

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA 1335 of 1996

Present : Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member
Hon'ble Mr. Shankar Prasad, Administrative Member

Pranesh Chandra Roy & Seven Others
-vs-

1. The Chairman, Railway Board, Rail Bhawan, New Delhi – 110 001.
2. The Union of India, through the General Manager, Eastern Railwy, 17, Netaji Subhas Road, Kolkata.
3. The Financial Adviser & Chief Accounts Officer, Eastern Railway, 17, N.S. Road, Kolkata.
4. The Chief Personnel Officer, Eastern Railway, 17, N.S. Road, Kolkata.
5. The Chief Accounts Officer/Admn, Eastern Railway, 17, N.S. Road, Kolkata.
6. The Deputy Chief Accounts Officer(G), Eastern Railway, 17, N.S. Road, Kolkata.

.... Respondents.

For the Applicants : Mr. S. Mukherjee, Counsel
Mr. T.K. Ghosh, Counsel

For the Respondents : Mr. P.B. Mukherjee, Counsel

Heard on : 23-07-2012

Date of Order : 30.8.12

ORDER

PER MR. SHANKAR PRASAD, AM :

Eight applicants, who were then working as Senior Section Officers (Accounts) under the respondents. have preferred this application. They are aggrieved by (a) the selection notification dated 2.3.1994 for filling up Group 'B' posts of Assistant Accounts Officer against 70% quota, (b) the result of the written test and calling of persons for viva-voce test, (c) the panel of successful candidates, (d) the notification for 30% quota of LDCE vide notification dated 19.2.1995, (e) the subsequent notification dated 5.10.1995 against 70% selection and (f) declaration of result of written test calling persons for viva-test and (g) the letter dated 29.8.1996, which is a reply to the Secretary.

Eastern Railway Men's Union in respect of selection against 70% quota. (h) Another letter of even date 20-10-1996 fixing the date of viva voce as 9.11.1996. It refers to OA 1112 of 1996. (There is however no specific reference to this judgement in para 4.32 where this annexure is referred to challenge is only to calling SC/ST candidates in excess of quota. The applicant had sought or the relief of quashing of the selection notification dated 2.3.1994, the panel dated 25.7.1995 declared pursuant thereto, the selection notification for 30% LDCE notified on 13.2.1995 and subsequent selection notification dated 5.10.1996 and calling people for viva-voce test and cancellation of letter dated 29.10.2006 asking the concerned persons to appear for viva voce on 9.11.1996 and directions to the respondents to arrange for holding of the 70% seniority-cum-fitness test for total promotion and 30% selection of LDCE strictly in accordance with IREM, after showing the break-up of UR, SC and ST candidates category separately for the two modes of selection. They had also sought interim order for not publishing the result of viva-voce test held in respect of 70% selection.

2(a) The Tribunal initially on an unlisted motion on 11.11.1996 granted the interim relief that the result of the viva-voce test shall not be published. Vide order dated 03-12-1996 the same was modified to the extent that any appointment to be made on the basis of aforesaid result of viva-voce test shall abide by the outcome of this petition. The applicants were also directed to implead successful candidates.

2(b) The present OA was dismissed for default on 19.04.2005. Shri Pranesh Chandra Roy and two others preferred MA 251 of 2007 for restoration of the OA along with MA 252 of 2007 for condonation of delay. It was dismissed vide order dated 2.5.2008 on the ground that (a) no cogent reasons have been given for condonation of delay; (b) only three of the applicants have preferred the same. W.P.C.T. No. 272 of 2008 preferred against this order was allowed. MA 155 of 2010 preferred in this regard was allowed and OA posted for hearing on 21.4.2010 along with OA 688 of 2005.

2(d) Ashish Kumar Niyogi had preferred OA 688 of 2005 against non-declaration of result of selection against 70% promotion quota notified on 13.5.2003. The Tribunal noted in para 27 that applicant is granted liberty to agitate decision in OA 1335 of 1996 if the applicant had participated therein.

