

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A. No. 721/92

Dt. of order: 2-3-1995.

J.S.Chawla & Ors.

: Applicants

Vs.

Union of India & Ors. : Respondents

Mr.S.P.Mathur : Counsel for applicants

None present for the respondents.

CORAM:

Hon'ble Mr.Gopal Krishna, Member (Judl.)

Hon'ble Mr.O.P.Sharma, Member (Adm.)

PER HON'BLE MR.O.P.SHARMA, MEMBER (ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, applicants S/Shri J.S.Chawla, R.P.Pateria, Hari Singh, Bachu Singh, Chanera Prakash, S.K.Sharma, B.N.Tiwari, Dev Dutt, B.S.Sharma and V.P.Gupta, who have all given their address C/o Divisional Railway Manager, Western Railway, Kota, have prayed that the respondents may be restrained from acting upon the panel dated 19.7.88 (Annex.A6) so as not to appoint any person on permanent basis to the post of Traction Foreman (TRD) scale Rs.3000-3200(RP) and the said panel may be quashed. They have further prayed that the respondents may be directed to hold a fresh selection by considering only those candidates who were eligible on the date of occurrence of vacancies and the persons found suitable may be given appointments from the date of occurrence of vacancies with all consequential benefits.

According to 'they' 2. The applicants were all holding the post of Assistant Traction Foreman at least for a period of 2 years and were, therefore, eligible to appear in the selection for the post of TRD, which is a safety category post and for which the incumbents must have put in at least 2 years service. 69 vacancies in the cadre of Traction Foreman were required to be filled-up by holding a regular selection through a written test followed by a viva voce for the candidates who were successful in the written test. A list of eligible candidates was circulated vide letter dated 31.8.87 (Annex.A1) by the Head-quarters of the Western Railway, Bombay.

In this list only 47 persons were included and it was mentioned in the letter circulating the list, that since sufficient number of candidates with 2 years service in scale ₹.1600-2660 (F.P) were not available, the selection would be conducted from amongst the above mentioned 47 candidates available. It was not open to the authorities to relax this requirement of 2 years' service. Earlier on 14.8.85, it was agreed between the Administration and the Unions in case a sufficient number of persons in the cadre of Asstt.Traction Foreman were not available, staff from other streams of Electrical Department with proper qualifications and experience would be inducted to the extent of deficiency. The result of the discussion was circulated vide letter dated 26.9.85 (Annex.A2). Thereafter, however the Western Railway Head-quarters issued a letter dated 11.11.87 (Annex.A3) containing a list of candidates to be considered for promotion to the post of Traction Foreman, wherein persons who had not put in 2 years service in safety category were also included. Thus, unequals and equals were sought to be treated alike, in violation of Articles 14 and 16 of the Constitution. Vide Annexure A4 dated 30.11.87, names of 4 persons i.e. Shri Jaspal Singh, V.K.Gupta, M.D.Sharma and H.K.Sharma, were sought to be deleted on the ground that they were not working in TRD Section. By the same letter 3, Shri N.K.Saxena and Kuldeep Singh were included in the list of eligible candidates though they were not working in the TRD nor did they have any lien in the TRD.

3. Further, according to the applicants, all the persons whose names were included in letters dated 11.11.87 (Annex.A3) and 30.11.87 (Annex.A4) appeared in the written test held in December 1987 and January '88. The result was declared vide Annex.A5 dated 30.3.88 and 68 persons were shown to have passed the written test. They were called for interview on 4.5.'88. The selection consisted of written test (35 marks), viva voce (15 marks), personality, leadership, academic and technical qualifications (20 marks) record of service (15 marks) and seniority (15 marks). In the professional ability (excluding a candidate was expected to secure at least 21 out of 35 marks. Since the persons included in the list dated 11.11.87 and 30.11.87, came from different streams, no interse

seniority list was drawn ^{up} before arranging for the interview. Confidential report of last 3 years including the current one were not made available before the Select Panel was declared. Vide letter dated 19.7.86, a panel of 38 candidates ^{were} declared, ^{as} ~~they~~ found suitable for the post of Traction Foreman (Annex.A6). Gross irregularities were committed by the Authorities in regard to the aforesaid selections. The applicants submitted a representation in this regard (Annex.A7) dated 26.7.86 to the General Manager, Western Railway, but there was no response.

