

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

O.A. No. 517 of 1996

DATE OF ORDER : 8.6.95.2001

1. Lallan Choudhary, son of Shri Ram Awadhesh Choudhary, resident of village and P.O. Bahura, P.S. Dawath, District - Rohtas.
2. K.B. Salahuddin, son of late Mohammed Usman.
3. Umi Ram, son of late Sarni Ram.
4. Satyendra Poddar, son of late Nand Lal Poddar.
5. Shyam Sunder Choudhary, son of late Ganga Choudhary.
6. Arvind Kumar Singh, son of Sri Laxmi Narayan Singh.
7. Daya Sanker Pathak, son of late Din Bandhu Pathak.
8. Bimal Kumar Lal, son of Sri Surinder Lal.
9. Ainul Haque Ansari, son of Md. Halib Ansari.
10. Akhilendra Kumar Mishra, son of Shri Braj Nandan Mishra.
11. Mohan Prasad Singh, son of Shri Ram Primal Singh.
12. Bijay Kumar Pathak, son of Shri Mukh Lal Pathak.
13. Vijoy Kumar Singh, son of Shri Rajendra Pd. Singh.

..... APPLICANT.

By Advocate Shri R.N. Mukhopadhaya with Shri V.Ram.

Versus

1. The Union of India through the Chairman, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi.
2. The Director (Establishment), Railway, Ministry of Railways, Rail Bhawan, New Delhi.
3. The General Manager, N.E. Railway, Gorakhpur.
4. The General Manager, Eastern Railway, Fairlie Place, Calcutta.
5. The Chief Personnel Officer, N.E. Railway, Gorakhpur.
6. The Chief Personnel Officer, E. Railway, Fairlie Place, Calcutta.

..... RESPONDENTS.

By Advocate Shri B.K. Choudhary.

C O R A M

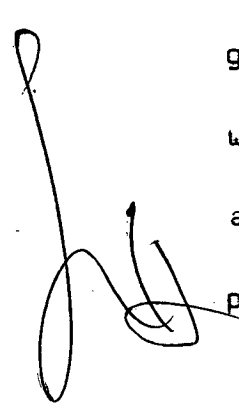
Hon'ble Shri Lakshman Jha, Member (J)

Hon'ble Shri L. Hmingliana, Member (A)

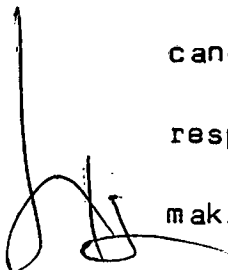
O R D E R

By L.Hmingliana, M(A) :- The 13 applicants are Guards (Goods), who were appointed some time in 1989, 1990, 1991 and 1992 on the basis of a panel of selected candidates for appointment to various class III posts, prepared by the Railway Recruitment Board, Muzaffarpur. The panel was prepared on the basis of the result of written examination and viva voce tests which were held in 1980 and 1981, Their prayer is for fixation of their seniority with effect from 1981 or at least from 1986.

2. The Railway Recruitment Board, Muzaffarpur published advertisement no. 9/78 on 11.6.1978, inviting applications for appointment to various posts like Guards/Officer Clerks/ Accounts Clerks Grade III etc. in the pay scale of Rs. 1200-2040/- The applicants applied , and they appeared at the written test held on 21.9.1980 and 28.12.1980, and also at the viva voce tests, which were held during the period from 15.12.1980 and 13.8.1981, and it would appear that they also went through the psychological test , but they were not given appointments. Then, in the year 1981, appointments were given to different persons pursuant to the advertisement no. 9/78, even though no panel was published by the Railway Recruitment Board. Complaints



were lodged with the Railway Minister by some candidates, including the applicants. Therefore, the Vigilance Department of the N.E. Railway seized all the relevant documents relating to the advertisement no. 9/78, including the answer sheets and viva voce marks. Then, on 5.9.1986, the Railway Recruitment Board came out with two different panels of selected candidates, one for the posts of Assistant Station Master and other for different posts including Guards. It is stated at para 4.10 of the OA that out of the 13 applicants, only applicant no. 7 was declared successful, with his name at serial no. 206 in the panel. On the representation made by the applicants and the others, the railway Minister directed the concerned authority to review the matter, and on 23.3.1988, the question also was raised and discussed in Parliament, wherein the government accepted that 968 candidates had been appointed by the railways without considering the cases of candidates with higher marks. Then, the railways came out with a fresh advertisement on 10.7.1988, calling for applications for appointments to different class III posts. The applicant no. 7 and some other candidates filed OA 306/88 for direction to the respondents to consider them for appointment after making necessary correction in the panel. And on



1.11.1988, another panel of 674 persons for appointment to different posts including Guards was published.

