

Central Administrative Tribunal

Lucknow Bench, Lucknow

Original Application No.211 /2003

this the 29th day of April, 2003

HON'BLE MR. A.K. MISRA, AM

HON'BLE MR. RAFIQUDDIN, JM

1. Brijesh Kumar Srivastava aged about 37 years son of Sri A.N.Srivastava r/o F-185, Indralok Krishna Nagar, Lucknow.

2. Fazlu Rahman, aged about 38 years son of Sri Abdul Mohit r/o House No. 290/121-B, Anupam Nagar, Moti Jheel, Lucknow.

3. A.K. Sabbarwal, aged about 38 years son of late Sri V.K. Sabbarwal, r/o MDS-140, Sector G, LDA colony, Lucknow.

4. Shambhu Singh Yadav aged about 46 years s/o of late Raghunath singh r/o c/o Station Manager, N.E. Railway, Lucknow.

5. Sri P.K. Nath aged about 47 years son of Sri S.K. Nath, r/o Q.No. MELT/52 F, Baulia Railway Colony, Gorakhpur.

6. Inayat Ali aged about 57 years son of late Shakir Ali r/o T/96 B, Khaira Colony, Gonda.

7. Amar Nath Sahai aged about 47 years son of late Sri V.N. Sahai r/o 322, Vishnu Lok Colony, Kanpur Road, Lucknow.

8. R.K. Sharma aged about 48 years son of late Sri P.C. Sharma r/op T/21 B, Railway Colony, Anwarganj, Kanpur.

9. Gopal aged about 33 years son of Sri Chhottey Lal r/o 412/60, Pul Motilal Chowk, Lucknow.

10. Afaq Ahmed aged about 38 years son of late Mohd. Ishtiyaq r/o 14 B-1, Badshah Nagar Railway colony, Lucknow.

11. C.B. Malviya aged about 42 years son of late V.K. Tiwari r/o 555 Kha/25 Ka, Bhola Kheda, Manas Nagar, Lucknow.

12. Assem Kumar Srivastava aged about 37 years son of Sri Vipin Behari Srivastava r/o House No. H-49, Hariom Colony, shivpur Snabjganj, Gorakhpur.
13. Ram Kinkar Tiwari aged about 35 years son of late Sarivansh Tiwari r/o L/57 A, Bolia Railway Colony, Gorakhpur.
14. Nageena Ram aged about 52 years son of late Jagat Ram Yadav r/o Q.No. 120 A, Simra Colony, Gonda.
15. Sukhram aged about 43 years son of late Mata Prasas r/o H.No. 87, Moh Rajagaona, Gonda.
16. Ram Lakhan aged about 39 years son of Shiv Prasad r/o Q.Lm39 B53RoadKNo13a Simray Colony, a Badgaon Gonda.
17. Ram Raj aged about 42 years son of late Bhim Narain r/o Q.No. 250 A, Khaira Colony, Gonda.
18. Dinesh aged about 41 years son of late Parameshwar Mishra r/o ES-348 A, Sahebganj Railway Colony, Badgaon, Gonda.
19. B.K. Yadav aged about 45 years son of Sri R.N. Yadav r/o T/118 B, Railway Colony, Mailani.
20. J.P. Pandey aged about 47 years son of R.N. Pandey No. 960, Rajendra Nagar, Gorakhpur.

...Applicants

By Advocate: Sri A. Moin

VERSUS

1. Union of India through General Manager, N.E. Railway, Gorakhpur.
2. Divisional Railway Manager, NE Railway Ashok Marg, Lucknow.
3. Additional Divisional Railway Manager, NE Railway Ashok Marg, Lucknow.
4. DRM (P), NE Railway, Ashok Marg, Lucknow.

...Respondents

By advocate: Sri Azmal Khan



ORDER (ORAL)

MR. A.K. MISRA, AM

The relief claimed in this O.A. is for cancellation of the order dated 24.4.2003 as contained in Annexure No. 1 with the request that all the consequential benefits may be paid. A further prayer is for issue of directions to allow all the 20 applicants to continue on the post of Guard (Passenger) in the grade of Rs. 5000-8000 in pursuance of the result dated 4th April, 2003.

2. Learned counsel for the parties have been heard at the admission stage on merits, ~~as~~ Sri Azmal Khan, learned counsel for the respondents agreed to argue the case without availing an opportunity of filing the counter reply.

