

## CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 69 OF 2006O.A.NO.: 513 OF 2007O.A.NO.: 78 OF 2008[Patna, this Monday, the 26<sup>th</sup> Day of May, 2008]C O R A M

HON'BLE MR. SHANKAR PRASAD, MEMBER [ADMN.]

HON'BLE MS. SADHNA SRIVASTAVA, MEMBER [JUDL.]

1. OA No. 69 of 2006.

Elias Kerketta, son of late Suleman, Quarter No. 256-B, New Colony Garhara,  
P.O.: Garhara, P.S.: Brauni, District – Begusarai. ....APPLICANT.  
By Advocate :- Shri S.K.Bariar.

Vs.

1. Union of India through Chairman-cum-Secretary, Railway Board, Rail Bhavan, New Delhi.
2. The General Manager, E.C.Railway, Hajipur.
3. C.P.O., E.C.Railway, Hajipur.
4. Divisional Railway Manager, E.C.Railway, Sonepur.

.....RESPONDENTS.By Advocate :- Shri M.N.Parbat, ASC.2. OA No. 513 of 2007

Elias Kerketta, son of late Suleman, Quarter No. 256-B, New Colony Garhara,  
P.O.: Garhara, P.S.: Brauni, District – Begusarai. ....APPLICANT.

By Advocate :- Shri S.K.Bariar.

Vs.

1. Union of India through Chairman-cum-Secretary, Railway Board, Rail Bhavan, New Delhi.
2. The General Manager, E.C.Railway, Hajipur.
3. C.P.O., E.C.Railway, Hajipur.
4. Divisional Railway Manager, E.C.Railway, Sonepur.

.....RESPONDENTS.By Advocate :- Shri M.N.Parbat, ASC. 

3. OA No. 78 of 2008

Elias Kerketta, son of late Suleman, Quarter No. 256-B, New Colony Garhara, P.O.: Garhara, P.S.: Brauni, District – Begusarai. ....APPLICANT.  
By Advocate :- Shri S.K.Bariar.

Vs.

1. Union of India through Chairman-cum-Secretary, Railway Board, Rail Bhavan, New Delhi-1.
2. Chairman, Railway Board, Rail Bhavan, New Delhi-1.
3. The General Manager, East Central Railway, Hazipur.
4. The General Manager, Personnel, East Central Railway, Hazipur.
5. Divisional Railway Manager, East Central Railway, Sonepur.
6. Sr. Divisional Personnel Officer, East Central Railway, Sonepur.
7. Assistant Personnel Officer, East Central Railway, Hazipur.

.....RESPONDENTS.

By Advocate :- Shri M.N.Parbat, ASC.

### O R D E R

Shankar Prasad, M[A] :- A common order will govern all these OAs as they have been preferred by the same applicant.

2. The applicant was appointed as a Principal [Group 'B' post], N.E.Railway, Inter College, on adhoc basis in 1998. The respondents had issued a selection notification dated 21.12.2005 to fill up two posts of Principal – one post was unreserved and the other post was reserved for member of scheduled caste. In OA 69 of 2006 the applicant had sought the relief of regularization of his adhoc appointment and quashing of <sup>this in</sup> his selection notification. The Tribunal while issuing notice had observed that if the applicant wishes to appear, he will be allowed to appear and the test if held would be subject to the outcome of the OA. The respondents Railway administration withdrew the selection notification dated 21.12.2005 and issued a fresh selection notification dated 23.08.2007. In this notification both the posts have been shown as unreserved. In OA 513 of 2007 the applicant sought a direction for quashing of this selection notification and for treating

his adhoc appointment as regular. However, at the time of hearing the learned counsels for the applicant gave up the relief relating to regularization. In OA 78 of 2008 the applicant challenged the instructions dated 07.01.2008 issued pursuant to selection notification dated 23.08.2007 and sought a direction that the selection be held as per the notification dated 21.12.2005. When the result was declared as per the selection notification dated 23.08.2007 the OA was amended to challenge the <sup>as prepared</sup> ~~said panel~~. The applicant had failed to clear the selection.

