

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Date of order 21-05-2001.

O.A.NO. 570 of 1994.

1. Nazeer Ahmed S/o Shri Khursheed Ali, aged around 36 years, R/o UIT Quarter No. 439, Sector No. 1, J.P.Nagar, Madar, Distt. Ajmer; presently posted as Khalasi in the office of Station Superintendent, Western Railway,
2. Dhan Singh Meena S/o Shri Bhanwarlal Meena, aged around years, R/o Meena Colony, 558/25, Ramganj, Ajmer, presently posted as Khalasi, Station Superintendent, Western Railway, Ajmer.
3. Basant Kumar S/o Shri Pooran Chand Chaurasiya, aged around 30 years, R/c Railway Quarter No. T-963 (H), Near Gandhi Bhawan, Ajmer; presently posted as Khalasi in the office of STation Superintendent, Ajmer.
4. Prem Singh S/o Shri Gopi Singh aged around 33 years, R/c Railway Quarter No. T-963, D/Ajmer, presently posted as Khalasi, in the office of Station Superintendent, Western Railway, Ajmer.
5. Prem Chand Sharma S/o Shri Balchand Sharma, aged around 44 years, R/o 12/96, Shyam Gali, Hathi Bhata, Ajmer, Presently posted as Telegramme Peon, in the office of Station Superintendent, Western Railway, Ajmer.
6. Ram Chandra Bhati S/o Shri Bhanwarlal Bhati, aged around 34 yrs posted as R/c Behari Ganj, IVth Gali, Bhati Bhawan, Ajmer; presently Call Boy, in the office of Station Superintendent, Western Railway, Ajmer.
7. Pooran Singh S/o Shri Gauri Lal Kushwaha, aged around 37 years, R/o Gulab Bari, Aam ka Talab, Ajmer, present posted in the office of Station Superintendent, Western Railway, Ajmer.

.....Applicants.

versus

Oppose of

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Divisional Railway Manager, Ajmer Division, Ajmer.

.....Respondents.

Mr. P.P.Mathur proxy for Mr. R.N.Mathur, counsel for the applicants.
 Mr. Anupam Agarwal, proxy for Mr. Manish Bhandari, counsel for the respondents.

CORAM :

Hon'ble Mr.Justice B.S.Raikote, Vice Chairman

Hon'ble Mr.Gopal Singh, Administrative Member

ORDER

Per Mr.Gopal Singh,A.M. :

In this application under section 19 of the Administrative Tribunals Act, 1985, it has been prayed by the applicants that the Panel dated 22.10.1994 (Annex.A/1) be quashed and the impugned order dated 31.3.1992 (Annex.A/3) and orders dated 29.5.1993 and 27.4.1994 and all the consequential proceedings of the selection for the post of Commercial Clerk etc. be declared illegal and be quashed and further, the respondents be directed to bifurcate the vacancies year-wise and conduct a selection accordingly as per the rules of selection with all the consequential benefits.

2. Applicants' case is that the respondents issued a Notification dated 31.3.1992, Annex.A/3. for conducting a test for promotion to the post of Commercial Clerk, Ticket Collector and Trains

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Clerk, for the vacancies of the years 1988, 1989, 1990 and 1991 against the rankers quota. The employees having three years regular service in the pay scale of Rs. 800-1150 or lower pay scales, were eligible to appear in that selection. Applicants also appeared in the said selection but could not find place in the selection panel. It is the contention of the applicants that clubbing of the vacancies together, has reduced the chances of passing the applicants in the said examination. Further, it has been alleged that the four persons whose names were deleted from the panel of eligible candidates for interview, were empanelled again on their option for reversion in a lower pay scale. This has also reduced their chances of selection. It is also alleged that the respondents also allowed some persons in the interview who had not qualified in the written test and one of them has even been declared successful finally. It is also pointed-out by the applicants that some of the persons who had been declared successful in the selection had been given promotion in the higher pay scale under the upgradation scheme. As such, their names could not have been included in the panel. It has also been pointed out by the applicants that Scheduled Caste/Scheduled Tribe candidates have been selected much in excess of the prescribed percentage in the said selection. Feeling aggrieved, the applicants have filed this O.A.

3. averments made in the counter, the application are denied by the respondents and it is pointed out that the applicants were aware that the selection was being conducted for the vacancies of five years and they could have raised objection at the initial stage itself. Raising the objection after having failed in the selection cannot be permitted as per the law laid down by Hon'ble the Supreme Court. It is also pointed out by the respondents that four persons, whose names were initially deleted from the eligibility list for interview, were again enlisted as per their option for the said selection though on a lower scale. It has also been pointed out by the respondents that it

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is permissible as per rules. It is also contended by the respondents that the Scheduled Caste/Scheduled Tribe candidates who had scored more than 60% marks were taken on general merit and appointed against the general vacancies and there was no illegality in the action of the respondents in this regard. The contention of the applicant that certain persons, who had not passed in the written test, were allowed to appear in the interview is replied by the respondents that it was only reserved category (Scheduled Caste/Scheduled Tribe) candidates who under the relaxed conditions were called for interview and that was as per the rules. It is also admitted by the applicants that the persons who were accorded promotion under the upgradation scheme, had applied for the selection in question much before the upgradation scheme was implemented and as such, placing such persons on the panel was not illegal. It has, therefore, been averred by the respondents that the application filed by the applicants is mis-conceived and is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the records of the case carefully.

5. It is not disputed that the applicants have appeared in the selection and have failed. In 1986 SCC (L&S) 644 - Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, it has been held by the Hon'ble Supreme Court that a candidate having appeared in an examination and failed, cannot challenge the examination. The Principal Bench of the Central Administrative Tribunal also in (1990) 12 ATC 625 - D. Kumar Vs. Union of India and Others, has held that a candidate cannot question the selection process after appearing in it but having been declared unfit. In the light of the law laid down as above, we are firmly of the view that the applicants ~~cannot~~ challenge the selection at this juncture. Moreover, ~~the~~

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the applicants have not brought to our notice any law which prohibits clubbing of all the posts available on the date of the notification for appointment similar to the one find in Indian Administrative Services Rules. The applicants did apply to those posts as per the notification and have taken the examination knowing fully well the implications of the notification calling for the applications. Therefore, it is not open to them to challenge the selection to the posts which were available for being filled-up as on the date of issuing the notification. Hence, we do not find any merit regarding the point urged by the applicants for clubbing of all the posts available as on the date of notification for the purpose of filling-up such posts.

6. Regarding the other contention that certain persons got reverted to a lower post for the purpose of claiming selection on the basis of the said notification and such a procedure is illegal, we find that even this point does not merit for consideration for more than one reason. The applicants have not challenged the reversion of such persons to a lower cadre nor they have any locus standi to challenge the same. The fact remains that those persons were reverted before they contested for the posts on the basis of the notification calling for applications. It is not the case of the applicants that such persons were juniors to the applicants in any cadre. If that is so, such selection of the senior persons to the next cadre on the basis of the notification calling for the applications, the applicants cannot challenge the same. Thus, we do not find any merit in this application. The explanation offered by the respondents in their reply in this behalf, deserves to be accepted.

7. In the light of the above discussions, we do not find any merit in this application, the same deserves to be dismissed.

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8. The Original Application is accordingly dismissed.

However, the parties are left to bear their own cost.

Gopal Singh

(GOPAL SINGH)
Adm. Member

RAIKOTE

(JUSTICE B.S.RAIKOTE)
Vice Chairman

mehta.