

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

O.A.No. 295/03

Lucknow this the 17th day of July, 03.

HON. MR. A.K. MISRA, MEMBER(A)

HON. SMT.SHYAMA DOGRA, MEMBER(J)

1. Brijesh Kumar Srivastava aged about 37 years S/O
Sri A.N.Srivastava, R/O F-185, Indralok Krishnagar Lucknow
2. Fazlu Rahman aged about 38 years S/O Sri Abdul Mohit
R/O H/ No.290/121-B, Anupam Nagar Moti Jheel Lucknow
3. A.K.Sabbarwal aged about 38 years S/O Late V.K.Sabbarwal
R/O MDS-140, Sector "G", LDA Colony Lucknow
4. Shambhu Singh Yadav aged about 46 years S/O Late Raghu
Nath Singh R/O C/O State Manager, N.E.Rly Lucknow
5. Sri P.K.Nath aged about 47 years S/O Sri S.K.Nath R/O
Q.No. MELT/52 F, Baulia Railway Colony, Gorakhpur
6. Akhilesh Dhar Dubey aged about 46 years S/O Sri.R.P.

By

Dubey R/O Vill Tijoura, P.O Pali Sahjanva District
Gorakhpur

7.S.B.Sinha aged about 43 years S/O Late A.K.Sinha
R/O Bindiya, Opp.Hanuman Mandir, Chhatrapati Shivaji
Marg, Bindiya, Gorakhpur.

8.R.K.Sharma aged about 48 years S/O Late P.C.Sharma R/O
T/21 B, Railway Colony Anwarganj Kanpur

9.Gopal aged about 33 years S/O Sri Chhotey Lal R/O 412/60
Pul Motilal Chowk Lucknow.

10.Afaq Ahmad aged about 38 years S/O Late Mohd Ishtiaq R/O
14 B-1, Badshah Nagar Railway Colony Lucknow.

11.C.B.Malviya aged about 42 years S/O Late V.K.Tewari R/O
555 Kha/25 Ka, Bhola Kheda Manas Nagar Lucknow

12.Aseem Kumar Srivastava aged about 37 years S/O Sri Vipin
Behari Srivastava R/O Hounse No.H 49, Hariom Colony Shivpur
Sahebjganj ,Gorakhpur

13.Ram Kinkar Tewari aged about 35 years S/O Late Harivansh

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Tiwari R/O L/57 A, Bolia Railway Colony, Gorakhpur

14.Nageena Ram aged about 52 years S/O Late Jagat Ram Yadav
R/O Q.No.120 A, Simra Colony, Gonda

15.Sukhram aged about 43 years S/O Late Mata Prasad R/O H/No.
87 Moh.Rajagaona, Gonda

16.Ram Lakhan aged about 39 years S/O Shiv Prasad R/O L-39B
Road No.3 Simra Colony Badgaon Gonda

17.Ram Raj aged about 42 years S/O Late Bhim Narain R/O Q.No.
250 A Khaira Colony Gonda

18.Dinesh aged about 41 years S/O Late Parmeshwar Mishra R/O
ES-348 A Sahebganj Railway Colony, Badgaon Gonda

19.B.K.Yadav aged about 45 years S/O Sri R.N.Yadav R/O T/118 B Railway
Colony Mailani

20.J.P.Pandey aged about 47 years S/O R.N.Paandey R/O 969 Rajendra
Nagar Gorakhpur

...Applicants

By Advocate Shri A. Moin.
Versus



Union of India through

1. General Manager, N.E. Railway, Gorakhpur.
2. Divisional Railway Manager, N.E. Railway Ashok Marg, Lucknow.
3. Additional Divisional Railway Manager, N.E. Railway Ashok Marg, Lucknow.
4. D.R.M.(P) N.E. Railway Ashok Marg, Lucknow.

Respondents.

By Advocate Shri Ajmal Khan.

O R D E R

BY SMT SHYAMA DORGA, MEMBER(J)

This Original Application has been filed for quashing of impugned order dated 19.6.03 (A-1) with all consequential benefits and further prayer to allow the applicants to continue on the promotional post of Guard (passanger) in the grade of Rs 5000-8000.

2. Briefly, the facts of the case are that the applicants appeared in the Selection test of Guard (Passanger) in the grade of Rs 5000-8000 and a panel of 39 successful candidates was prepared in the office of D.R.M.(P) Lucknow. This panel of 39 candidates includes the names of 20 applicants of this O.A. In pursuance of the selection and inclusion of their names in the panel prepared on 4.4.03, the applicants were given appointment orders and some of the applicants, out of 20, who have filed this O.A. had also joined in pursuance of their appointment. However, the order of promotion was cancelled vide order dated 24.4.2003, on account of certain irregularities committed during the selection process.

3. The said order of cancellation of their promotion order dated 24.4.03 was challenged by the applicants while preferring O.A.No. 211/03 which was decided on 29.4.03 wherein directions were given to the respondents, quashing the order dated 24.4.03, to follow the principles of natural justice after giving opportunity of hearing to the applicants before cancelling their

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selection, *appointments*.

4. In pursuance of this, the notices were issued to the applicants vide Annexure A-7 dated 12.5.03 which were duly replied by the applicants vide Annexure 8, who have asked for the relevant irregularities being committed during the selection process so that they could give proper reply to the show cause. However, without giving the details of irregularities in the selection process the impugned order under challenge (A-1) has been passed and the promotion order of these applicants has been cancelled and the applicants have been reverted to their original posts where they were working before their promotion order.