The applicants were in the panel dated ^{1. 11.} 30.10.1988, which is at Annexure -3 (A), and in fact the panel consisted exclusively of their names. Then, according to the chart prepared by the applicants, which is at Annexure -7, they were offered the appointments, and they joined in the years 1989, 1990, 1991 and 1992. The letters of offer of appointment made to only two of them (applicant no. 7 and ' 8) have been produced at Annexure 5 series.

3. The case of the applicants is that their empanelment and appointments were on the basis of their success in the written examination and viva voce tests held in 1980 and 1981 following the publication of the original advertisement no. 9/78, and that they should have been included in the panel of 5.9.1986, and even earlier in 1981, in which year they had succeeded in the written and viva voce tests. Their prayer, as stated in the relief clause at para 8, is as follows;

" The respondents be directed to fix the seniority of the applicants as well as pay fixation, if required notionally from the date the applicants are legally entitled to, that is with effect from 23/24 December, 1981

and/or at least with effect from 5th September, 1986 and other benefits in service in accordance with law".


It will appear that they are not really hopeful of their prayer for seniority with effect from 23/24. December, 1981, being granted. This date of 23/24 December, 1981 is the date of the letter by which the General Manager (Vigilance) of North Eastern Railway congratulated one of them for bringing to light the irregularities committed by the respondent authorities in making appointments without preparing the panel of selected candidates, and that date cannot be the basis for fixation of the seniority of the applicants. In other words, they are not entitled to fixation of their seniority with effect from 23/24th December, 1981.

4. The learned counsel for the applicant has submitted a written argument, in which it is stated at para 4 that the Vigilance Department "seized the documents and fresh panel published on 5.9.1986 (Annexure-2), in which the name of the applicants no. 2,4,6,7,10 and 11 appeared " (sic). This statement is contrary to the statement at para 4.10 of the DA, which is that "surprisingly, the names of other applicants, although they also did fairly well, were not shown by the respondent authorities in the panel."

which panel is the same panel published on 5.9.1986, wherein only applicant no. 7 out of the 13 applicants was stated to have been declared successful, as we have already stated above.

5. Annexure -2 is state to be the panel of 5.9.1986, but it is not a complete document: pages no. 2,3,5 and 6 are missing , and page no. 7 is after page 8. The document may be ^a truncated ^{copy of the} panel of 5.9.1986, and in it we find the names of applicants no. 1,2,4,6,7,9,10,11 and 13, which would be contrary to the statements at para 4.10 of the DA that none of the applicants excepting applicant no. 7 was shown in the panel. Any way, the documents cannot be accepted as the panel of 5.9.1986, for which the applicants have only themselves to blame.

6. It is not the case of the applicants that appointments were made on the basis of the panel of 5.9.1986. ^{Appointments were obviously not made} ~~reasons for not making appointments~~ out of ^{and the reason was the obviously the} ~~the panel was obviously~~ a hue and cry raised by the candidates who were not in the panel and the discussion held in parliament on 23.3.1988. The Railway Recruitment Board came out with a fresh advertisement no. 1/88-89 on 10.7.1988 , inviting applications for appointment to different class III posts. Some candidates , including applicant no. 7 filed



OA 306/88 for direction to the respondents to consider their cases for appointment after making necessary corrections in the panel, and during the pendency of the OA, the Advisor of the Railway Board came out with one confidential letter addressed to the General Manager, N.E. Railway, Gorakhpur, stating that the Railway Board had taken certain decisions to prepare a fresh panel of candidates, who had secured higher marks than 968 persons (presumably the persons who were selected or included in the panel), and on that basis make appointments, to prepare two panels, one for Assistant Station Masters and the other for the posts like Guards, Ticket Collector etc, and to make appointments to the vacant posts from the fresh panel till the panel gets exhausted. Then, a panel of 224 persons against the posts of Assistant Station Master was published on 25.10.1988 and another panel of 674 candidates against the other posts of Guards, Ticket Collectors etc was also prepared on 31.10.88/ 1.11.88. It is stated in the OA that the names of the applicants were in that panel (of 674). The OA 306/88 came to be dismissed for default on 12.11.1989, as by that time, appointments were given to the applicants therein excepting the present applicant no. 7.

7.


