

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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Original Application No.160 of 1998

Original Application No.161 of 1998

And

Original Application No.302 of 1998

Date of decision: This the 9th day of February 2000

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

1. OA.No.160/98

Md. Saiful Rahman and 24 othersApplicants

By Advocates Mr A.K. Phukan and H.B. Sarma.

-versus-

Union of India and othersRespondents

Union of India and othersRespondents

By Advocate Mr B.K. Sharma, Railway Counsel

2. O.A.No.161/98

Shri Santosh Kumar and 14 othersApplicants

By Advocates Mr N. Dutta and Mr H.B. Sarma

-versus-

Union of India and othersRespondents

By Advocate Mr B.K. Sharma, Railway Counsel

3. O.A.No.302/98

Abdul HannanApplicant

By Advocates Mr M. Chanda, Mr A. Rashid
and Ms N.D. Goswami

-versus-

Union of India and othersRespondents

By Advocate Mr B.K. Sharma, Railway Counsel

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O R D E R

BARUAH.J. (V.C.)

All the above three applications involve common questions of law and similar facts. Therefore, we propose to dispose of all the three applications by a common order.



2. The facts are:

The Chairman, Railway Recruitment Board, Guwahati, published Annexure 1 Employment Notice No.1/96 on 21.5.1996 in respect of about 39 categories of posts. Pursuant to the said notice the present applicants submitted their applications alongwith others. In O.A.No.160/98, some of the applicants applied for two categories, namely, category 29, i.e. for the post of Hindi Assistant Grae II and category 32, i.e. for the post of Apprentice Permanent Way Mistry. In O.A.Nos.161/98 and 302/98, the applicants applied for category 33, i.e for the post of Tr. Assistant Draftsman (Civil). Alongwith the present applicants there were others also who applied for various posts in various categories. Thereafter, there was re-advertisement of these posts by publication of yet another Notice dated 25.4.1997 which was in continuation of the Annexure 1 Notice. After the re-advertisement the applicants of the above three O.A.s submitted their applications for their respective posts alongwith other candidates in respect of other categories mentioned in the notice. The written tests for categories 29 and 32 were held on 7.9.1997 and 14.9.1997 respectively in respect of the applicants in O.A.No.160/98. The written test for category 33 was held on 2.11.1997 in respect of the applicants in O.A.Nos.161/98 and 302/98. Similar written tests had been held in respect of other categories on various dates.

3. The results of categories 29 and 32 were published on 2.3.1998 in respect of the applicants in O.A.No.160/98 and the results for category 33 were published on 4.3.1998 in respect of the applicants of O.A.Nos.161/98 and 302/98. It may be mentioned that similar results for the other categories had also been published. Thereafter, call letters had been issued to the applicants and the viva voce test for all the categories, namely 29, 32 and 33 had been

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held on 25.3.1998, 26.3.1998, 27.3.1998 and 28.3.1998. Similarly, in respect of other categories also call letters had been issued to the candidates who came out successful in the written test and the viva voce tests were also held. However, even after holding the viva voce test, for certain reasons, the final results were not declared. Situates thus, the applicants in O.A.Nos.160/98 and 161/98 filed a writ petition (Civil Rule No.2767 of 1998) before the Hon'ble Gauhati High Court challenging the inordinate delay in publishing the results. The said writ petition was admitted and a notice of motion was issued. In the said notice of motion the Hon'ble High Court observed that pending disposal of the Civil Rule, it would not be a bar for the authority to declare the results. Thereafter, on 24.6.1998 the final results were declared selecting the applicants of the above three O.A.s alongwith others as successful candidates eligible for appointment subject to fulfilment of the eligibility conditions mentioned in the notice dated 24.6.1998. Similar results were also declared in respect of the other categories. In fact, appointments had also been made in respect of other categories excluding categories 29, 32 and 33. Meanwhile, the Chief Personnel Officer, N.F. Railway, Maligaon, issued Annexure-3 Notification which was published in the 'Assam Tribune' on 7.7.1998 as stated in para 4.9 of the application in O.A.No.160/98. In reply to the averments made in the said para 4.9 the respondents in para 9 of their written statement (in O.A.No.160/98) have not categorically denied this fact, stating inter alia that it was a matter of record. We quote para 9 of the written statement in O.A.No.160/98.

"That with regard to the statements made in paragraph 4.9 of the application, the answering respondents do not admit anything contrary to relevant records of the case."



