

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA

O.A. No. 668 of 1996

Dated

3<sup>rd</sup> July 2002

1. Maha Sunder Jha
2. R.P. Samaiyar
3. Surendra Prasad Paswan

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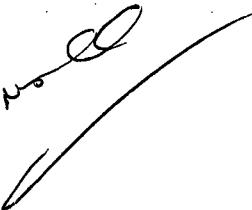
Applicants

-versus-

1. Union of India through G.M., N.F.Railway, Maligaon, Guwahati.
2. Chief Personnel Officer, N.F.Railway, Maligaon, Guwahati.
3. D.R.M., N.F.Railway, Katihar.
4. Senior Divisional Personnel Officer, N.F.Railway, Katihar.
5. Sri Pratap Singh, Head Clerk, (E) under Sr.D.P.O., N.F.Railway, Katihar.
6. Sri Gautam Sarkar, Head Clerk (E) under Divisional Security Commissioner, N.F.Railway, Katihar.
7. Sri J.M. Das (I), Head Clerk (E) under Sr. Divisional Personnel Officer, N.F.Railway, Katihar.
8. Sri A.K. Sen Gupta, Head Clerk (E) under Sr. Divisional Personnel Officer, N.F.Railway, Katihar.
9. Sr C.P. Saha, Head Clerk (E) under Senior Divisional Personnel Officer, N.F.Railway, Katihar.
10. Smt. Sonalika Duptta, Head Clerk (E) under Senior Divisional Personnel Officer, N.F.Railway, Katihar.
11. Smt. Rita Dey, Head Clerk (E) under Senior Divisional Personnel Officer, N.F.Railway, Katihar.

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Respondents

  
Counsel for the applicants .. Shri Sudama Pandey  
Shri J. Prasad  
Counsel for the respondents .. Shri Gautam Bose

PRESENT: The Hon'ble Shri L.R.K.Prasad, Member (A)

The Hon'ble Mrs. Shyama Dogra, Member (J)

O R D E R

L.R.K.Prasad, Member (A) :

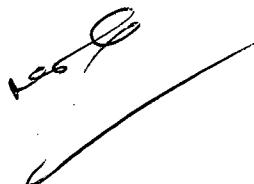
1. This application has been filed seeking following reliefs:

(i) Memorandum No.E/254/0/Part-VIII dated 24.12.1996 (Annexure-A/1) be quashed being illegal and arbitrary.

(ii) The respondents be further commanded to hold the selection for the post of office ~~Supdt.~~ Grade II (Rs.1600-2660) as per rules.

2. Heard the learned counsel for the parties and perused the materials on record. The applicants (3 in number) are allowed to file the instant application together.

3. At the relevant time, the applicants were working as Head Clerk (E) in the scale of Rs.1400-2300 under the administrative control of Senior Divisional Personnel Officer, N.F. Railway, Katihar. Vide notification dated 4.3.1996 (Annexure-A/2), it was decided to form a panel of O.S. Grade II in the scale of Rs.1600-2660 for filling up 7 unreserved posts. For the said purpose, 21 candidates, including the applicants, were asked to appear in the written test on 30.3.1996 vide letter dated 15.3.1996 (Annexure-A/3). After written test, a list of candidates who were required to appear at viva voce test on 11.10.1996, was issued. As there were representations from staff as well as recognised Union with regard to alleged procedural irregularities, further action was not taken. Vide letter dated 13.6.1996



(Annexure-A/6), the selection for the post of O.S. Grade II was declared as cancelled and a fresh notification is stated to have been issued on 21.6.1996 (Annexure-A/7) with advice to candidates to be in readiness for appearing in the selection test. The names of the applicants are included in the said notification (Annexure-A/7). A call letter was also issued advising the eligible candidates to appear in the written test on 20.7.1996. However, the said written test was postponed. In this regard, the applicants have referred to Annexures-A/8 and A/9. It is alleged by the applicants that instead of proceeding further with the notification dated 21.6.1996 (Annexure-A/8) and letter dated 8.7.1996 (Annexure-A/8), the respondents published a panel for the post of O.S. Grade II vide O.M. dated 24.12.1996 (Annexure-A/1) which was finalised on the basis of <sup>earlier</sup> written test as well as <sup>A</sup> viva voce test and the said panel was approved by the competent authority. The applicants have impugned the said panel on the grounds, as stated in the O.A. It is the stand of the applicants that once the selection process has been cancelled, no result can be published on the basis of earlier written test followed by viva voce test. According to applicants, after cancelling the earlier selection process vide letter dated 13.6.1996 (Annexure-A/6), the respondents should have treated the said selection as closed and proceeded in the matter of selection on the basis of letter dated 21.6.1996 (Annexure-A/7) and letter dated 8.7.1996 (Annexure-A/8) which has not been done. Hence, the instant O.A. with the prayer as stated above.

4. While opposing the above application, the respondents have stated that the instant application is not maintainable due to non-joinder of party as well as on

on merit. It is also hit by Section 21 of A.T.Act, 1985. So far as limitation aspect is concerned, we find that the same is not applicable in the instant O.A. as they have filed the instant O.A. in 1996 itself challenging the action of the respondents in publishing Annexure-A/1 sometime in December 1996. Therefore, limitation clause is not attracted in the instant case.