The Railway Board again came out with

another advertisement no. 3/88-89 on 29.3.1989, calling for applications for appointments to some class III posts of Guards, Commercial Clerks, Ticket Collectors etc. Then, the applicant no. 7 and others similarly situated persons filed OA 322/89 for direction to the respondents to consider their case for appointment and for protection ^{of} ~~the~~ their seniority on the basis of the marks they obtained, and also to fix their pay accordingly. The Tribunal disposed of that OA 322/89 on 10.8.1990 with observations that the Tribunal was of the opinion that the applicants were entitled to succeed, and with direction to the respondents to consider their cases for appointments in accordance with Railway Board's instructions dated 19.9.1988 within a period of six months.

8. Written statement filed on behalf of the respondents was not on record at the time of final hearing of the OA, even though rejoinder filed on behalf of the applicant, was there. Subsequently, unattested xerox copies of the written statement were filed, wherein it is stated that no recruitment was made without forming a panel, and that the panel (of 31.10.88/1.11.88) was not prepared in continuation of the previous panel, but it was a separate panel. But it is clearly stated in the panel

of the 13 applicants dated 31.10.88 that " the under noted candidates have been selected for the post and categories mentioned above as a result of the written examination held on 21.9.1980 and 28.12.1980 and interview/psychological tests held between 15.12.1980 to 13.8.1981 by Railway Recruitment Board (the then Railway Service Commission), Muzaffarpur." Then, the statements in ^{the} unattested copies of the written statement cannot be accepted.

9. The method of fixation of seniority of candidates recruited through the Railway Recruitment Board as in para 303 of the Indian Railway Establishment Manual Vol. I (revised edition 1989) is relied upon and reproduced in the unverified copy of the written statement. According to paragraph 303 of the IREM Vol. I (revised edition 1989), ~~the~~ candidates who have undergone training in training school will rank in seniority in their grades in ^{the} order of merit obtained by them at the time of examination held at the end of the training period before being posted against ~~the~~ working posts, and those who joined ~~at~~ the subsequent course for any reasons whatsoever, and those who (repeat the training ~~&~~ and) pass the examination in a subsequent chance will rank junior to those who passed the examination in the earlier course, and in case of ~~the~~



candidates who do not have to undergo training , seniority should be determined on the basis of the order of the merit assigned by the Railway Recruitment Board.

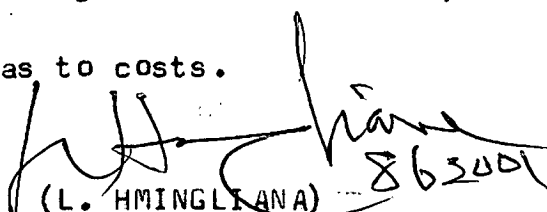
10. According to the statement produced by the applicant at Annexure -7, the date of the orders of their appointments were 21.3.1989 (applicants no. 1 to 6, 10 and 12), 20.3.1990 (applicants nos. 7 and 13), 29.1.1991 (applicants no. 9 and 11), and ~~15~~ 15.2.1991 (applicant no. 8). The accuracy of the statement is doubtful, because for most of the applicants, the dates of completion of training are earlier to the dates of joining, though ranging from 5 days in the case of applicant no. 3 to more than 7 ~~xxx~~ months, in the case of applicant no. 13, while the dates of completion of training are shown to be much later than the dates of joining in case of applicants no. 8 and 11. Any way, it appears that the applicants were ^{not} given letters of appointments immediately after their names were included in the panel of 31.10.1988/1.11.1988. It remains, however, that the applicants have not furnished us ~~the~~ adequate information for granting them reliefs they are praying for.


11. Nevertheless, it remains that the allegations of serious irregularities committed by the respondents

in making the appointments to the post, which were advertised in the notification no. 9/78 dated 11.6.1978 even before the panels were formed remained uncontroverted. It remains uncontroverted that the posts which were advertised on 11.6.1978 were advertised again even before the panels of selected candidates were properly formed on the basis of the results of the written examination and viva voce/ psychological tests held in 1980 and 1981. It is unfortunate that the Railway Recruitment Board, Muzaffarpur and the Railway Administration resorted to such sordid malpractices.

12. The application is disposed of with the following observations:

The reliefs as prayed for cannot be granted on the basis of the inadequate informations furnished to us by the applicants. However, they will be entitled to seniority over those who were below them in the order of merit in the result of the examination, even though the latter may have been appointed earlier or they may have been appointed without being empanelled on the result of the examination. Our observations will not apply to those whose appointment were earlier because of the quota of reservations for the categories to which they belong. There shall be no order as to costs.


(L. HMINGLIANA)
MEMBER (A)


(LAKSHMAN JHA)
MEMBER (J)