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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 744 of 2006

Wednesday, this the 19th day of December, 2007

**Hon'ble Mr. G. George Paracken, Member (J)
Hon'ble Mr. K.S. Menon, Member (A)**

1. Vijendra Kumar I, s/o Shri Chandan Singh.
2. Ajay Kumar Pathak, S/o Shri H.N. Pathak.
3. Chandra Prakash VII, S/o Shri Jagdish Singh.
4. Awadhesh Kumar, S/o Shri B.L. Sharma.

All posted as Driver (Goods) Moradabad Shed,
Northern Railway, Moradabad Division, Moradabad.

Applicants

By Advocate Sri M.K. Sharma

Versus

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Moradabad Division, Moradabad.
3. Senior Divisional Manager, (Operating), Northern Railway, Moradabad Division, Moradabad.
4. Senior Divisional Personnel Officer, Northern Railway, Moradabad Division, Moradabad.

Respondents

By Advocate Sri Avnish Tripathi

ORDER

By K.S. Menon, Member (A)

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 challenging the impugned panel for promotion to Loco Pilot Passenger Grade (Rs.5500-9000) dated 18.04.2006 issued by respondent No.2, in which the applicants' names do not appear even though they have passed the written test held in pursuance of the notification dated 01.07.2005.

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2. The facts of the case in brief are that the respondents issued a notification dated 01.09.2004 for selection to the post of Driver Passenger Grade (Rs.5500-9000) and eligible candidates were called for a Written Test which, however, as per the applicants, was not held due to pendency of a Court case, pertaining to seniority. The respondents thereafter issued another notification dated 01.07.2005 (Annexure A-II of the O.A.) for selection of Loco Pilot Passenger Grade Rs.5500-9000/- and called candidates for a Written Test between 26.07.2005 and 18.10.2005. The applicants all working as Driver (Goods) in the grade Rs.5000-8000/- appeared in this Written Test and were declared successful as per results declared on 12.12.2005 (Annexure No. III) and their names feature at serial No. 138, 144, 179 and 196 respectively of the successful list dated 12.12.2005. However, in the panel of 140 names drawn up on 18.04.2006 and consequent posting order dated 21.04.2006 on the basis of the said written examination, the applicants' names were not included. Hence they filed the present O.A., with a prayer to direct the respondents to include their names in the panel dated 18.04.2006 for promotion to the post of Loco Pilot Passenger Grade Rs.5500-9000/-. The applicants contend that the vacancies should be 207 as per the O.A. and 223 as per the Rejoinder Affidavit on the basis of guidelines drawn up in accordance with paragraph No. 215 of I.R.E.M. Vol. I besides the cut off date for eligibility was 01.07.2005 i.e. date of notification and all the eligible candidates including the applicants were within the zone of consideration. Applicants further submit that the Top Sheet at Annexure IV of the O.A. shows existing vacancies as $155+20=175$ plus 20% of anticipated vacancies for unforeseen contingencies would come to 207 vacancies. As per this calculation, the applicants' names should have featured in the panel drawn up. Hence preparation of the panel of 140 names and exclusion of the applicants' names is arbitrary and in violation of the provisions of I.R.E.M. Volume I. Subsequently, the respondents obtained permission to initiate another selection process for 112 posts within six months of the preparation of the earlier panel and accordingly issued a notification dated 29.08.2007 for holding viva voce tests. In view of this, applicants have sought directions from this Court to the respondents not to hold the selection to the post of Loco Pilot Passenger Grade Rs.5500-9000/- without permitting the applicants who have already passed the Written Test earlier, to appear in the said selection process. They have further sought staying of the impugned notification dated 29.08.2007. The notification for holding the viva voce test was not stayed vide order of

this Tribunal dated 19.09.2007, however, liberty was given ^(2u) to the applicants, to appear at the scheduled viva voce tests, if eligible, but the results were to be kept pending till the final outcome of this O.A.

3. The respondents submit that the calculation of vacancies with reference to the notification dated 01.07.2005 was 155 in accordance with paragraph No. 215 (f) (i) of I.R.E.M. Volume I. While 207 candidates qualified in the Written Test only 140 were placed in the panel and since the applicants were very low on the list of those who qualified in the Written Test, they were not included in the panel. The remaining 15 vacancies were kept unfilled due to want of SC/ST candidates. In support of their submission, the respondents have shown the calculation of vacancies as under: -

1.	Existing Vacancies	:	127
2.	Anticipated vacancies in the next 15 months	:	12
3.	Vacancies in the higher Grade.	:	16
	<u>Total Vacancies</u>		<u>155</u>

Respondents contend that as per foot note (2) Railway Board letter No. E. 272/1999, number of vacancies cannot be changed once the selection process has been set in motion, unless the assessment itself is wrong ab-initio. All changes subsequent to commencement of selection process should be ignored and the original assessment should stand. Since the above assessment of 155 vacancies is in order, no change in the number of vacancies is called for.

