

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 859 OF 1997

Present : Hon'ble Mr. S. Biswas, Member (A)

Hon'ble Mr. A. Sathath Khan, Member (J)

1. Haradhan Das
2. Mrityunjoy Bhattacharjee

VS

1. Union of India through the General Manager, E.Rly. Fairlie Place, Calcutta-1
2. Div. Rly. Manager, E.Rly. Sealdah, Calcutta-14
3. Div. Personnel Officer, E. Rly. Sealdah
4. R.N. Samaddar
5. Smt. Rina Chakraborty
6. Phani Choudhury
7. Smt. Prativa Biswas
8. Nishi Kanta Koyal
9. Smt. Gita Banerjee

.... respondents

For the applicants : Mr. B.C. Sinha, Counsel

For the official respondents : Mr. P.K. Arora, Counsel

Heard on : 7.1.03 : Order on : 09.1.03

O R D E R

S.Biswas, A.M.:

This is a joint application by two persons praying for quashing of the selection test held on 13.5.97 for promotion to the post of Typist Superintendent/Gr.II. The applicant No. 1 belongs to SC community while applicant No. 2 is a general category candidate. They were appointed as Head Typist in the year 1985 and 1987 respectively. Their next channel of promotion is to the post of Typist Superintendent, Gr.II. On 30.4.97, a notice was issued stating that 8 persons named therein (including the applicants) were eligible to appear in the selection test for promotion to the post of Gr.II Typist/Superintendent. The grievance of the applicants is that in the said notice the number of vacancies and the break-up of vacancies earmarked for SC/ST candidates were not shown as required under the rules and as such the said notice is irregular. It is also contended

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that according to the railway rules, one month's time is to be given before an examination is held whereas by the impugned notification, such time was not given. The other grievance of the applicants is that no pre-examination training was conducted by the railway authorities for SC/ST candidates which is also required under the rules. The applicants, therefore, claim that due to aforesaid flaws, the impugned notice is regular and should be quashed and a direction be given to the respondent authorities to prepare an integrated seniority list for both general category and SC/ST category candidates in the feeder grade and thereafter to hold the examination afresh.

2. The respondents have filed a reply in which it is stated that the impugned notice dt. 30.4.97 was issued as per rules. It is stated that there was one vacancy for SC and two vacancies for UR candidates. As per formula of 1: 3, 2 SC candidates and 6 UR candidates were called for the selection test. It is stated that the third SC candidate was not available. The applicants were also called and they appeared in the selection test. They never raised any objection earlier. However, they could not qualify and the selected candidates have been appointed in June 1997 and they have already joined the post. It is further stated that as per Railway Board's circular No. 80/88, 10 days notice is required before holding examination and not one month's notice as contended. It is also stated that for pre-examination training, the applicants have not made any representation.

3. We have heard the ld. counsel for the parties and have gone through the documents.

4. Ld. counsel for the applicants has drawn our attention to a decision of this Tribunal in OA 1151 of 1996 in which similar issue was adjudicated. In that case the examination notification dated 6.9.96 was challenged on the ground that break up of SC/ST vacancies and total number of vacancies to be filled up were not indicated in the notification as required under Rly. Board's circular dated 22.3.84. This Tribunal by its order dated 15.8.97 cancelled the said

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notification on that ground and issued direction for fresh selection process. Ld. counsel has also drawn our attention to another decision of the Tribunal in OA 814/96 dt. 18.9.97 wherein more or less similar issue was considered. It is submitted by him that on an earlier occasion the Railway authorities cancelled the selection process to the post of OS, Gr.II on the ground that break up of vacancy for SC/St candidates was not indicated in the examination notice. The cancellation order was challenged before this Tribunal in OA 321/95 and this Tribunal upheld the decision of the authorities vide its order dated 31.3.95.

5. Ld. counsel, therefore, urges that since in the instant case, the total number of vacancy and the break up have not been indicated in the notification dt. 30.4.97, the same should be quashed.

6. Ld. counsel for the respondents, on the other hand, has contended that the applicants had already appeared in the selection pursuant to the notice dated 30.4.97 but they could not qualify in the same. As such they are now debarred from challenging the selection process once they participated in the same. So far as the issue of indicating the break up in the impugned notice, it is submitted that as per rules, the said notification was issued. However, due to inadvertence the break up was not indicated but that does not make the selection process irregular. He has also stated that more than 10 days notice as required under the rules was given. His further contention is that applicant No. 1 belongs to SC community while applicant No. 2 is a general category candidate. Therefore, the issue of pre-examination training cannot be a common grievance because such training is imparted only to the SC/ST candidates. However, applicant No. 1 has never made any request for such training. He further submits that due to administrative difficulty such training could not be imparted. He has, therefore, prayed for dismissal of the OA.

7. We have considered the rival contentions. We are inclined to agree with the contention of the ld. counsel for the respondents.

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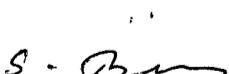
Admittedly, the applicants appeared in the selection process initiated on the basis of the notice dt. 30.4.97, but they could not qualify. The instant application was filed thereafter. It is now settled position of law that once a person appears in the selection process and fails to qualify, he cannot turn around and challenge the selection process alleging irregularities. It is true that as per rules, break up of SC/St vacancies and total number of posts to be filled have to be indicated in the notice. We are satisfied with the explanation given by the respondents in this regard. The decision in OA 1151 of 1996 is of no help to the applicants. We find that in that case the examination was scheduled to be held on 21.9.96 and notice was issued on 6.9.96. The application was filed before this Tribunal on 18.9.96 i.e. before the examination was held. In the instant case, the applicants appeared in the examination without any protest and when they failed to qualify, they have filed the instant OA subsequently. The facts are quite different. In the other OA viz. OA 814/96, the petitioner's name was not included in the impugned notice dated 26.6.96 whereas in the instant case the applicants were called and they appeared. Thus the facts are distinguishable. Similarly, in the case of OA 321 of 1995, the respondents cancelled the selection process before holding viva-voce test whereas in the instant case the entire selection process has been completed and no objection was raised by any of the candidates or others earlier. Moreover, in the instant case, the selected candidates have already joined the post after having been declared successful. As such, it is too late to quash the selection process.

8. For the reasons stated above, we do not find any merit in this OA and it is accordingly dismissed. No costs.



(A. SATHATH KHAN)

MEMBER(J)



(S. BISWAS)

MEMBER(A)