

Date of order: 11-8-99

OA No. 297/99

Radhey Lal S/o Shri Mool Chand, now-a-days working as Goods Driver, Loco Shed, Western Railway, Phulera.

OA No. 307/99

Mohd. Zalil S/o Shri Babudeen,
Mohan Lal S/o Shri Ram Swaroop,
now-a-days working as Driver, Loco Shed, Phulera.

OA No. 298/99

Ashok Kumar S/o Shri Ganesh,
Shyam Lal S/o Shri Nanu Ram Jatav,
Ram Swaroop S/o Shri Ramji Lal Gurjar,
Om Singh S/o Shri Ram Singh,
All are working as Goods Driver, Loco Shed, Western Railway Phulera.

OA No. 305/99

Gheesa Lal S/o Shri Mool Chand, now-a-days working as Driver, Loco Shed, Phulera.

OA No. 309/99

Ram Karan S/o Shri Ram Sahai,
Bhanwar Lal S/o Shri Bhana Ram,
Radhey Shyam S/o Shri Bhairu Mali,
Hukum Chand S/o Shri Ganga Ram,
Babu Lal Harijan S/o Shri Matadin,
Jagmohan Lal Meena. S/o Shri Gulab Chand
All are working as Goods Driver, Loco Shed, Western Railway, Phulera.

OA No. 306/99

Braham Swaroop S/o Shri M.D.Sharma, now-a-days working as Driver, Loco Shed, Western Railway, Phulera

.. Applicants

Versus

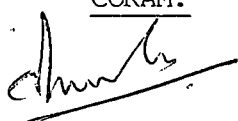
1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager (E), Western Railway, Jaipur Division, Jaipur.
3. Additional Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.

.. Respondents

Mr. S.K.Jain, counsel for the applicants

Mr. U.D.Sharma, counsel for the respondents

CORAM:



Hon'ble Mr. Gopal Krishna, Vice Chairman

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

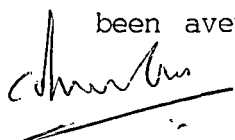
Per Hon'ble Mr. N.P.Nawani, Administrative Member

In view of the similar facts and circumstances as also the relief sought, it is proposed to dispose of the above mentioned OAs by a common order.

2. In these applications under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed that:

- i) the respondents should interpolate their names in the panel dated 25.2.1999 (Ann.A1) and they should be regularly promoted on the posts of Goods Driver in the Grade of Rs. 5000-8000 from the date of their appointment/promotion and the impugned order dated 15.6.1999 (Ann.A/1a) be quashed, deeming the applicants to be continuing on the posts of Goods Driver w.e.f. their date of joining.
- ii) the respondents be directed not to revert the applicants to the lower post till a legal selection is held by calling them for the viva-voce test/interview.
- iii) that the applicants should be granted all the ancilliary benefits regarding seniority, further promotion etc.
- iv) in the alternative, the interview held by the illegal Selection Board be quashed and the respondents be directed to reconstitute the Selection Board and hold the interview again as per law.

3. The facts of the case, as stated by the applicants, are that they have been working as Senior Diesel Assistants on regular basis in the Jaipur Division of the Western Railway. They were promoted on ad hoc basis on the post of Goods Driver in the Grade of Rs. 5000-8000 from various dates ranging from 17.4.1995 to 18.8.1998 and they have been working on the said post since then. The respondents had published a total of 144 posts of Goods Driver and a written examination was conducted in the month of August-September, 1998 for which 244 candidates were called. The applicants appeared in the said examination and since the panel dated 25.2.1999 does not contain their names, they are presumed to have been declared unsuccessful in the written test and not selected. The applicants have been satisfactorily working on the post of Goods Drivers they could not have been declared unsuccessful. Further, marks for seniority had not been added to the marks obtained by them in the written test and as such they were not called for interview. In the alternative, it has also been averred by the applicants that the constitution of the Selection