5. The applicants have challenged this impugned order on the grounds that reasons given in the show cause for cancellation of the said order of promotion are contrary to the reasons given in the impugned order of cancellation. The second submission of the applicants is that when the applicants have asked for the details of irregularities committed in selection process, it was incumbent upon the respondents to supply those details to the applicants so that they could file proper reply. By not doing so, the principles of natural justice have been violated.

6. The further submission is that even the cancellation order is not passed in accordance with law, as per provisions envisaged in the Indian Railway Establishment Manual (for short IREM) and the Railway circulars issued from time to time with regard to selection process, particularly on the ground, ~~of~~ respondents ^{have} submitted in the Counter reply and no approval has been taken from higher authority before passing this cancellation order.

7. The respondents have filed the Counter reply and justified the impugned order on the ground that the respondent No. 2 is fully competent to cancel the selection for the said post and the same has been done on

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account of irregularities committed in selection proceedings. Since the proceedings of selection being confidential in nature, the specific irregularities occurred in the selection proceedings was not indicated in the show cause issued to the applicants.

8. It is further submitted that in view of the Railway Board's order dated 28.8.87, the selection conducted by the Railways for promotion to Group C post can be cancelled due to some irregularities being noticed by the Vigilance Wing of the Railway Board during the course of Investigation. Some of the irregularities noticed have also been mentioned in the Coutner reply.

9. The respondents have also referred to rule 219 of the IREM which, according to them, prescribes that the concerned authority can cancel/modify the selection, if some irregularities are found during the selection process.

10. Since the selection proceedings are confidential in nature, no stigma has been attached or caused to any of the applicants, nor there was any adverse effect on the career of the applicants because error has been committed in selection proceedings by the Selection Board/committee and the selection has not been cancelled because of any fault on the part of the applicants. Even the applicants are not barred from their future selection for the said posts. Therefore, the selection has been cancelled on account of errors committed by the selection committee in the selection proceedings, hence there is no illegality in the impugned order.

11. We have heard the learned counsel for the parties and perused the relevant record including the original record which was produced during the course of arguments. After perusal of the proceedings of the selection committee, we find no procedural irregularity being committed by the members of the selection committee while awarding marks to the candidates including the applicants except applicant No. 10 i.e. Afaq Ahmad and when his

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marks have been increased from 8 to 14, the same have been duly initialled by one of the members of the selection committee. These marks have been given under column 3 which pertains to the educational qualification, leadership and personality, which is an exclusive domain of the members of the selection committee to assess. Even if the said marks would have remained 'as it is ', the applicant No. 10 would have remained within the eligibility of successful candidates, as the last merit has gone upto 56 marks. In the case of two more candidates, it has been found that some over writing has been done in the last column of total marks that has also been initialled by one of the members of the selection committee and correction has been made in the total aggregate marks of the candidates and the marks have been decreased while correcting the numbers and he has been declared unsuccessful. In view of this, it cannot be said that there is some irregularity being committed during the selection process by the selection committee. Any minor correction cannot be made a ground to cancel the entire selection.

Moreover, after perusal of the report, on the basis of which process of cancellation of this promotion order has been initiated, the same has been found to be quite contrary to the grounds being^{given} in the counter reply. Otherwise also, these grounds are found to be very flimsy and not cogent to cancel the promotion order.

12. Even after perusal of comments of General Manager, being given in the original record, on the decision of DRM, to cancel these promotion orders, it is found that he has not approved the said decision of cancellation of said promotion order on various counts. The said comments have been given on 2nd June, 2003 and inspite of this, another note has been prepared by the DRM on 10th June, 2003, on the basis of which he has decided to cancel the selection of Guards (Passanger) issued vide notification dated 4.4.03. After passing of this order, no further approval of the higher authority i.e. G.M. has been taken by the DRM. The provision of para 219(1) clearly envisage as under:



"(1) After the competent authority has accepted the recommendations of the Selection Board, the names of candidates selected will be notified to the candidates. A panel once approved should normally not be cancelled or amended. If after the formation and announcement of the panel with the approval of the competent authority it is found subsequently that there were procedural irregularities or other defects, and it is considered necessary to cancel or amend such a panel, this should be done after obtaining the approval of the authority next higher than the one that approved the panel."

A bare perusal of the above provisions show that in the present case, since the order of cancellation has been passed by D.R.M, therefore, the approval of any such higher authority i.e. G.M. was mandatory, which has not been done. Therefore, it can safely be held that the said impugned order dated 19.6.03 (A-1) is not sustainable, in the eyes of law.

/13. In view of the rival contentions of the parties and the observations made hereinabove, we are of the considered opinion that there was no irregularity committed by the selection committee in the selection process to cancel the promotion orders and there was no approval of the higher authority for cancellation of the said order, hence the impugned order dated 19.6.03 (A-1) is hereby quashed and set aside. The respondents are directed to allow the applicants to perform duties on the said posts of Guard (Passenger) in the grade of Rs 5000-8000.

14. In terms of the above observations and directions this O.A. is allowed, as above. However, without any order as to costs.

MEMBER (J)

Lucknow; Dated:

Shakeel/

MEMBER (A)

17/7/03