4. Most of the applicants were working as Traction Foreman for 3 to 6 years and since they had worked for more than at least 18 months they could not be declared unsuitable in the selection in view of the circular letter of the Railway Board dated 9.8.82.

Shri Kuldeep Singh was holding the post of an Estimator and therefore, he could not be treated as eligible to the post of Traction Foreman. Regardless of the marks obtained on other counts, the applicants apprehend that the result has been declared on the basis of performance in the interview only. Shri V.P.Gupta, one of the applicants was not called for the selection though he was screened in TRD and was also appointed in TRD and Shri S.K.Gupta, was also denied consideration for selection. In the final panel there were at least 14 persons who were not eligible for being considered and yet they were included in the panel.

5. The respondents in their reply have taken certain preliminary objections. One is that the persons whose selections have been challenged have not been impleaded as parties to the application. The other is that the applicants Nos.2 and 4 were not entitled to approach the Jaipur Bench of the Tribunal as these persons were working in Baroda and Ratlam Divisions of the Western Railway.

6. As regards to the substantive issues raised by the applicants, the respondents have stated that the panel prepared by them is perfectly valid. They have placed on record a letter dated 4.6.84 as Annex.P1 circulating a letter dated 26.5.84 issued by the Railway Board communicating a decision that the condition

ended after the issue of letter dated 31.3.88, the confidential reports for the year ending 31.3.88 were not sent. Respondents had considered the Confidential Report for the same period for all the candidates. Before a reply could be given to the representation made by the applicants against their nonselection they filed this application before the Tribunal.

7. The respondents have further contended that all the candidates who have been promoted by order dated 19.8.88 (Annex.F4) had completed 2 years on the lower post before the date of their promotion. Since the applicants have not given particulars about the dates from which they were working on the post of Traction Foreman and therefore the ground that they have been working on the said post for the last 3 to 6 years is vague. Some of the applicants did not pass the written test. The applicants had not been declared unsuitable, only on the ground of failing in the interview but ^{also} on account of their overall performance in the selection test. Therefore, the letter dated 9.8.88 issued by the Railway Board and relied upon by the applicants is in fact not applicable in their cases. The benefit of length of service has been given to all the candidates. They have denied that the seniority list of all the eligible candidates was not taken into consideration. Shri V.P.Gupta, one of the applicants, was excluded from the selection process because he was not working in TRD nor did he have ^{been} ~~have~~ in TRD. Regarding Shri S.K.Gupta, the applicants have not given full particulars and therefore a proper reply regarding him can not be given.

8. During the arguments, the learned counsel for the applicants stated that the respondents had not produced the marks list to show that the applicants had failed to secure the necessary number of marks for being included in the panel. Ineligible persons not having 2 years experience were considered by the respondents for inclusion in the panel and some of them were eventually included therein. This way, persons who did not possess qualifications possessed by the applicants namely 2 years experience were also

treated as equals of the applicants. Although there were 69 vacancies only 38 persons were included in the panel and the applicants were also being eligible for included in the panel. Shri V.P.Gupta, one of the applicants had not been selected even for the written test even though he was eligible.

9. We have heard the learned counsel for the applicant and have perused the records. None is present on behalf of the respondents.

