

**Central Administrative Tribunal Lucknow Bench
Lucknow**

Original Application No. 354/2011

This the 6th day of December, 2012

Hon'ble Justice Sri Alok Kumar Singh, Member (J)

Hon'ble Sri D. C. Lakha, Member (A)

1. Om Prakash Shukla, aged about 50 years, son of Late Amber Prasad Shukla, resident of M/473, Sector D-1 L.D. A. Colony, Kanpur Road, Lucknow.
2. Anil Kumar, aged about 45 years son of Late Tulsi Ram, Resident of 290/5, Pandey Ka Talab Bulaki Adda, Lucknow.
3. Mahesh Prasad, aged about 41 years, son of Late Sant Ram Resident of 416/23, dila Ram Ki Barandari, Chopatiya, Chowk, Lucknow.
4. Suresh Chandra aged about 59 years son of Late Kishan Lal, R/o Plot No. 13 Gokul Nagar, Kanchanpur Kandawa, D. L. W. Varanasi.
5. K. K. Srivastava aged about 57 years, son of I. N. Srivastava R/o Plot No. 5 Navodit Nagar (Ext) Mahmoorganj, Varanasi.
6. D. C. Rai about 57 years son of late P.C. Roy, R/o C21/89 Lahuraveer, Varanasi.

Applicants

By Advocate Sri A. K. Balediha

Versus

1. Union of India through Chairman, Railway Board, New Delhi.
2. Railway Board, Ministry of Railways, Rail Bhawan, New Delhi through its Secretary.
3. General Manager, Northern Railway, Ministry of Railways, Baroda House New Delhi.
4. Divisional Railway Manager, Northern Railway, Lucknow.

Respondents

By Advocate Sri S. Verma.

Order (Dictated in Open Court)

By Hon'ble Justice Sri Alok Kumar Singh, Member (J)

In this O.A., the reliefs have been sought in the following manner:-

- (i) To quash the impugned order dated 11.5.2011 passed by the opposite party No. 4 contained in Annexure No. 1 to this Original Application.
- (ii) To direct the opposite party to maintain the result dated 17.4.2010 about to 24 vacancies and provide the promotion to

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the applicants on the date of notification dated 23.1.2006 and other service benefits.

- (iii) To pass any other order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

2. An examination of the C.I.T. was held on 15.7.2006 and 22.7.2006 by the opposite parties. Aggrieved by this exercise, Sri Ahmad Irfan and others filed a Writ Petition No. 955(SB) of 2006 wherein, an interim order dated 21.7.2006 passed by the Hon'ble High Court. In compliance thereof, the OPs did not declare the result of the above examination. It is said that OP No. 4 i.e. Divisional Railway Manager, Lucknow had not complied with the order issued by the Headquarter and gave ad hoc promotion to some of the employees which were declared failed in the examination conducted by the OPs. The result of the above examination was stayed vide aforesaid interim order of the Hon'ble High Court. Not only that, the DRM, Lucknow has further extended ad hoc promotion for a period of 120 days by an order dated 25.11.2008. It is said that the DRM ought to have approached to the Hon'ble High Court to vacate the interim order. Instead he proceeded for ad hoc promotion in favour of the above persons. On the other hand, the applicant Nos 1 to 3 of this O.A. filed W. P. No. 2958(S/S) 2009 before the Hon'ble High Court, Lucknow Bench wherein quashing of the orders in respect of ad hoc promotion has been sought. Writ of mandamus has also been sought for OP No. 4 to comply with the letter/order dated 21.8.2008. The relief has also been sought for declaration of the result of the aforesaid examination.