Similar statements have been made in O.A.No.161/98 and O.A.No.302/98 regarding the publication of the above Notification. In the Annexure 3 Notification mentioned above it has been stated as follows:

"The attention of the Railway Administration has been drawn to the Press Notification appearing in the Assam Tribune of 1st July'98 declaring the results of recruitments of three categories namely, Hindi Asstt, Apprentice Permanent Way Mistry and App. Asstt. Draftsman (Civil) issued by Shri A.K. Bora, the then Chairman, Railway Recruitment Board, Guwahati.

"Ministry of Railways had ordered that the interviews planned to be held by Rly. Recruitment Board after 25th March were to be postponed beyond April 30, 1998. The interviews in those cases were to be held by the newly constituted committee....."

It is not known why only in respect of these three categories, i.e. 29, 32 and 33, interviews were to be held by the newly constituted committee, even though interviews for other categories were not disturbed. This notification appeared in July 1998. However, the date of notification has not been mentioned. Therefore, the interviews for these three categories planned to be held between 25.3.1998 and 30.4.1998 were admittedly over by that time as the notification was published in the Assam Tribune in July 1998.

4. In their written statement the respondents have annexed a copy of the letter dated 25.3.1998 sent by Fax. We quote the relevant portion of the said letter.

"The Organisation of the RRBs is under review. The Board have, therefore, decided that

(a) no further notifications calling for applications against indents placed by Railways/PUs may be issued till 30.4.1998; and

(b) any written examination/interviews which may be planned from now till 30.4.1998 be postponed beyond that date." (emphasis added)

From this letter it would appear that the Railway Board desisted the Chairman from holding any written test and

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interview which might be planned from the date, i.e. 25.2.1998. As the written test was held so far the applicants were concerned and they having been declared successful in the written test their interviews were held on 25.3.1998, 26.3.1998, 27.3.1998 and 28.3.1998. Therefore, these dates on which the interviews were held so far the applicants were concerned, were scheduled much earlier. As the results were not declared after the viva voce test and they were not given appointment they have approached this Tribunal by filing the present O.A.s.

5. In due course the respondents have entered appearance and filed written statements in all the three cases. The stand taken by the respondents in all the three cases is on the same line.

6. We have heard Mr A.K. Phukan, learned Sr. Counsel, assisted by Mr Bhuyan and Mr Munir, appearing on behalf of the applicants in O.A.No.160/98, Mr N. Dutta, learned Sr. Counsel, assisted by Mr H.B. Sarma, appearing on behalf of the applicants in O.A.No.161/98, and Mr M. Chanda, assisted by Ms N.D. Goswami, learned counsel for the applicants in O.A.No.302/98. We have also heard Mr B.K. Sharma, learned Railway Counsel appearing on behalf of the respondents in all the three cases. The learned counsel for the applicants submit that pursuant to the Employment Notice in respect of categories 29, 32 and 33, the applicants submitted their applications. Similar applications had also been submitted by others for other categories who are not before us. Written tests had been held in respect of all the categories and the results of the written tests had also been published. Thereafter, call letters were issued to the applicants alongwith other successful candidates and the interviews were also held. It is stated by the learned

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counsel for the applicants that appointments had been made in respect of other categories in total exclusion of categories 29, 32 and 33. The letter dated 25.3.1998 issued by the Railway Board informed that those interviews which were planned to be held between 25.3.1998 and 30.4.1998 should be postponed beyond 30.4.1998. The learned counsel for the applicants submit that though the Railway Board's letter is dated 25.3.1998 it is, however, not shown when this was received by the addressee, i.e. the Chairman, Railway Recruitment Board. The Chairman has also been made a party. The other respondents have also not stated in their written statements on which date the said letter was received. No endeavour has been made by the respondents to show when this letter was received. Another letter dated 26.3.1998 was issued to the General Manager, All India Railway and PUs enclosing the letter dated 25.3.1998. The letter dated 26.3.1998 does not say when the Fax message was received.

7. Mr B.K. Sharma, learned Railway counsel vehemently argues in support of the action taken by the Railway Administration. He submits that because of certain irregularities the Railway Board was compelled to stop the appointments.