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Board for holding the interview was not as prescribed in para 218 of Indian Railway Establishment Manual (for short, IREM) and, therefore, it was wholly illegal and did not confer any right to the respondents to declare any result of the interview. They also cannot be debarred or estopped from raising the objection against the constitution of the Selection Board in spite of the fact that the applicants appeared before the said Board as they got to know the names of the members of the Selection Board much later. It is, therefore, contended on behalf of the applicants that their names should be interpolated in the panel and they should not be reverted to the lower post. It has also been mentioned that in a similar matter in OA No.281/99, Rajendra and Ors. Vs. Union of India and Ors., this Tribunal had granted a stay on 18.6.1999 and it has been prayed that in their cases also a similar stay should be granted. The applicants have also filed an affidavit on 29.6.1999 stating that they had represented to the General Manager, Western Railway, Mumbai against the formation of the panel in addition to the representations made on their behalf by the Union.

4. The respondents in their reply have strongly opposed the contentions of the applicants. Their preliminary objection was that the applicants have challenged the order of reversion without first availing statutory remedy available to them in the Railway Servants (Discipline and Appeal) Rules (for short, the Rules). As regards the plea that the Selection Board was not constituted as per rules, the respondents have stated that the Selection Board under para 218 is for pay scale Rs. 1600-2600 and above whereas the pay scale of a Goods Driver is only Rs. 1250-2200 and, in any case, having appeared before the Selection Board without any protest and having subsequently been declared failed therein, the applicant cannot question the constitution of the Selection Board. In any case, all the members of the Selection Board were in accordance with the rules and circulars. It is also averred that it was an admitted position that the applicants had failed in the initial stage of selection i.e. written examination and could not, therefore, reach the second stage i.e. the interview. They have no locus-standi to challenge the composition of interview Board and no prejudice has been caused to them even if it is assumed, without admitting, that the Board was not in conformity with para 218 of IREM and benefit of Railway Board's letter dated 7.2.1976 ought to have been given to them. Respondents categorically stated that the constitution of the Selection Board was in full conformity with the provisions of para 218 of IREM. The respondents also informed that marks pertaining to the notional seniority had been properly added to the marks obtained by the applicants and even, therefater, they could not secure 60% marks.

5. We have heard the counsel for the parties at great length and have also perused the records carefully.

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6. It was argued by the learned counsel for the applicants that the very constitution of the Selection Board was illegal and, therefore, the records of the viva-voce should not be made the basis for non-selection of the applicants. In this connection, he referred to para 218(c) of the IRBM and seeking support from the Railway Board's letter No. E(NG)I/89/PM II/8-A dated 10.1.92, in which Goods Driver's pay scale of Rs. 1350-2200 has been equated with the pay scale of Rs. 1600-2660, pressed that the Boards should have been constituted under the above para as prescribed for selection post in the scale of Rs. 1600-2660. Enumerating details of the names and designations of the members of Board as contained in the pleadings, he contended that the Board was not constituted as per the provisions of this rule. The Board should have consisted of officers of the Junior Administrative rank and could have included a Personnel Officer in the next lower rank who should nevertheless be an equal member of the Selection Board and as against this, two members of the Board viz. D.O.M. (C) and A.P.O. were of grades lower than prescribed. It was also contended that fourth member was added unnecessarily for influencing the decision of the Board and, therefore, the interview and its result was wholly illegal and liable to be quashed. The respondents, on the other hand, argued that the letter dated 10.1.92, referred to by the learned counsel for the applicants was not applicable and as specifically provided in para 218(c), the Board was constituted 'for all other selection posts' as against for selection post in the scale of Rs. 1600-2600.

It has been contended on behalf of the applicants that the marks for seniority have not been included while computing the total marks obtained by them. The learned counsel for the respondents, on the other hand, stated that this was not true and the marks have been allotted to the applicants on all counts as prescribed.