10. The preliminary objections raised by the respondents are dealt with first. While the promotion order on the basis of the select panel was issued vide Annex.R4 dated 19.8.'88, the Tribunal had passed an interim order dated 18.8.88 to the effect that the respondents should make appointments of the applicants on the basis of the impugned panel on provisional basis and subject to the decision in this O.A. On 1.9.88, another interim order was issued by the Tribunal that appointments on the basis of the impugned order will be subject to the decision on this application. Since an interim order had already been issued by the Tribunal before the order dated 19.8.88 was issued, in our view, ^{it was} ~~not necessary~~ necessary for the applicants to implead all the so-called juniors appointed vide order dated 19.8.88. Regarding the aspect of jurisdiction with regard to applicants Nos.2 & 4, since this application has already been admitted long back, we have considered it appropriate to dispose of on merits in the interests of justice.

11. The basic point to be considered in this case is ~~whether~~ the principle namely whether the respondents were justified in enlarging the area of selection by going beyond Annex.A1 and by including candidates mentioned in Annexes.A3 and A4 (dated 11.11.87 and 30.11.87) respectively. The respondents have stated that in view of various representations received by them/decided to enlarge the area of selection by including a larger number of candidates as mentioned in Annexes.A3 and A4, besides those who were initially included by Annex.A1 dated 31.8.87. They have placed on record Annex.R1 by which the Railway Board's letter dated 26.5.'84 has been circulated. In this letter, the Railway

12. Next question is whether there were any irregularities in the selection process itself as alleged by the applicant. The respondents have maintained that the entire selection procedure was properly followed. The respondents have added that it was on the basis of their over all performance in the written test and marks for seniority etc. that the candidates including the applicants were called for interview. It was not that those who had failed in the written examination were not called for interview. As seen from Annex.R2, 6 of the applicants had failed in the written test and still they were called for interview, on account of their over all performance. As regards the Confidential Reports, the respondents have rightly stated that the current years reports could not have been sent to the Selection Committee, because the panel was published on 30.3.88 (Annex.A5), on which date the current financial year ~~have~~ had not even been completed. Thus, we do not find any irregularity in the process of selection either.

13. Now the question is regarding inclusion or exclusion of individual candidates in terms of the criteria adopted. Vide Annex.A4, names of 4 persons were deleted because they were not working in TRD Section. Regardless of the reasons for deletion of their names ~~none~~ of these 4 persons are applicants. Therefore, the applicants ^{cannot} have ~~not~~ any grievance with regard to exclusion of names of persons who are not applicants themselves. As regards inclusion of names of S/ Shri N.K. Saxena and Kuldeep Singh, the applicants have rebutted the assertion of the respondents in their rejoinder that these 2 persons were screened in TRD cadre and these were holding lien in TRD cadre. The respondents statements in this regard is belied by the letter of DRM, Kota dated 11.1.88 (Annex.A9). A perusal of Annex.A9 shows that the remarks of DRM Kota in his letter dated 11.1.88 were that these 2 persons are not working on this Division and hence no remarks can be given. From Annex.A10 filed by the applicants with the rejoinder, it is however seen that Shri N.K. Saxena, TFO, belongs to Bombay Division and was granted promotion in Bombay Division. Annex.A10 also makes it clear that Shri N.K. Saxena was working in Electrical (TR) department and he has already

been placed on the panel notified vide DPM(E) BCT's office order dated 25.4.88. As regards Shri Kuldeep Singh, the learned counsel for the applicants stated during the arguments that he was an Estimator and therefore could not be part of TRD Section. Order Anxx.A11 shows that this official had his lien in the Electrical Branch. We therefore, do not find any irregularity in consideration of name of Shri Kuldeep Singh. It is not to be forgotten that this selection was for the entire Western Railway and not for any particular Division within the Western Railway.

14. Regarding the exclusion of another applicants namely Shri V.P.Gupta, the respondents have stated that he was excluded from the selection process because he was not working in TRD nor did he had any lien in TRD. The applicants in their rejoinder have not indicated any concrete evidence to rebut this averment of the respondents. In these circumstances, we hold that the respondents were not unjustified in excluding the name of Shri V.P. Gupta, one of the applicants from the selection process at the relevant time.

15. Over all, we find no merits in this application and it is, therefore, dismissed with no order as to costs.


(O.P.Sharma)
Member(A).


(Gopal Krishna)
Member(J).