

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

20-3-07

Mr. S. N. Trivedi Counsel for applicant
 Mr. S. S. Hazare Counsel for official
 respd.
 Mr. Ramesh Chandra Counsel for
 respds no 10 to 12 & 14 to 16
 Mr. Nand Kishore Counsel for respd no 13

Arguments heard.

Order reserved.

(J. P. Shukla) (Kuldip Singh)
 Administrative Member Vice Chairman

23/3/07

Order has been pronounced
 today in the open court
 by PJC.

23/3/07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 23 day of March, 2007

ORIGINAL APPLICATION NO.606/2003

CORAM :

HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR.J.P.SHUKLA, ADMINISITRATIVE MEMBER

1. Naresh Kumar Luhadiya, Head Clerk in Compilation Office, Western Railway, Ajmer.
2. Om Prakash Sharma, Head Clerk in Compilation Office, Western Railway, Ajmer.
3. Lal Singh, Head Clerk in Compilation Office, Western Railway, Ajmer.
4. Surgyan Jain, Head Clerk in Compilation Office, Western Railway, Ajmer.
5. Smt.Madhu, Head Clerk in Compilation Office, Western Railway, Ajmer.
6. Smt.Vandana, Head Clerk in Compilation Office, Western Railway, Ajmer.
7. Pramod Gaur, Head Clerk in Compilation Office, Western Railway, Ajmer.
8. Ashok Ajmera, Head Clerk in Compilation Office, Western Railway, Ajmer.

By Advocate : Shri S.N.Trivedi

... Applicant

Versus

1. Union of India through
General Manager,
Western Railway (Central),
Churchgate, Mumbai.
2. The Railway Board through its Chairman,
Ministry of Railway,
New Delhi.
3. General Manager,
North Western Railway,
Headquarter Building,
Jaipur.

Sumit

4. Financial Advisor & Chief Accounts Officer,
Western Railway,
Headquarter Building,
Churchgate,
Mumbai.
5. Dy.Chief Accounts Officer (TA),
Western Railway,
Ajmer.
6. Sr.Personnel Officer (TO),
Western Railway,
Headquarter Building,
Churchgate,
Mumbai.
7. Statistical & Analysis Officer,
Western Railway,
Churchgate,
Mumbai.
8. Statistical & Analysis Officer,
North Western Railway,
Headquarter Building,
Jaipur.
9. Statistical & Analysis Officer,
Western Railway,
Ajmer.

By Advocate : Shri S.S.Hasan

10. Shri Pushkar Narain,
Head Clerk in Compilation Office,
North Western Railway,
Ajmer.
11. Shri Prem Prakash Choudhary,
Head Clerk in Compilation Office,
North Western Railway,
Ajmer.
12. Shri Sushil Kumar,
Office Superintendent Grade-II,
Compilation Office,
Western Railway,
Ajmer.

By Advocate : Shri Ramesh Chand

13. Shri Satish Chandra,
Office Superintendent Grade-II,
Compilation Office,
Western Railway,
Ajmer.

By Advocate : Shri Nand Kishore

14. Shri Ramji Lal,
Office Superintendent Grade-II,
Compilation Office,
Western Railway,
Ajmer.
15. Shri K.C.Meena,
Office Superintendent Grade-II,
Compilation Office,
Western Railway,
Ajmer.
16. Shri R.K.Meena,
Office Superintendent Grade-II,
Compilation Office,
Western Railway,
Ajmer.

By Advocate : Shri Ramesh Chand

... Respondents

ORDER

PER HON'BLE MR.J.P.SHUKLA

This OA has been filed by the applicants under Section-19 of the Administrative Tribunals Act, 1985, thereby praying for the following relief :

"A) That by an order or direction in the appropriate nature, the notification vide letter dated 25.1.2002 (Ann.A/1) issued by respondent No.9 - Statistical and Analysis Officers, Western Railway, Ajmer, and in pursuance of that, empanelment vide letter dated 7.10.2003 (Ann.A/2) issued by respondent No.9 and the promotion order dated 8.10.2003 (Ann.A/3) issued by respondent No.9 may kindly be modified. Accordingly, the respondents Railway Administration may kindly be directed to prepare the fresh empanelment by considering the candidature of the applicants on the basis of initial recruitment seniority in pursuant of the law laid down by the Hon'ble Apex Court and to issue the promotion order with all consequential benefits.

B) That the circular vide letter dated 8.3.2002 (Ann.A/4) issued by respondent No.2 - Railway Board, Ministry of Railway, Govt. of India, New Delhi, may kindly be quashed and set aside. Accordingly, the consequential seniority in pursuance of the Amendment Act,

Annul

2001 may kindly be made applicable with effect from 17.6.1995."

