

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 480/2005

This the 8th day of February, 2010

Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Dr. A.K. Mishra, Member(A)

1. Praveen Kumar Arya, aged about 25 years, S/o Shri B.D. Arya.
2. Girish Kumar Mishra, aged about 36 years, s/o Shri Chhotey Lal Mishra.
3. Rajesh Kumar Bhatnagar, aged about 39, S/o Shri O.P. Bhatnagar,

[All are resident of c/0434, Indira Nagar, Bareilly.]

.....Applicants.

By Advocate: Sri Praveen Kumar.

Versus

1. Union of India through the General Manager, N.R., Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Moradabad.
3. Shri Prafful Kumar, adult, s/o Shri Shiv Narain presently posted under Divisional Railway Manager, Northern Railway, Moradabad on the post of Signal Maintainer-II.

.....Respondents

By Advocate: Sri B.B. Tripathi for Sri N.K. Agarwal.

ORDER

By Dr. A.K. Mishra, Member-A

The applicants have challenged the select list dated 5.11.2004 for promotion to the post of Junior Engineer-II (JE-II) in which their names did not find place, and the review order dated 16.5.2005 which rejected their representation and confirmed the select list. They have prayed for quashing the impugned order and for proper assessment of the marks awarded in respect of academic qualifications, records of service, seniority, etc. and promote the applicants on the post of JE-II with all consequential benefits.

2. The respondents notified five posts of JE-II on 17.7.2000 for selection from amongst eligible candidates against 20% quota fixed for



the purpose. Out of five posts, three were meant for general, one each for Scheduled Tribe and Scheduled Caste categories. Since they were selection posts, the promotion could be made only after following a positive act of selection, which originally consisted of written examination and viva-voce. But the rules were amended to exclude the viva voce from the selection process before the impugned selection took place. On 3.9.2004, 18 eligible candidates were asked to appear in the written examination, including applicants; 10 candidates securing more than 60 marks were declared successful vide notification dated 20.10.2004. Thereafter, the impugned final select list was published showing the names of five candidates other than the applicants; hence this OA.

3. It is alleged that without holding a viva voce test, the selection committee could not assess properly the personality of the candidates. This has given rise to colourable exercise of powers and discrimination against the applicants without valid reasons. According to them, their service records were excellent and proper scrutiny of records would have established their claims if regard had been made to their inter-se seniority. Their grievance is that juniors have been allowed to steal a march over them under the garb of assessment of performance. It is stated that as per letter dated 7.12.2004 of DRM (Annexure-6) CRs were not available in respect of the applicant no 2; therefore his performance could not have been judged by the selection committee on 1.11.2004 properly. It is further alleged that the applicant no.2 was senior to respondent no.3; therefore, he deserved better consideration than the respondent no.3.

3.1 It is their contention that if the selection process would be subject to careful scrutiny at Railway Headquarters by the respondent no.1 the full story would be exposed and their claims would be vindicated.

4. The respondents have submitted that the viva voce was not conducted in view of amendment to Paragraph-215 of IREM-II which dispensed with the need for conducting such a test. This position is admitted by the learned counsel for the applicant. Therefore, admittedly there was no irregularity in not taking up the viva voce. We have called for the records relating to selection. From a perusal of

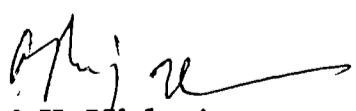
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the statement containing marks given under different heads, we find that 50 marks were assigned for written examination, 30 in respect of personality, leadership, academic qualification and 20 for record of service. The candidates, who have been selected except for the scheduled caste candidate, had overall scored more than the applicants. The scheduled caste candidate was selected against the reserved post meant for that category, although he had scored overall less marks, but cleared the qualifying marks.

5. The scope of judicial enquiry is limited. It is not for us to reassess the selection made by a validly constituted Selection Board. We find that some of the candidates selected did not score very high marks in personality and record of service categories as compared to the applicants. The applicant, Rajesh Kumar Bhatnagar, did not score even qualifying marks of 60; therefore, he was eliminated. The other two applicants could not find place in the select list as they had less marks overall.

6. In the case of **Chandra Prakash Tiwari Vs. Shakuntala Shukla (2002) 6 SCC 127** and also in the case of **K.A. Nagamani Vs. Indian Airlines (2009) 2 SCC (L&S) 57**, the Supreme Court has held that the Court should not try to reassess the merits of the candidates whose suitability was assessed by an expert selection committee. The ratio of judicial pronouncements of the Apex Court is very clear that the Tribunal should not sit in appeal over the assessment made by the Selection Board and substitute its own opinion for that of the Board.

7. We do not find any infirmity in the selection procedure. It is not for us to substitute our own assessment of the personality and service records of the applicants. In the circumstances, we do not find any justification to interfere with the selection made by the respondent authorities following the rules prescribed for the purpose. The OA is accordingly dismissed. No costs.


 (Dr. A.K. Mishra)
 Member-A


 (Ms. Sadhna Srivastava)
 Member-J