3. We have heard the learned counsels. We have also permitted the learned counsel for the applicant to go through the selection file and the Railway Board circulars regarding appointment to the post of Principal of Railway Inter Colleges.

4. It is not disputed that there are four posts of Principal [Group B] under the respondents. Rule 212 of IREC empowers the General Manager to make adhoc appointment to Group B posts in the circumstances mentioned therein. The letter appointing the applicant on this post found suitable for promotion. There is nothing on record as to what necessitated this adhoc appointment.

5. The first contention raised by learned counsel for the applicant is that if the earlier selection notification had not been withdrawn then the post reserved for SC could have been earmarked for ST and the case of applicant, who is a member of ST, be considered against that post. Such interchange is permissible in the very first year in case of promotion to Group B post in Railways.

The respondents on the other hand have stated that the Ministry of Railways decided vide their letter dated 16.11.2005 that post based roster will apply for promotions from Group C to Group B and within Group B . Instructions contained in Board's letter No. 95-E[SCT]1/49/5[2] dt. 21.08.21997 should follow.

6. It may be noted that the post based roster has been introduced pursuant to the decision of Constitution Bench in R.K.Sabharwal Vs. State of Punjab AIR 1995 SC 1371. The assertion of Railways in para 6 of reply in OA <sup>1</sup>

513 of 2007 has not been controverted by filing a rejoinder. The applicant has, however, submitted a supplementary application on 14.05.2008 stating that notification had been issued in terms of Railway Board Circular. We note that the only ground taken in the OA is that the subsequent notification has been issued to defeat the interim directions that decision will be subject to outcome of OA 69 of 2006. We also note that the applicant had himself sought quashing of this notification of December, 2005 in that OA. The applicant has also failed in the selection.

7. The file, which has been made available shows that the Ministry of Railways had issued an O.M. dated 27.05.1976 on the subject of filling up of the posts of headmaster. It provides :-

[a] There will be no written examination.

[b] Marks should be awarded to candidates on the following basis :-

	<u>Maximum</u>	<u>Qualifying</u>
Record of service.	50	30
Viva-voce.	50	30
	100	60

The Selection Board has to consist of four HODs.

8. The first contention of learned counsel for the applicants is that the as per para 204.1 of IREM the selection has to take place on the basis of written test. The preface to IREM shows that it is a compilation of orders issued by Railway Board. As there is a specific instruction of the Railway Board regarding filling up the posts of the Principal, the same would hold the filed. This contention has, therefore, to be rejected.

9. The next contention of Shri S.K.Bariar, the learned counsel for the applicants is that the respondents have taken into account the ACR of the applicant for the year 2006-07 even though the applicant had represented against those ACRs and inspite of the directions of the Tribunal the said representation is yet to be decided.

10. We find that as per the Railway Board instructions quoted in para 7 above, the applicant has to obtain minimum qualifying marks both in

record of service as well as in viva-voce. The result of viva-voce shows that out of the eight candidates only two candidates have secured more than qualifying marks. As noted in para 7 above, the Selection Board consists of four HODs of the respondents Railway Administration. The applicant has failed in viva-voce. There is no challenge to the meetings of the Selection Board on the ground of bias or malafide in awarding of qualifying marks. Thus, even if the contention regarding taking into consideration the ACR of 2006-07 has merit, the applicant has failed in viva-voce test which he was required to pass.

11. It is well settled that those who had participated and failed cannot challenge the selection except on grounds of fraud or malafide, etc. As noted above, no malafide has been alleged against the Members of the Selection Board.

12. In view of the foregoing discussions, there is no merit in the OA and the same deserves to be dismissed. It is dismissed, accordingly, with no order as to costs.



[Sadhna Srivastava]/M[J]



Shankar Prasad  
[Shankar Prasad]/M[A]

skj.