5. On the factual score, it is admitted position that a notification dated 4.3.1996 (Annexure-A/2) was issued for filling up 7 posts of O.S. Grade II in the scale of Rs.1600-2660 by promoting 7 Head Clerks of the Establishment Section working in the scale of Rs.1400-2300 after a selection process. It was decided that post of O.S. Grade II would be filled up by a positive act of selection, which would include written test as well as viva voce test. While clarifying the position, the respondents have stated that three candidates, namely, T.K. Mukhopadhyaya, Basisth Jha and B.C. Nag, whose names appear at serial nos. 19, 20 and 21 respectively in the letter at Annexure-A/3, were allowed to appear in the written test in place of Smt. Sandhya Dutta, Smt. Bhabani Dalwi and Smt. Rupa Ray, whose names appear at serial nos. 12, 17 and 19 at Annexure-A/2, as they had expressed unwillingness to appear in the written test. However, later on, Smt. Sandhya Dutta expressed her willingness to appear in the written test and the prayer was allowed as she was within the zone of consideration. Finally, 18 candidates appeared in the written test. Out of 18 candidates, 7 were declared qualified in the written test and 3 declared eligible to appear in viva voce test by adding notional seniority marks and the final result of written test was published on 6.6.1996 (Annexure-R-1).

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In the meantime, on receipt of certain complaints, respondent no.3 ordered cancellation of the above selection. The complaints were made mainly on the ground that there were 22 candidates against 21 no. called on the ratio of 1:3. As the vacancies were 7, 21 candidates were required to be called for written test. The cancellation matter was, however, taken up by certain recognised Unions of N.F.Railway and a meeting was also arranged at the level of General Manager. After hearing the Unions, the General Manager called for case file. The matter was examined by respondent no.2, who observed that the candidature of such candidate, namely, B.C.Nag, should be treated as cancelled and the selection process already initiated earlier should be finalised and the result declared. It was felt that there was nothing wrong in allowing Smt. Dutta to appear in the selection test as she was well within the zone of consideration and she had withdrawn her unwillingness before the commencement of the written examination. Accordingly, the decision was communicated to the President, N.F. Railway Employees' Union, Guwahati, on 6th September 1996, which is self-explanatory. It is clarified by the respondents that the second written test which was to be held on 20.7.1997 could not be held as the entire selection case file was called by the Headquarter for departmental examination. In fact, after due examination, necessary decision was taken which was implemented and the result based on earlier notification was finally published. The applicants had appeared in the written test in response to the notification dated 4.3.1996. They were, however, declared un-successful in the written test held on 13.3.1996 and absentee

test held on 23.5.1996. However, applicant no.2 was declared successful for appearing in viva voce test after adding his notional seniority marks on 11.6.1996. However, he failed to qualify. As such, the names of the applicants could not be included in the panel for promotion to O.S.Grade II. During the course of argument, our attention was drawn to paras ~~219~~ <sup>219</sup> of IREM which relate to procedure to be adopted for filling up selection post. It is clearly stated that selection should be made primarily on the basis of over all merit but for the guidance of Selection Board, the factors to be taken into consideration and their relative weight are laid down in para 219(g) and (h) of IREM.

6. We have considered the matter in the light of submissions made on behalf of the parties and materials on record. It is admitted fact that initially notification for filling up 7 posts (unreserved) of O.S.Grade II was issued on 4.3.1996 (Annexure-A/2). A written test was also held which was participated by the applicants. The post of O.S.Grade II is a selection post and is required to be filled up by positive act of selection which includes written test as well as viva voce test. We find from Annexure-R-1 that a list of successful candidates in the written test was published on 6.6.1996, which includes the name of applicant no.2. On the basis of written test and viva voce test, the selection process with reference to notification dated 4.3.1996 was completed with the publication of final result. <sup>As</sup> ~~Applicant nos. 1 and 3 failed to qualify in the written test, they were not called for viva voce test.~~ So far as applicant no.2, <sup>concerned</sup> he became eligible for appearing in viva voce test by adding notional seniority marks. However, he could not qualify, hence his name was not included in the final panel prepared for promotion to the

post of D.S.Grade III. It is alleged by the applicants that the selection process started with reference to notification dated 4.3.1996 should have been closed as the same was cancelled and a fresh notification for written test was issued. However, it is observed that after the written test with reference to notification dated 4.3.1996, a technical complaint was raised so much so that instead of calling 21 eligible persons, 22 had been called for written test. This matter came to the notice of the General Manager and the said technical problem was ultimately sorted out with the direction to finalise the selection process based on result already declared, meaning thereby that selection process be completed with reference to notification dated 4th March 1996 (Annexure-A/2) expeditiously. Further action was, accordingly, taken by the concerned authority and the selection process for promotion to the post of O.S.Grade II was finalised and the result published. We are convinced with the justification given by the respondents in support of their arguments that necessary action was taken as per the prescribed procedure <sup>under Rule 219 (Copy)</sup> and no irregularity/ illegality was committed in the process. The applicants had been given opportunity to appear in the selection process but they failed to qualify. The technical complaint was sorted out at the level of General Manager/CPO.

7. In view of the above position, we have reached conclusion that this O.A. has no force and the same is, accordingly, dismissed with no order as to the costs.

*Shyama Dogra*  
(Shyama Dogra) 31.7.2002  
Member (J)

*L.R.K. Prasad*  
(L.R.K. Prasad) 31.7.02  
Member (A)