

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH : PATNA

Date of Decision:- 4.1.2000

Registration No. OA-647 of 1996

1. Ajay Kumar Pandey, T.C.I. under DRM/Sonpur,
Son of Shri Jagdish Narain Pandey,
Railway Quarter No. T/78-C Microwave Colony,
P.O. Sonpur, District Saran* (Bihar).
2. Pradip Kumar Verma, T.C.I., under DRM/Sonpur,
Son of Shri Ganesh Prasad, 324/2, New Colony,
Garhara, Distt. Begusarai.
3. Pradip Kumar Srivastava,
Son of Late S.P.S. Shrivastava, T.C.I., under DRM/Sonpur,
Qr. No. T-8 'B' DTS Colony,
N.E. Railway, Sonpur, District Saran (Bihar)
4. Sunu Kumar Srivastava, Son of Late Satish Chandra
Shrivastava, T.C.I. Mohalla Turkman Pur, N.E.Railway,
Gorakhpur.
5. T.A.K. Shrivastava, T.C.I., Son of Late Thakur R.P.
Srivastava, resident of 535 A, Kawa Bay Railway
Colony, Gorakhpur.
6. R.G. Prasad, T.C.I., Son of Sri Ranjit Prasad,
resident of Saraswati Medical Store, P.O. Rahania,
District Varanasi.
7. Manohar Lal Dixit, T.C. I., Son of Sri Ram Kishore
Dixit, resident of Surya Mayur, Dhandha Khers,
Plastic Factory, Rajaji Puram, Lucknow.
8. Syeedullah, T.C.I. , Son of Late Shareef, resident
of Mohalla Vasantpur, P.O. Gita Press, Gorakhpur.
9. Prakash Narain, T.C.I., Son of Late S.D.Ram Niwas,
resident of House No.551(a)/56, Alam Bag, Lucknow.
10. R.G.N. Prasad, T.C.I., Son of Late R.B.N. Prasad,
resident of Savitri Niwa, Behind Post Office, Mahaddinpur,
Gorakhpur.

11. Ram Kumar, T.C I., Son of Late Bhagwan Das, resident
of House No.J/12/6-A, Nati Imali, Varanasi Cantt.

... Applicants

-By Shri S. Pandey, Advocate

Versus

1. The Union of India, through the General Manager,
N.E.Railway, Gorakhpur

2. The General Manager (P), N.E.Railway, Gorakhpur.

3. The Chief Signal and Telecom. Engg.

N.E. Railway, Gorakhpur

... Respondents

- By Shri A.B. Ojha, Advocate

Coram:- Hon'ble Shri L.R.K. Prasad, Member (A)

Hon'ble Shri Lakshman Jha, Member (J)

ORDER

Hon'ble Shri Lakshman Jha, Member (Judicial):-

In this application under section 19
of the Administrative Tribunals Act (Hereinafter to be
referred as 'A.T. Act'. The applicants, 11 in number
have prayed for direction to the Respondents to conduct
Viva Voce tests for filling up 14 posts of T.C.I. Grade I
in scale of Rs. 2000-3200 with retrospective effect, Since
dates, the posts are lying vacant with all consequential
benefits.

2. The applicants are working as T.C.I.,
Grade II in scale of Rs. 1640-Rs. 2660/- under N.E. Railway.
The Respondents Department issued a Notification vide
G.M.(P), N.E.Railway, Gorakhpur's letter No. Ka/254/6/Du.
Sal Ni./13 Part (iv) dated 24.11.1995/1.12.95 to fill up
14 posts of T.C.I., Grade-I (Rs. 2000-3200/- for general
category. The applicants along with other eligible

candidates appeared at the written tests held on 30.12.95 and 3.1.96, vide Annexure-A/3. The result of the written test was declared on 15.4.96 and the applicants were declared successful. Therefore, they were called upon for viva voce test on 22.4.96, vide Annexure-A/2, but it was postponed till further intimation. However, it is stated that the applicants came to know that the result of written test has been cancelled by the G.M.(P) vide his letter dated 28.7.96, without assigning any reason with ulterior motive for accommodating some favourites.

3. The Respondents Department in their counter have stated that the written test for selection to fill up 14 posts of TCI Rs. 2000-32000/- was held as per notification dated 27.11.95, but in the aforesaid notification it could not be mentioned that three posts out of the aforesaid 14 posts of T.C.I. were reserved posts for S.T. As a result of this irregularity in the notification 42 candidates of general category were called for written test whereas only 33 candidates should have been called for filling up 11 vacancies of general category. This irregularity came in notice of the Selection Committee on 22.4.96, i.e. to say on the date fixed for viva voce and, accordingly, the selection committee submitted a joint report indicating that 14 vacancies of T.C.I. Grade I included 3 S.T. posts, for which dereservation from the competent authority was required. Accordingly, the case was put up before C.P.O. (Administration) who ordered for cancellation of the notification dated 27.11.95 including result of the written test held pursuant thereto as according to him the number of vacancies had wrongly been calculated by including 3 S.T. posts without dereservation. Accordingly, a fresh notification

was issued on 18.7.96 in consultation with G.M. for filling up the 11 vacancies of general category candidates. It is stated that for filling up 11 Nos. of vacancies for general category only 33 eligible candidates should have been called whereas 42 were called which is a serious irregularity. Therefore, notification itself was wrong and the competent authority decided to cancel it and, ^{therefore,} the written test ^{were ordered to be cancelled.} held on 16.12.95 and for absentees on 23.12.95. By the cancellation of the written test of the applicants their right, much less, justifiable right has not been infringed and they are not entitled to the relief prayed for. The applicant has obtained interim stay order on 7.2.97 and, therefore, selection process is held up in pursuance of the notification issued subsequently for the purpose.