2(e) Shri Panesh Chandra Roy preferred MA 279 of 2010 joining other co-applicants as proforma respondents (a) to implead 14 persons mentioned therein, who had been promoted as AAOs (b) to implead the then FA & CAO Mr. A.K. Sanyal, who was allegedly gratified (c) to permit Shri Ashish Kumar Niyogi – applicant of OA 688 of 2005 as co-applicant. The Tribunal held (a) the promoted persons were a necessary party, nothing is indicated that due diligence had been exercised in this regard and their interests have to be safeguarded, they cannot be impleaded now. (b) allegations of malice cannot be allowed to be raised after 15 years against the then FAO & CAO. These requests were rejected. The said Shri Niyogi was allowed to be joined as co-applicant. The Tribunal also observed “one of the questions that would also arise is as to whether OA is bad for non-joinder of successful candidates.

Z2C. The Tribunal noted on 21.4.2010 that in spite of the order dated 3.12.1996 no private respondents have been impleaded so far. The Ld. Counsel for the applicant had sought for a short adjournment and a request was also made for production of the result of the selection so that on perusal of whole records the Tribunal could satisfy itself that the test was conducted properly. The request for production of documents was resisted by the Ld. Counsel for the respondents. The Tribunal held that respondents should produce the records for perusal of the Tribunal in the first instance. The respondents have filed an affidavit on 7.6.2010 indicating therein that the respondents had made earnest effort to produce all the concerned files but the same could not be produced as yet. It was pointed out that the OA was dismissed for default on 19.04.2005 and the MA for restoration was moved after two years. There was no direction for a specific order from any court of law. As per retention schedule, the retention period is five years unless the same is required in a court’s case.

3. Applicant No. 5 Shri Panesh Chandra Roy had earlier preferred OA 176 of 1995 seeking a declaration that he should be treated to have passed the viva-voce test and to treat him as declared promoted out of panel dated 22.8.1994 prepared pursuant to notice dated 2.3.1994. The Tribunal had gone through the record and held that selection was properly conducted. It dismissed the OA.

4. It has been contended in this OA that though as per provisions of IREM, 70 % selection for Group 'B' post and 30% selection have to be notified simultaneously. Railway Board's instructions provide that this will be filled up on the basis of 70% by selection-cum-seniority and 30% by LDCE. Such an amendment was made only in 2001. It was pointed out that the vacancies for such examination have been improperly computed and the reservation has been incorrectly given. All of them were wrongly allocated to the promotion quota. Selections were not held in a fair and transparent manner and selected persons have been favoured. In spite of directions of the Tribunal the records were not produced for perusal of the Tribunal so that the Tribunal could satisfy itself regarding correctness of posts.

5. The respondents have filed their reply and have resisted the application. It is submitted that pursuant to the decision in OA 1112 of 1996 in connection with holding of viva-voce test of the written examination steps were taken to hold the viva-voce test. A panel was notified with the approval of the competent authority on 11.11.1996 and in the second half of 11.11.1996 the interim order of the Tribunal staying operation of the result of the viva-voce test was received. Accordingly the officers who had not taken over the charge were not allowed to assume the charges. The respondents have reasons to apprehend the suppression of the above mentioned vital facts by the applicants. Applicant No.5 Shri P.C. Roy had earlier approached the Tribunal in OA 176 of 1995 for the 70% selection of 1993-95 which had been dismissed by the Tribunal. The present application is of similar nature and is required to be rejected. 30 % LDCE is yet to be notified. Actual vacancies are 57 and not 60 as alleged. In the earlier LDCE selection only applicant No. 8 had exercised option to participate even though all these applicants were eligible and had full opportunity for the same. 30% LDCE for 1995-97 is to be conducted once the 1995-1997 selection is over as per Railway Board's letter dated 10.1.1990. No SC vacancy was counted in 30% LDCE of 1993-95. Selection to the post of AAO is governed by Railway Board's order dated 3.8.1977. Both parts of the selection constitute complete for a particular selection and assessment was worked out and selection was also made properly. Reliance has been placed on the decision in

Birendra Kumar Verma –vs- PSC Uttarakhand (2011) 1 SCC 150, to content that those who have participated and failed cannot challenge the selection.

