

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

O.A.NO.554/98

Tuesday, this the 11th day of March, 2003

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri K.V.Sachidanandan, Member (J)

1. Eknath Ganpat Danke
working as Maintainer Grade I
Under Divisional Electrical
Engineer (TO), Central Railway,
Kalyan

Residing at:
Veer Savarkar Nagar
Behind Maruti Temple (E)
At & PO Manda
(Titwala) Distt. Thane

2. M.J. Parate
working as Maintainer Grade I
Under Divisional Electrical
Engineer (TO), Central Railway,
Kalyan

Residing at
Central Railway Quarter
Quarter No.12, "H"
Tiltwala (Manda) Distt. Thane

3. R.C.Patel
working as Maintainer Grade I
Under Divisional Electrical
Engineer (TO), Central Railway,
Kurla

Residing at Dayal Nelgi Chawl
2nd Floor, Room No.21, New Prabhadevi Road
Mumbai -400 025

4. O.B. Patil
working as Maintainer Grade II
Under Divisional Electrical
Engineer (TO), Central Railway,
Kurla

Residing at Central Railway Colony
Quarter NO. RB/I/A/8 Vidyavihar (E)
Mumbai 400 077

5. R.G. Kalan
working as Maintainer Grade II
Under Divisional Electrical
Engineer (TO), Central Railway,
Kurla

Residing at Kharwai
PO Kalyan, Tal.Ulhasnagar
Distt. Thane

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6. P.R.Mohite
Working as Linesman
Under Divisional Electrical
Engineer (TO), Central Railway,
Kurla

residing at 35/5 Khot Chawl
Takya Wada
S.M. Road
Kurla (W), Mumbai 400 070

7. Sudhir Nagwekar
Working as Linesman
Under Divisional Electrical
Engineer (TO), Central Railway,
Kurla

Residing at 21, Hetkari Mahajan Wadi
P.L. Kale Guruji Marg,
Dadar (E), Mumbai 400 028

...Applicants

(By Advocate: Shri G.S.Walia)

Versus

1. Union of India through
General Manager, Central Railway
Head Quarters Office, Mumbai CST
Mumbai 400 001

2. Divisional Railway Manager
Mumbai Division, Central Railway
DRM's Office, Mumbai CST,
Mumbai - 400 001

3. Dattraya P. Borgaonkar
working as Maintainer Grade I
T.O.Kalyan, Central Railway, Kalyan

4. Mohali Pradeep Sonsingh
working as T.O.Kurla, Central Railway
Kurla

5. P.G. Deshpande
Working as ASI
T.O.Lonawala
Central Railway, Lonawala

...Respondents

(By Advocate: Shri S.C.Dhawan)

ORDER (ORAL)

Shri Govindan S. Tampli:

The reliefs sought for in this OA are as below:

"a) this Hon'ble Tribunal will be pleased to call for the records and proceedings which led to the publishing of panel dated 12.2.1998 and after going through its validity, constitutionality, propriety, quash and set aside the same;

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b) this Hon'ble Tribunal will be pleased to order and direct the Respondents to send the Applicants for training and after the completion of the training, promote them as Chargemen Grade B with all the consequential benefits as Seniority, increments, fixation of pay etc.;

b-1) this Hon'ble Tribunal be pleased to order and direct the Respondents to calculate the 25% vacancies for Intermediate Apprentices properly by taking into consideration the unfilled vacancies since 1981 and empanel the Applicant No.4 in the panel dated 12.2.1981 and send him for training for the post of Chargeman Grade-B accordingly and accord him seniority and pay protection along with the persons in the same batch,

c) Any other or further order as to this Hon'ble Tribunal may deem necessary in the circumstances of the case may be passed;

d) cost of this Original Application be provided for; and

e) Joint Application may be allowed to be filed."

2. Non-selection of the applicants ~~by~~ on the post of Apprentice Mechanics in the pay scale of Rs.4000-6000/under the OHE Group of Mumbai Division, Central Railway, is the subject of challenge in this OA. All the five applicants working as Maintainer Grade-I/Linesman had become entitled to appear for the selection as Apprentice Mechanics and to be promoted as Chargeman Grade 'B'. On 20.1.1997, a Notification was issued by the respondents for promotion against 25% quota from amongst the rankers with requisite qualification. The applicants were so qualified. All of them appeared for the test and were called for the interview but their names were not placed on the final panel. Their request that more posts should be given to the rankers under the 40% quota has not been given effect to. According to them, in terms of the Rules, the post of Chargeman Group 'B'/Junior Engineer Grade II is filled 50% by direct

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recruitment, 25% by Intermediate Apprentices and remaining 25% by promotion from other categories. These posts have to be filled up on the yearly assessment of vacancies. However, the respondents had not correctly calculated the vacancies and promotions have been made wrongly by making adjustments in favour of others. In the present case, three vacancies have been assessed for those like the applicants, which was wrong, as it did not represent 25% vacancies but was much less and the same had led to the exclusion of applicant No.4, who, amongst all the applicants, had passed the test. It is further pointed out by the applicants that the selection should have been made on the basis of merit as it was ~~the next~~ ^{an} cadre post and no seniority marks should have been given.

According to the applicants, there should have been six posts made available to their category, while only three have been given. Hence, this OA, challenging the action of the respondents in not selecting the applicants as an illegal arbitrary act, violative of the Articles 14 & 16 of the Constitution. The applicants having been qualified, there is no reason to have denied them the above selection, plead the applicants.