3. The respondents filed a preliminary objection regarding non-maintainability of the case. According to the applicants, the prayer Nos. II, III and IV have become infructuous after final decision of the aforesaid Writ Petition No. 955(S/B) 2006 on 25.11.2009. However, the Writ Petition No. 2958(S/S) 2009 is still pending. Meanwhile in view of the interim orders dated 10.3.2010 and 17.4.2010, the result of the above examination has been declared on 17.4.2010 as is evident from perusal of Annexure 12. At the foot of this result, declaring 24 candidates as successful a note has been appended that the above result is subject to final decision in O.A. No. 370/2006 and O.A. No. 82/2010. Some of the present applicants have moved a representation dated 17.5.2010 followed by another representation dated 16.6.2010 (Annexure 13 and 14) for ignoring the circular dated 3.9.2009 and giving promotion to the applicant from the date of notification i.e. 23.1.2006. Thereafter, another O.A. 497/2010 was filed before this Tribunal which was decided on 2.12.2010 with the direction to the respondents to decide the representations of the applicant's within the stipulated period. In furtherance of the above order, the representations have now been disposed of vide impugned order dated 11.5.11 (Annexure-1).

4. In spite of giving several opportunities to the respondents for filing CA, no counter affidavit could be filed even after a lapse of one year in this case and ultimately, therefore, this opportunity was closed.

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5. We have heard the arguments at length and perused the entire material on record.

6. The applicants have assailed the impugned order on the ground that though it is mentioned in this order that the respondents have to adhere to the directions contained in the recent circulars dated 3.9.2009 and 11.1.2010, but the fact of the matter is that O.P. No. 4 did not consider timely the vacancies of 37 posts notified on 23.1.2006 for which aforesaid examination was held and the result was declared on 17.4.2010 in furtherance of the order of the CAT. It is said that the applicants should not suffer for no fault on their part. It is due to inaction on the part of the respondents that this process could not be brought to a logical end within a reasonable time. Coming back to the aforesaid two recent circulars, it is worthwhile to mention that in circular dated 3.9.2009 in respect of posts in question, it has been provided that the posts carrying the grade pay of Rs. 4600/- and above, proposed to be filled up by suitability with prescribed benchmark may be filled up with benchmark of 7 marks out of 15 marks in last three years ACRs, duly considering the existing instructions for promotion based on confidential reports (Para 2(b)). Similarly, the relevant part of the subsequent circular dated 11.1.2010 as contained in Para (i) is as under:-


“ In cases where even after merger mode of filling up in merged grades, as indicated in the statement enclosed with letter dated 03.09.2009, has not been changed, all such panels, suitability lists (if any) as finalized/partly operated before restriction was imposed on making promotion to such merged grades, which was effective from 04.09.2008, may be further operated. All other panels/suitability lists

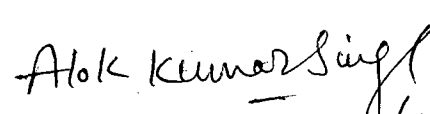
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cease to exist i.e. the cases where a 'Non-Selection' post has been changed to 'Selection' or 'Suitability with Prescribed Benchmark' AND where a 'Selection' post has been changed to 'Non-Selection' or suitability with prescribed Benchmark. In the above cases of change of classification/mode of filling up in merged grades, any promotion/filling up of vacancies on or after 04.09.2009 will be treated as adhoc and will not confer any right on the incumbents promoted/posted as such to hold or continue to hold the said post. In such cases of posts where mode of filling up has been changed vide letter dated 03.09.2009, w.e.f. 04.09.2008 all posts should be filled up as per revised procedure. In case of Running Staff, where existing AVCs were continued any panel/suitability list finalized before 03.09.2009 may first be operated, to fill up the vacancies as existed on 31.8.2009 and then further action for making promotions, as indicated in letter dated 3.9.2009, should be taken, in case panels/suitability lists finalized earlier have fallen short, in fulfilling the requirements up to 31.08.2009. All vacancies as have arisen on or after 01.09.2009 will be filled up after laying down regular scheme for the same, as indicated in this Ministry's letter of even number dated 03.9.2009."

7. Now coming back to the impugned order, we find that both the above circulars have been referred in it and on that basis, the representation has been decided. These circulars have not been challenged and still stand good and hold the field.

8. In view of the above, we do not find any embellishment in the impugned order. The O.A. deserves to be and is accordingly dismissed. No costs.


(D. C. Lakha)
Member (A)


(Justice Alok Kumar Singh) 6-12-12
Member (J)