4. The applicants have in paragraph No. 4 of their O.A. indicated that as per Railway Board Circular dated 06.09.2005 Written Test for purposes of selection has been dispensed with and the criteria is now purely seniority. In view of the fact that they have already passed the Written Test, their candidature should be considered and their names should be considered and included in the panel dated 18.04.2006. Rebutting this, the respondents in paragraph No.3 of their reply to M.A. No. 1880 of 2007 filed by the applicants contend that the Railway Board Circular of 06.09.2005 is applicable to notifications issued on or after 06.09.2005 and since the notifications challenged by the applicants were issued on 01.09.2004 and revalidated on 01.07.2005 i.e. before issue of the said Circular dated 06.09.2005, the applicants' cases are not covered by it. In view of the above respondents submit that the

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applicants have not made out a case for any interference of this Court and hence the O.A. and other Misc. Applications filed are liable to be dismissed.

5. Heard, Shri M.K. Sharma, learned counsel for the applicants and Shri Avnish Tripathi, learned counsel for the respondents and perused the pleadings on record.

6. In this case besides the O.A. a series of Misc. Applications, replies to these Misc. Applications, Counter Affidavits, Rejoinder, and Supplementary Counter Reply have been filed. We are, however, of the opinion that the basic issue involved is whether the respondents have determined the vacancy position as on the date of notification i.e. 01.09.2004 subsequently revalidated by another notification dated 01.07.2005, for promotion to the post of Loco Pilot Passenger in the Grade of Rs.5500-9000/- as per Railway Board guidelines and provisions contained in I.R.E.M. Volume I.

7. The applicants have tried to argue that the vacancies on the date of notification (01.07.2005) should have been 207 and not 140 as erroneously made out by the respondents. They have relied on a tabular statement purporting to be the top sheet as on 01.07.2005 wherein the vacancy shown is 155+20 in the higher grade totaling 175 to which 20% vacancies arising out of contingencies if added would work out to 207. The original documents to determine how the vacancies were arrived at before issue of notification issued on 01.09.2004, 01.07.2005 and 29.08.2007 were summoned from the respondents. Perusal of the records has shown that the vacancy of 155 has been determined as per provisions of I.R.E.M. Volume I with respect to the notification dated 01.09.2004 which was held in abeyance and after discussion with the two Trade Unions, it was decided to retain the vacancies assessed earlier when the invalidated notification dated 01.07.2005 was issued (pp 11 of the original record produced in Court refers). Since the vacancies have been determined on the basis of the guidelines issued by Railway Board and discussed with the Trade Unions, it is to be taken as correct. The argument of the applicants indicates that they have added the vacancies in the higher grade to the figure of 155 whereas this figure is inclusive of the vacancies in the higher grade as worked out by the respondents as per the guidelines. Besides the applicants have not been able to elucidate on what basis they have reckoned 20% of vacancies arising out of contingencies -

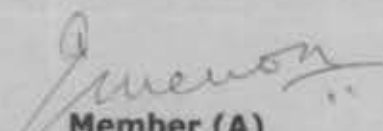
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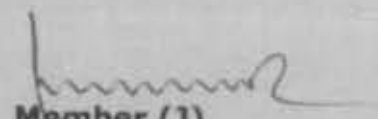
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these already stand included in the vacancies arising in the next 15 months which has been factored in by the respondents. Hence, there appears to be no force in the argument of the applicants on this issue.

8. The applicants have vide their M.A. No. 1880 of 2007 drawn reference to the notification dated 29.08.2007 by which the respondents propose to fill up 112 posts through viva voce tests. Their main contention is that the respondents should be restrained from going ahead with the selections without permitting the applicants who have already passed the Written Tests. The applicants in this case have not challenged the basis of arriving at the vacancy figure of 112 but have merely prayed for their cases to be considered. It is evident from the letter of D.R.M., Northern Railway, Moradabad dated 05.06.2006 that after filling up the posts out of the panel dated 18.04.2006, the panel was exhausted and approval was sought for initiating selection for 112 vacancies as detailed in their letter dated 05.06.2006. The approval was accorded vide G.M. Northern Railway letter dated 21.07.2006. It is in pursuance of this approval that the notification dated 29.08.2007 was issued and viva voce tests for the same were held. This Tribunal vide its Order dated 19.09.2007 permitted the applicants to appear in the viva voce tests if otherwise eligible but did not stay the selection process. It appears that the vacancies of 112 circulated vide D.R.M. Moradabad letter dated 05.06.2006 took into account the vacancies which arose after 30.11.2005 i.e. the period upto which vacancies were considered by the panel dated 18.04.2006. It is, therefore, clear that it is not the case that vacancies existed but were not considered when the panel dated 18.04.2006 was drawn up and it is being considered now in the 112 vacancies proposed to be filled up. In view of this the applicants stand is therefore, without merit.

8.3 In view of the above, we are of the view that the O.A. lacks merit and is accordingly dismissed. No costs.


Member (A)


Member (J)

/M.M/