3. The brief facts of the case are that all the applicants of this O.A. appeared in the selection test of Guard (Passenger) in the scale of Rs. 5000-8000 and a panel of 39 successful candidates was prepared in the office of the DRM (Personnel), Lucknow. This panel of 39 candidates includes the names of all the 20 applicants of this O.A. In pursuance of the selection and inclusion of their names in the panel prepared on 4.4.2003, the applicants were given appointment order and some of applicants out of 20 who have filed the present O.A. had also joined in pursuance of their appointment. Subsequently, by order dated 24.4.2003 issued from the office of the DRM (P), Lucknow, the selection of all the 39 candidates who were included in the panel drawn on 4.4.2003 was cancelled on account of certain irregularities committed during the selection process and it was provided in this letter of 24.4.2003 which is impugned in the present O.A. that the cancellation will apply equally even to those applicants who



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had joined in pursuance of the appointments given to them and also to those applicants who had not yet joined. It was argued on behalf of the applicants that having been selected in pursuance of the selection test and having ~~been~~ joined, a vested right is created in favour of the applicants to continue as Guard (Passenger) in the scale of Rs. 5000-8000 and it was not open for the respondents to cancel the selection test on account of irregularities if any committed by them. It was argued that the cancellation of the entire selection was not warranted specially in view of the fact that no show cause notice or opportunity of hearing was given to any of the applicants before cancelling the entire selection. Thus, it was submitted that the Rule of ~~Audi Alteram Partem~~ has ~~not~~ been followed by the respondents and accordingly it was submitted that the impugned order deserves to be quashed. Reference in this regard was made on behalf of the applicants to the following decisions:-

1. Shravan Kumar Jha Vs. State of Bihar and others 1991, Supplement (1) SCC, page 330
2. Basudeo Tiwari Vs. Sidokanho University and another, 1998, 8 SCC page 194
3. Sridhar Vs. Nagar Palika, Jaunpur and others 1990 (Supplement), SCC, 157.
4. Md. Naseem Vs. U.O.I, TA No. 1057/87 (WP No. 2670/82), decided by this Tribunal on 16.1.01
5. O.A. No. 800/93 decided on 9.3.2000 in re Uma Shanker Nirmal and others Vs. Union of India through General Manager, NE Railway, and others.

4. On behalf of the respondents it was submitted that the impugned order dated 24th April, 2003 should not be quashed whereby the entire selection was cancelled on account of certain irregularities having been committed in the selection process for ^{the} simple reason that the cancellation of the selection has not



been made to the detriment of some candidates and not to the detriment of the other candidates. It was submitted in this regard that a fresh selection ^{will} ~~will~~ be shortly held in which all the applicants to the present O.A. shall be asked to participate. Accordingly it was submitted that the O.A. deserves to be dismissed.

5. Heard Counsel for the parties and also considered the case law cited on behalf of the applicant. In the case of **Shravan Kumar Jha Vs. State of Bihar (Supra)**, the appointment of Assistant Teachers by District Superintendent of Education was cancelled by the Dy. Development Commissioner on the ground that the District Superintendent of Education was not authorised to make appointments. The Hon'ble Supreme Court held in this case that the appellants should have been given an opportunity of hearing before cancelling their appointments and hence the order of cancellation ~~was xxxxxxxx~~ set aside by the Hon'ble Supreme Court. In O.A. No. 800/93 in the case of **Uma Shankar Nirmal and others Vs. Union of India and others (Supra)** relying on the decision of **Shravan Kumar Jha**, the order reverting the applicants from the higher post of ~~Artisans~~ to the lower post was quashed for the reason that no opportunity of hearing was afforded to the applicants before reverting them to the lower post. Following the decision of the Hon'ble Supreme court in the case of **Shravan Kumar Jha** and the decision of this Tribunal in the case of **Uma Shankar Nirmal** delivered in O.A. no. 800/93, we hold that there was no justification whatsoever for issuing the impugned order dated 24.4.2003 whereby the appointment of all the 20 applicants of the present O.A. was cancelled without giving them a show cause notice or an opportunity of hearing.



6. In view of the foregoing discussion and the findings recorded by us in the immediately preceding paragraph, we quash the impugned order of 24.4.2003 in so far as it relates to the applicants of this O.A. with the directions that all the applicants of the present O.A. who were selected in the panel of 4.4.2003 shall be given appointment in pursuance of their selection and if any of the applicants of this O.A. has been relieved from the post of Guard (Passenger) in pursuance of the impugned order dated 24.4.2003, he shall be taken back on the post of Guard (Passenger) within a period of 15 days from the date of receipt of this order. We also make it clear that it would be open for the respondents to pass necessary orders as deemed fit after giving an opportunity of hearing to the applicants of this O.A. before cancelling their selection. If eventually, the selection of the applicants of the present O.A. is cancelled after giving them an opportunity of hearing, the respondents will be free to initiate fresh process for selection in accordance with rules.

7. In the result O.A. is disposed of as above without any order as to costs.

Rajiv Maddan'
MEMBER (J)

M. Hussain
MEMBER (A)

LUCKNOW:DATED:29.4.2003

HLS/-