8. On hearing the learned counsel for the parties and on perusal of the pleadings with annexures, it is now to be seen whether the action of the respondents in not giving the appointments can sustain in law. The facts reveal that various categories of posts were advertised by the Notice dated 21.5.1996 asking the eligible candidates to submit their applications. There was re-advertisement of these posts by issuing yet another Notice dated 25.4.1997. Pursuant to this the present applicants alongwith others submitted their applications. Written tests were held and

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the results of all those including the applicants, who came out successful in the written test had been published. Thereafter call letters had been issued in respect of all the categories including categories 29, 32 and 33. It is stated that in respect of the other 30 categories selection process had been completed and appointments had also been made. In reply to this the respondents have stated in their written statements that these were matters of record. However, at the time of hearing no endeavour has been made to show whether the averments made by the applicants are correct or not. It has been merely stated that as there was a ban in appointments the appointments were not finalised. As per the letter dated 25.3.1998 issued by the Deputy Director, Establishment (RRB), Railway Board to the Chairman, Railway Recruitment Board, a ban was imposed on holding any written examination or interviews which might have been planned from that day, i.e. 25.3.1998 (the date of the letter) till 30.4.1998. As per the plain language we understand this to mean that those written examinations and interviews which were scheduled to be held were prohibited by the aforesaid letter. It appears that this decision was taken by the Railway Board, and therefore, it was issued by the Deputy Director, Establishment (RRB), Railway Board. WE find that this letter was sent by fax. Normally, in a fax message the time is mentioned. However, in this letter no time has been mentioned. No endeavour has been made to inform this Tribunal when this letter was received. Even if it was received on that day it could have been received at 10 A.M. in the morning or in the late evening. It is also not known when it was placed before the Chairman. At least, on 25.3.1998, it can be safely presumed that the viva voce test was either going on or it was over at the time of receipt of the said letter. No attempt has been made to show when this was placed before the Chairman. Even assuming that

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it was placed on the same day, the direction in the said letter was 'any written examination/interview which may be planned from now till 30.4.1998 be postponed beyond that date'. We understand the statement 'may be planned' means preparing a schedule for holding written tests/interviews. In this case the call letters had been issued much before the letter 25.3.1998. Therefore, the holding of the interviews was planned long before the date of issue of this letter. Therefore, the ban imposed, in our considered opinion, cannot be applicable to the cases where interviews were held on 25.3.1998, 26.3.1998, 27.3.1998 and 28.3.1998 which had been planned earlier. The decision taken the Railway Board, however, has not been placed before us by the learned Railway Counsel to show as to who took the decision regarding the imposition of the so called ban.

9. Again, looking at Annexure 3 Notification published in the 'Assam Tribune' on 7.7.1998, we find that there is a noticeable improvement from the Railway Board's decision as per the Annexure 1 letter dated 25.3.1998 to the written statement. The words 'planned from now' appearing in the letter dated 25.3.1998 are completely missing in the Annexure 3 Notification. This is an innovation of the letter dated 25.3.1998. We find no reason why this was changed. As no explanation is forthcoming we feel the Railway Board has made this improvement just to bring the alledged ban within the ambit of the interviews held for the three categories, namely 29, 32 and 33. In the instructions issued by the Railway Board, nowhere it is stated why the appointments or holding of interviews were prohibited. Only in the written statement the respondents have tried to improve the instructions by saying that certain defects and irregularities had been committed by the Chairman, Railway

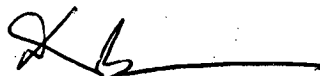
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Recruitment Board, Guwahati. If the irregularities were detected before imposing the ban then these ought to have been mentioned in the letter dated 25.3.1998 or in the Notification published on 7.7.1998. We fail to understand why this was not mentioned in the said communications. In the written statement certain irregularities including composition of the Selection Board have been pointed out, but no explanation has been offered why the composition of the Selection Board was not found proper. In respect of the other categories the respondents have also not clearly stated or produced any document regarding the perfect constitution of the Selection Board in other aspects. Be that as it may, we find that the Annexure 3 Notification published in the 'Assam Tribune' on 7.7.1998 is at variance with the Annexure 1 letter dated 25.3.1998 to the written statement.

10. Considering the entire facts and circumstances of the case we hold that the Annexure 3 Notification cannot sustain in law in view of the improvement made over the Annexure 1 letter dated 25.3.1998 to the written statement. Accordingly the Annexure 3 Notification published on 7.7.1998 is set aside. As we have set aside Annexure 3 Notification the effective ban imposed by the letter dated 26.3.1998 was only upto 30.4.1998. As the period is already over even if the ban was imposed that is no longer operative.

11. In view of the above the respondents shall proceed to give appointments in accordance with law on the basis of the applicants' own merit as per the written tests and interviews. This must be done as early as possible, at any rate within a period of two months from the date of receipt



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of the order.

12. The application is accordingly disposed of. No order as to costs.

Sd/-VICE CHAIRMAN

Sd/-MEMBER(ADM)

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