ <sup>of B</sup> those candidates, who were eligible to appear in the said selection, was annexed with the notification dated 21.02.2003 (pg 7), wherein the applicant's name figured at sl no. 52. The applicant appeared in the written test along with other ~~eligible~~ <sup>elig</sup> candidates and the result there-of was declared on 22.8.2003, whereby only four persons were said to have been found eligible for viva-voce test. In the said letter the applicant's name figured at sl no. 04 (pg 12). Accordingly, the applicant also appeared for viva-voce, but in the result declared ultimately only 2 persons were shown ~~has~~ having passed in unreserved category vide letter dated 22.8.2003 (pg 40). There is a note mentioned in this letter which reads as under:-

"One post of unreserved category has been kept vacant subject to the final outcome of the petition of Shri Ajay Sehgal V/s UOI and others O.A. no. 256/03 at CAT.ALD."

4. Learned counsel for the applicant submitted that there was no need to keep this post as vacant because in



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the order passed by this Tribunal in case of Ajay Sehgal in OA no. 256 of 2003, there was no such direction. He has annexed the order dated 17.3.2003 passed by this Tribunal in OA no. 256 of 2003. The operative portion of the same reads as under :-

"Considering the facts and circumstances and the fact that applicant no. 1 was serving as Loco Inspector on the date when notification was issued and applicant no. 2 had completed more than 3 years Foot Plate experience as Goods Driver, there may be permitted to appear in the written test scheduled to be held on 23.3.2003 and 29.03.2003. Respondents no. 2 and 3 are accordingly directed to allow the applicants to appear in the written test for selection to the post of Loco Inspector scheduled to be held on 23.3.2003 and 29.3.2003. However, it is made clear that the applicants appearance in the written test shall be provisional and subject to the orders passed in this O.A."

5. Learned counsel for the applicant has submitted that since Sri Ajay Sehgal was allowed to appear in the test provisionally, obviously his result cannot be declared, but that does not mean that the result of other successful candidates <sup>should</sup> <sup>be</sup> <sup>also</sup> not declared. Therefore, there is no justification to with-hold the result of the applicant ~~or~~ <sup>in</sup> the present case.

6. Learned counsel for the respondents submitted that since Sri Ajay Sehgal was permitted to appear in the test provisionally and subject to the order passed in the OA they had kept one post vacant, so that ultimately, if the said OA is allowed, he could <sup>be given</sup> the benefit of said selection. However, learned counsel for the respondents sought time to file reply to the OA after taking more instructions

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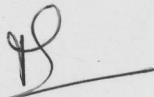
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from the department.

7. We have heard learned counsel for the parties, considered their submissions and perused records.

8. The facts, as narrated by the applicant in the OA, are absolutely clear and it is seen from the order passed by this Tribunal in case of Sri Ajay Sehgal that he was allowed to appear in the written test provisionally and <sup>whether</sup> ~~he~~ <sup>had a</sup> right to appear in the test is yet to be adjudicated upon (OA no. 256/03) finally after pleadings in the said case <sup>all</sup> ~~over~~ <sup>because</sup> and after hearing both the parties. Simply, ~~in case~~ he was allowed to appear in the written test provisionally it would not give him right to hold the post and to deprive other successful candidates from getting appointment on the said post. Since he had been allowed to appear provisionally in the written test, the respondents cannot declare the result of the said selection, <sup>as far as he is concerned B</sup> but none-the-less those who were eligible <sup>are B</sup> as per respondents, appeared in the selection and found successful, should not be deprived of their appointment/promotion. The right of Sri Ajay Sehgal can ~~never~~ always be protected by mentioning in the final order that these promotions are subject to the out-come of OA no. 256 of 2003. Perusal of the final result shows that the respondents have kept ~~one~~ unreserved category as vacant. According to us there was no need to keep this post vacant, firstly because there was no such direction to keep the post vacant and secondly, because even after declaring the result of third candidate, the right, if any, of Sri Ajay Sehgal could ~~not~~ still have been protected by making the said promotion

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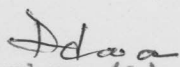


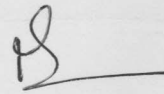
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subject to the outcome of OA no. 256/03 filed by Sri Ajay Sehgal.

9. In view of the above discussion, we do not think any necessity to call for counter affidavit from the respondents. Therefore, this OA is being disposed of at the admission stage itself by giving direction to respondent no. 2 to declare the result of the applicant and in <sup>this B of</sup> case, ~~he~~ <sup>if</sup> he is found successful, issue promotion order in his favour. However, it should also be mentioned in the said order that this promotion is subject to the outcome of OA no. 256 of 2003. It goes without saying that the candidates, who were found successful, <sup>are entitled to B</sup> ~~shall~~ get promotion and the applicant would also be entitled for promotion <sup>from same B</sup> ~~from same B~~ <sup>B</sup> ~~date in case he is found successful B~~ <sup>B</sup>. This exercise shall be completed within a period of two <sup>weeks B</sup> ~~weeks~~ from the date of communication of this order. ~~or~~ finally at the admission stage.

10. With the above direction the OA is disposed of at admission stage itself with no order as to costs.

  
Member (A)

  
Member (J)

/pc/