6. Ld. Counsel have been heard and the records perused.
7. The Ministry of Railways vide its letter dated 3.8.1977 (Annexure-) had conveyed the decision for holding of LDCE for promotion of 25% of vacancies in the case of post of Assistant Accounts Officer. This was in continuation of Board's letter dated 3.8.1977 introducing LDCE for filling up vacancy in Class II Service in Engineering and Transport Department. Para 5 thereof, reads as under :

“...5. In the matter of seniority in respect of the declared number of vacancies to be filled at any one through the media of selection (75%) and competitive examination (25%), those empanelled through the normal selection will rank senior to those selected through the competitive examination”.

8. We may note in this connection that in their representation of August 1996 they stated that quota was enhanced from 25% to 30%. They sought a direction that promotion be granted on the basis of seniority only. They cannot be allowed to argue contrary to this stand

9. Annexure-R/1 dated 17.10.1996 in OA 1112 of 96 (Shri Sunil Kr. Chakraborty & Ors. –vs- Union of India & Ors.) is in respect of selection for 70% promotion vacancies for 1995-97. The applicants therein were aggrieved by the action of the respondents in not holding viva-voce test on 22.7.1996 and not notifying fresh date. It was stated in the reply that viva-voce test did not take place due to violent protest by the union representatives and that no further date for the same has been fixed pending an amicable settlement as the General Manager is pursuing the matter with the highest Trade Union Leaders for resolving the issue. There is not a word about this OA in the OA filed by the applicants through Annexure-A/10 is referred to in para 4.32. Para 1 refers. The Tribunal expected the respondents to discharge its duties of completing the process of selection in question. Respondents were directed to hold viva-voce test within three months and to prepare a panel according to rules within one month. The promotion orders were issued on 11.11.1996. Some of the persons could not take over charge in view of stay initially granted in this OA.

10. We note at the outset that none of these applicants appear to be candidates for the selection against 70% quota. They are aggrieved by non-holding of selection against LDCE quota simultaneously with promotion quota. We also note that no subsequent records had been brought on record to show as to when 30% LDCE against 1995-97 was notified and as to whether applicants participated in the said selection. We also note that the averment made by the respondents in their reply that, applicant No. 8 had participated and remaining applicants, though eligible, had not participated in the LDCE 1993-95, has not been converted in the rejoinder.

11. We note that Sl. No. 5 had preferred OA 176 of 1995 in respect of 70% selection for the year 1993-95. He cannot be now allowed to argue that the said selection is vitiated for non-simultaneous holding of LDCE.

12. The principle of constructive res-judicata applies vis-à-vis these two applicants. We also note that he is the sole applicant in MA 279 of 2010 and one of the three applicants in earlier MA.

13. The applicant filed MA 279 of 2010 for impleadment of successful candidates which was resisted by the respondents on the ground that applicant cannot be allowed to unsettle settled things and that many officers have been further promoted and some have superannuated. The MA was dismissed. It is not brought on record that the said order has been challenged. Thus, the said order attained finality. The Tribunal had also observed that in view of the disposal of the MA a question would arise as to whether the OA was bad for non-joinder of the successful candidates. The Apex Court in **Prabodh Verma etc. etc. –vs-State of U.P.**, AIR 1985 SC 167, had held that writ petition ought to have been dismissed for non-joinder of necessary parties or at least some of them in representative capacity. The OA is bad for non-joinder of necessary party.

14. Further contention raised by the applicant is that the selection was not held in a proper manner. Such a stand had not been taken in the August 1996 representation where the only ground was to promote as per scheme only. We note that the Tribunal vide its order dated 21.4.2010 directed for production of records for perusal of the Tribunal only. The respondents filed their affidavit on 07.06.2010 highlighting the

position which has been noted in para 2C. The holding of such an enquiry on our own, when none of the applicants participated in the selection, would amount to a PIL, a jurisdiction which does not inhere in the Tribunal.

15. Delay in impleadment of parties is also fatal to adjudication of this matter as successful candidates, in particular, were called upon to defend the allegations against them after 14 years. Taking all factors into consideration, we do not find any merit in the OA. The OA is fit to be dismissed and is dismissed. No costs.

Shankar Basu
MEMBER(A)

/DKN/

[Signature]
MEMBER(J)