

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH: JODHPUR.

O.A. No. 208/97

Date of Order: 29.5.1998

and

O.A. No. 216/97

Budh Ram s/o Shri Surja Ram working as Shunting Master, Lalgarh, r/o T-12-F, opposite Lalgarh Station, Railway Colony, Lalgarh Bikaner.

Applicant in O.A. No. 208/97

Duli Chand s/o Shri Kana Ram working as Shunting Master Grade I, Northern Railway, Sri Ganganagar, r/o Block No. C-33, Railway Colony Broade Gadge, Sri Ganganagar.

Applicant in O.A. No. 216/97

VERSUS

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner.
3. Divisional Personnel Officer, Northern Railway, Bikaner.
4. Mohan Lal s/o Shri Nanda, Shunting Master Grade I, Rewari.
5. Basant Singh s/o Khem Singh, Shunting Master Grade I, Hanumangarh.

Respondent No. 4 and 5 service through Respondent No. 3.

... Respondents

Mr. Y.K. Sharma, Counsel for the applicants.

Mr. S.S. Vyas, Counsel for the respondents No. 1 to 3.

None present for respondent No. 4 and 5.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

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O R D E R

Per Hon'ble Mr. Gopal Singh

Facts of the cases in both the application are same and relief sought is also the same and as such both these applications are disposed of with this order.

2. Applicants, Budh Ram and Duli Chand, have filed this application Under Section 19 of the Administrative Tribunals Act, 1985, praying for staying the operation of order dated 8.4.1997 (Annex. A/1). In this letter dated 8.4.1997, it has been brought out that S/Shri Mohan Lal and Basant Singh could not attend the viva voce test on 25.7.1996 though they had qualified in the written test since they did not receive the notice of holding viva voce test. Both Shri Mohan Lal and Shri Basant Singh were senior to both the applicants. With the approval of the competent authority a supplementary viva voce test was held on 5.11.1996 for both these candidates and they were found suitable to be placed on the panel for the post of Shunting Master Grade I. Both the applicants were empanelled and their names appeared at Sl. No. 8 and 9 of the panel of 9 persons. Since Shri Mohan Lal and Shri Basant Singh were senior to both the applicants and were found suitable for being empanelled, it was proposed to empanel these two candidates and delete the name of the applicants from the panel. Both the applicants were given the chance to represent against this proposal within 15 days from receipt of the letter dated 8.4.1997.

3. The case of the applicants is that they had been empanelled after having qualified in the written and viva voce test. The said panel had already exhausted with the promotion of all the empanelled candidates vide order dated 30.11.1995. The impugned order dated 8.4.1997 seeks revision of the panel at a time when no panel existed and there are no rules to amend the panel when it has already exhausted.

4. The respondents in their reply have stated that the notice dated 19.7.1995 calling for viva voce test was not served upon S/Shri Mohan

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Lal and Basant Singh as is revealed by an enquiry conducted by the Welfare Inspector. The supplementary viva voce test for these two candidates was held after approval of the Chief Personnel Officer, Northern Railway, New Delhi. Since the original panel was approved by the Divisional Railway Manager as per the rules, the approval of the next higher authority i.e. Chief Operating Manager was obtained for interpoliting the name of the Shri Mohan Lal and Shri Basant Singh in the original panel and deleting the names of the applicants. Since both Shri Mohan Lal and Shri Basant Singh were senior to the applicants and they were left out as the notice for viva voce test was not served upon them because of the administrative lapse, they had a right to be considered for the empanelment.

5. We have heard the learned counsel for the parties and perused the records of the case.

6. It is seen that both the applicants were empanelled and were promoted to higher grade over their seniors because of an administrative lapse. Had Shri Mohan Lal and Shri Basant Singh received the notice for viva voce test and appeared for the same on the scheduled date, they would have found place in the panel and the applicants name would not have been there. It has nowhere been stated by the applicants that Shri Mohan Lal and Shri Basant Singh were junior to them. It has been clearly mentioned in the provisional panel Annexure A/3 that "the mere fact that they have been placed on the panel is no guarantee that they will be offered the post of Shunting Master Grade I." Since the empanelment was provisional, the same does not give right to the applicants to continue on the panel in view of the fact that persons senior to them have been found to be entitled to be empanelled.

7. We are firmly of the view that the applicants are not entitled to continue on the promoted post of Shunting Master Grade I since their seniors have been found entitled to be empanelled and promoted.

8. We, thus, do not find any merit in these applications and both the applications are dismissed accordingly. The parties are left to bear their own costs.

Gopal Singh
(Gopal Singh)
Administrative Member

A.K. Misra
(A.K. Misra)
Judicial Member