4. The applicants in their rejoinder to the written statement have stated that notification for holding selection for the post of 14 TCI Grade I (Rs. 2000-3200) (general candidates) was rightly notified on 27.11.95. The post of TCI Grade I is a selection post for which written test as well as viva-voce test are required to be taken. The assessment of the vacancies for selection includes the existing vacancy and those anticipated during the course of one year plus 20% of the anticipated vacancies for unforeseen contingency. The Respondents Department taking into account of the aforesaid factors assessed 14 number of vacancies ^{and,} accordingly, notified for filling up the same vide notification referred to above. It is denied that there were only 11 vacancies of T.C.I, Grade I for general category candidates and 3 out of 14 notified posts included 3 reserved posts for S.T. There was no S.T. candidates

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available before hand and due to non-availability of S.T. candidates, the 3 vacancies were carried forward for many years, but ~~lastly~~, these three posts were dereserved by the competent authority as per Top-Sheet at C/235-234-Noting 40-46 of case No.E/210/6/TCI/PLYC 19. Accordingly, the aforesaid Notification was correctly issued for 14 posts (general) for which written test was held and result was published. Thus, there was no irregularity in selection procedure and cancellation of the selection procedure is said to be illegal, arbitrary and unconstitutional.

5. Heard Shri S. Pandey, learned counsel for the applicant and Shri A.B. Ojha, learned counsel for respondents and perused the record.

6. It is admitted position that the Respondents Department issued notification for filling up 14 vacancies in the grade of T.C. I (2000-3200) and pursuant to the notification a written test was held and the result of the written test was declared. It is also admitted position that the applicants were declared successful in the written test and were called for viva voce test which could not be held and subsequently the notification itself was cancelled. The only ground for cancellation of the notification is that the aforesaid 14 number of vacancies as notified for general category candidates included three posts for S.T. candidates and, therefore, the notification was irregular and it vitiated the selection process as a whole.

7. The learned counsel for the applicants contended that the aforesaid three posts of ST category were vacant for a number of years due to non-availability of the candidates in the feeder grade. Accordingly, after

dereservation of the three posts of S.T. category, the total number of 14 vacancies for general category candidates were notified. The learned counsel for the Respondents disputed this factual position regarding dereservation of the posts of S.T. category. It is stated ⁱⁿ para 7 of the reply to rejoinder of the applicants that the only competent authority did not pass any speaking order for dereservation of S.T. posts in the aforesaid note referred to by the applicants. The posts reserved for S.T. were left vacant in absence of proper order of dereservation. It is stated that the order for dereservation in the particular vacancy is valid for only one time ^{and} not for ever.

8. It appears that the applicants took clear and categorical stand that three posts of S.T. had already been dereserved as there was no eligible candidates available for a number of years in that category. They have also referred to the file no. i.e. N/4-46 of case No.E/2106/TCI/Pt. VII (9) to drive home the points that the three posts of S.T. candidates for the posts in question had already been dereserved. The Respondents Railway have not brought on record the aforesaid file note to refute the claim of the applicants. This Tribunal, vide order dated 31.5.99, at the conclusion of the arguments directed the applicants to submit a copy of the above note through an affidavit. Accordingly, on 1.6.99, an affidavit was filed on behalf of the applicant which shows that the three posts of S.T. had already been dereserved, vide the aforesaid note and the notification for holding selection for 14 general posts had correctly been issued. It may be pointed out that it is the admitted position that S.T. candidates in the category in question were not available and it is

also admitted that the dereservation is resorted to for a particular year and not for ever. In such circumstances of the case, we are constrained to believe that the 3 posts of S.T. had been dereserved and 14 number of vacancies for general category candidates had rightly been notified.

9. The learned counsel for the applicants contended that there is no justification for cancellation of the whole process of selection and the result of the written test. ~~He~~ ^{contended} that, even if, it is assumed that the three excess posts of reserved category had been notified, ~~the~~ ^{should} selection process ~~have~~ ^{should} have been completed by preparing the merit list on the basis of the written test as well as viva voce test in accordance with law and then the Respondents department ~~have~~ ^{should} have proceeded to fill up the available vacancies ignoring the claim of ineligible candidates on the ground of non-availability of vacancy. It is true that appearing in the examination for selection to the post does not create any right to the appointment, but in the instant case, we find that the Respondents ^{have} Department ~~renotified~~ ^{and} the vacancies ~~propose~~ ^{to} fill up the same by selection process. There is no ^{aforesaid} complaint against the ~~selection~~ ^{selection} process by either of the parties. In such a circumstance, the contention of the learned counsel for the applicant that cancellation of the whole selection process by cancelling the notification itself is wrong and arbitrary appears to hold water.

10. In view of the aforesaid discussions, we are of considered opinion that the cancellation of the selection process including the result of written examination held on 16.12.95 and 23.12.95, for filling up the post of ~~TCI, Grade-I in the scale~~ of Rs.2000-3200 for

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14 posts (general) is not valid and proper. Accordingly, the order dated 18.7.96, as contained in Annexure-A/1 is quashed. The Respondents Railways are directed to proceed with the further selection process on the basis of the notification dated 24.11.95/1.12.95 as at Annexure-A/5 and to finalise the same within a period of three months from the date of receipt of this order. There shall be no order as to costs.

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Lika 4.1.2000
(Lakshman Jha)
Member (J)

4.1.2000
(L.R.K. Prasad)
Member (A)