7. A preliminary objection has been raised on behalf of the respondents that these applications are premature and not maintainable since the applicants have not exhausted the alternative remedy of appeal provided under Rule 18 of the Rules. It was argued on behalf of the applicants that the grievances of the applicants are (i) not being empanelled and (ii) being reverted from the post of Goods Driver and whereas there is no provision for filing an appeal for not being empanelled, Rule 18(v)(b) of the Rules does not apply as the applicants were reverted from a post in which they were working on ad hoc basis and not 'officiating' as provided in sub rule (b) of Rule 18 (v) of the Rules. The learned counsel for the respondents, however, stressed on the fact that if a railway servant has any grievance, an appeal/representation is mandatory before approaching the Tribunal and the present grievance can certainly be dealt with by the appellate authority under Rule 18(v)(b) dealing with reversion or under Rule 18(iv)(a) of the Rules, which

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provides for appeal against an order which denies or varies to this disadvantage, his pay, allowances, pension, provident fund benefits, service gratuity or other conditions of service as regulated by rules or by agreement. It was also mentioned that the applicants having been ordered to be reverted from a higher post to a lower post, an appeal certainly lies since officiating does not occupy a higher level than working on ad hoc basis, as contended by the learned counsel for the applicants.

8. The learned counsel for the applicants, however, argued that in view of the incorrect procedure adopted in declaring the applicants failed in the interview/viva-voce in disregard to decisions of the various Benches of the Tribunal and also the judgment of the Hon'ble Apex Court as also on account of illegal constitution of the Selection Board, the requirement of exhausting the alternative remedy of appeal before approaching the Tribunal should be dispensed with. In this regard, reliance has been place on WLC (Raj.) 1998 (3) 484 - Smt. Ruby Joyce Charles v. Air Force School & Ors., (1998) 8 SCC 1 - Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors., (1996) 33 ATC 747 - U.P. Forest Service Assn. & Ors. v. Union of India & Ors., 1996 (2) WLN (Full Bench) 35 - R. Dayal & Ors., v. State of Rajasthan & Ors., (1993) 23 ATC 910 - Alfred D'Souza v. Collector of Customs & Anr., (1998) 8 ATC 741 - Rajkishore Das v. Union of India & Ors., (1988) 8 ATC 808 - Smt. D.R. Shah and Others v. Union of India and others, and 1986 ATC 307 - Charan Singh v. Union of India and Others.

9. Section 20 of the Act specifically provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed of all the remedies available to him under the relevant rules as to redressal of his grievances. The use of the word 'ordinarily' is deliberate. It signifies that in ordinary course, an applicant has to avail of all the remedies provided under the relevant service rules before approaching the Tribunal for redressal of his grievances. It is only in exceptional and extra-ordinary circumstances that the Tribunal can entertain an application dispensing with the requirements of making an appeal or representation, as the case may be, provided under the relevant Rules.

10. However, in these cases, while it was mentioned in the Original Applications that the applicants and others represented this matter to the Union and the Union filed the representation to the General Manager, some of them have, subsequently, through their affidavits intimated that they have made representations to the General Manager. It is borne out from the records that some of them have not made any such individual representation. In any case, we find that the applications are premature and the applicants should have waited for six months after making

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representations before approaching this Tribunal.

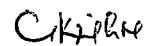
11. Keeping in view the facts and circumstances of these cases and the contentions made by the opposite parties, we deem it just and proper to pass the following order:-

- i) All the applicants may file their appeals as envisaged under Rule 18 of the Railway Servants (Discipline and Appeal) Rules, 1968 to the General Manager within 15 days of this order and the appellate authority shall consider these appeals and decide the same through detailed speaking orders on merits meeting all the points raised by the applicants within a period of two months from the date of its receipt. Let copies of the OAs and annexures thereto be sent to respondent No.1 alongwith a copy of this order.
- ii) These applications are held to be premature and these are disposed of accordingly with no order as to costs.



(N.P. NAWANI)

Adm. Member



(GOPAL KRISHNA)

Vice Chairman