Maru Chord for the applicants

3. During the oral submissions, Shri G.S. Malia sought to assail the selection by stating that the respondents have acted in a manner which was highly irregular and totally prejudicial to the cause of the applicants. He relied upon the decision of the Principal Bench in OA-2479/96, decided on 4.4.2000 (Mohan Lal Sharma & Others vs. Union of India & Others), whereunder it has been held that single selection made for the vacancies, which accrued on different years, leading to the preparation of a single selection panel, was ~~both~~ ^{both} improper and illegal. He

also referred to the decision of the Hon'ble Supreme Court in the case of **Union of India & Another vs. R.N. Gautam & Others** (Civil Appeal Nos. 1426-1427/95), decided on 18.3.1999, which upheld the findings of the Tribunal and stated that the directions of the Tribunal that year-wise vacancies will have to be computed and year-wise selections have to be made, was unexceptional and duly supported by the decisions of the Hon'ble Apex Court. Shri Walia pointed out that on account of the wrong policies adopted by the respondents, his clients have suffered and their grievances would have to be redressed. At the same time, during the oral submissions, he stated that he did not want the entire panel to be scraped as that would go against the interest of applicant No.4 also, but stated that his case should be favourably considered and promotion be granted to him, if it is found that he has lost only on account of wrong application of the rules.

4. Replying on behalf of the respondents, Shri S.C. Dhawan pointed out that by the amendment in the OA, relief has been claimed only for applicant No.4, thereby totally amending its nature as a joint application. According to them, the post of Chargeman Gr.B was to be filled in accordance with the Railway Board's letter, in terms of which the impugned selection was held. Out of 10 vacancies, 25% was meant for departmental staff, 50% for direct recruitment quota and remaining 25% for rankers. The respondents had conducted screening test correctly. Of all the applicants, only applicant No.4 got sufficient marks to be placed on the panel, but in

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the selection like this, merit plays the main role. The said applicant could not make it, as he was lower in merit.

5. The written submissions filed by both the parties also follow their pleadings in the OA. The applicants point out that in terms of the instructions contained in para 219 (g) of IREM, an employee has to obtain 60% marks in the written test and 60% marks in the professional ability, which consists of a written test and viva voce. The person was also expected to get 60% aggregate for being placed in the panel. According to the applicants, following the decision of the Hon'ble Supreme Court in the case of **M. Ramajayaram vs. General manager, South Central Railway & Ors.** [1996 SCC (L&S) 890], no seniority marks were to be awarded for promotion to ex-cadre/general post. The applicants further pointed out that it was only on account of the action of the respondents in not conducting annual DPOs this unfavourable situation has arisen. In terms of the respondents' pleas, the selection board should call for viva voce test of all candidates, who scored less than 60% marks in the written test. On the other hand, according to the respondents, those who had participated in the selection, cannot challenge the pattern for selection merely because they have failed. Their attempt was also to unsettle the settled position, which was also not permissible. Shri Dhawan, learned counsel for respondents clearly pointed out that the applicants did not have any case, as the selection had been gone through correctly and applicant No:4 failed to make the grade in the interview. The applicants are only attempting to assail the selection policy after they have lost out in

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the written test. This cannot be endorsed, says Shri Ohawan. He also placed before us the minutes of the selection which, according to him, showed that the respondents had acted correctly and no interference was called for.

6. We have carefully considered the matter. In this OA, the applicants are seeking to challenge the selection of three persons in the grade of Chargeman Gr. "B" from the cadre of Intermediate Apprentice. The applicants have attempted to show that though they are entitled for being considered for promotion to 25% vacancies, the same has been denied to them by not making a proper assessment of the vacancies. But for the averments made by the applicants, nothing has been brought on record to prove this charge. It is evident, therefore, that only three vacancies existed ^{in the year} and the selection could have been made only for ~~the~~ ^{post} period. The applicants request ^h that when selection is made for filling up the vacancies for different year, the panel should have been prepared separately year-wise, which has not been done in the instant case. The same also is not correct, as three vacancies related to the single year and there was no question of preparing separate panel in respect of these posts. The third plea raised by the applicants is that in the selection of an ex-cadre/general post, seniority marks shall not be assigned and it is only on account of the assignation of such seniority marks, they have been denied the benefit of promotion. This is also not correct. Perusal of the minutes of the selection conducted on 9.9.1997 for filling up the three posts shows that only five persons have made the grade in the selection. Of these, applicant

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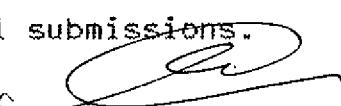
No.4 is also included: However, with 60 marks out of 100, he has been placed at No.5, whereas only three vacancies could be filled. No marks are found to have been assigned for seniority. When this was pointed out, Shri Walia stated that the marks obtained would have to be taken as out of 80 instead of 100, keeping aside the marks for selection. However, this does not serve his purpose: Even if the maximum marks are indicated as 80/100, applicant No.4's position is only fifth and, therefore, he would not have made the grade when there are only three vacancies. The respondents have, therefore, correctly declined to give him selection and the same cannot be called in question.

7. We have also carefully gone through the various judgments relied upon by the applicants. The same, however, would not come to his assistance, as the facts are clearly distinguishable, in that (a) all the vacancies accrued during the same year obviating the necessity of having separate panels, (b) no marks for seniority had been assigned and (c) the position was only fifth as against three vacancies.

8. Though originally the application was filed by five persons, however, during the oral submissions, Shri Walia pressed the relief only in respect of applicant No.4, who alone amongst them, had cleared the 'written' test. However, he failed to clear the interview and had, therefore, been denied the promotion. In the above view of the matter, we are totally convinced that the applicant(s) has failed to make out any case in law. The OA should fail and is accordingly dismissed. No costs.

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10. Order pronounced in Court at the conclusion of
oral submissions.


(K.V. Sachidanandan)
Member (J)


(Govindan S. Tampli)
Member (A)

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