2. The matter pertains to selection, empanelment and thereafter promotion to the post of Office Superintendent Grade-II. The grievance of the applicants is that a notification vide letter dated 25.1.2002 was published by respondent No.9 i.e. Statistical and Analysis Officer, Western Railway, Ajmer, for the purpose of promotions to the post of Office Superintendent Grade-II in the pay scale of Rs.5500-9000 by way of selection and empanelment against the total 17 posts which were classified as 14 posts to the General category, 01 post to the Scheduled Caste category and 02 posts to the Scheduled Tribes category candidates. Further, an eligibility list on the basis of seniority list of Head Clerks was appended to the notification containing the names of 51 employees under List-A and the names of 04 employees under List-B. In List-A, the names of the applicants are placed at S.No.18, 27, 35, 40, 37, 43, 44 and 48 respectively, as per Ann.A/1. The applicants had participated in the said selection process comprising of the written examination and the viva-voce. The panel for the said post was notified vide order dated 7.10.2003, wherein the names of the applicants were not included, whereas the names of the private respondents figured at S.Nos.4 to 6,12,15,16 & 17 respectively. It is seen from the perusal of the said panel that the respondents No.10 to 13 have been shown as selected on general merit, respondent No.15 has been shown as selected against SC quota

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and respondents No.16 & 17 have been shown as selected against ST quota of two posts. Thereafter, the final panel was notified vide letter dated 7.10.2003, passed by respondent No.9, in which the names of all the applicants were missing, whereas respondents No.11 and 14, who declared pass under relaxed standard rule, were placed on the panel and the other private respondents who were belonging to the reserved category were shown selected on general merit, resulting which the candidates of general category like the applicants were deprived to be empanelled. Though the result of the written test was rendered as per the seniority principle, but the interview had been conducted as per reversed seniority list prepared under 85th Amendment Act, 2001, which has caused grave injustice to the applicants as the two employees who were failed in the written test were called for interview by adding the notional marks of seniority prepared. The applicants feeling aggrieved by the aforesaid notification dated 25.1.2002 (Ann.A/1), orders dated 7.10.2003 and 8.10.2003 (Ann.A/2 & A/3 respectively) have filed this OA challenging the promotion of the private respondents and also for quashing and setting aside the said notification dated 25.1.2002 (Ann.A/1) and the orders dated 7.10.2003 (Ann.A/2) and 8.10.2003 (Ann.A/3).

3. We have heard the learned counsel for the parties and gone through the material placed on record.

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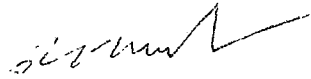
4. Learned counsel for the applicants argued that action of the official respondents is arbitrary, illegal and unjustified inasmuch as the selection proceedings were initiated based on initial seniority as also the eligibility list annexed with the notification dated 25.1.2002 (Ann.A/1), in which the names of the applicants were appearing. Had the viva-voce been conducted as per the notified seniority list, the applicants would not have been deprived of the final selection, empanelment and promotion.

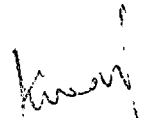
5. It was argued from the respondents' side that the OA is time barred and none of the applicants made any representation/ objection against the revised seniority. However, it was counter argued by the learned counsel for the applicants that the list of finally selected candidates for empanelment was notified on 7.10.2003 and the promotion orders were issued on 8.10.2003, which has been challenged for modification and accordingly the OA was filed on 19.12.2003 and, therefore, we hold that it is not time barred and is well within limitation. As regards the representation or filing objection against the revised seniority after conducting written examination, as the candidates were already invited for participating in the viva-voce, it was not considered appropriate by the applicants to make any representation/filing any objection at that stage.

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6. After hearing the learned counsel for the parties and perusing the records placed before us, we find that the action on the part of official respondents is bad in law as the selection should have been conducted till final empanelment based on the seniority and eligibility annexed with the notification for holding selection as per Ann.A/1. Revising seniority in between before viva-voce and after the applicants had qualified in the written examination is arbitrary and unjustified and bad in law. Applicants might not have been finally selected due to revised seniority, as they were deprived of the seniority marks as per originally notified seniority.

7. In view of the foregoing, the OA is allowed and the empanelment order dated 7.10.2003 (Ann.A/2) and the promotion order dated 8.10.2003 (Ann.A/3) issued by respondent No.9 are quashed and set aside. The respondents are directed to prepare fresh empanelment by considering the candidature of all the applicants on the basis of initial recruitment seniority in pursuance of the law laid down by the Hon'ble Apex Court and to issue the fresh promotion order, with all consequential benefits. No order as to costs.


(J.P. SHUKLA)
MEMBER (A)


(KULDIP SINGH)
VICE CHAIRMAN