

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

CIRCUIT CAMP AT INDORE

Original Application No. 43 of 1998

Jabalpur, this the 6th day of February, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

Sanjay Kumar, S/o. Shantilalji
Giri, aged 21 years,

and 20 others.

... Applicants

(By Advocate - Shri K.C. Raikwar)

V e r s u s

Union of India, Through
General Manager, Western
Railway, Churchgate, Mumbai,

and 12 others.

... Respondents

(By Advocate - Shri Y.I. Mehta, Sr. Advocate with Shri
H.Y. Mehta)

O R D E R

By G. Shanthappa, Judicial Member -

The above Original Application is filed by the applicants seeking the reliefs to quash the entire selection process and list of candidates qualified for Group-D posting (Annexure A-1) and also to quash the entire selection board and order to conduct fresh selection in terms of para 179 of IREM, 1989, and order ^{to} not appoint the selected candidates.

as stated by the applicants
2. The brief facts of the case/are that the applicants are Wards of the Western Railway employees and local residents of recruitment unit e.g. Diesel Shed, Ratlam. The applicants have applied for the post of Khallasi in Diesel Shed, Ratlam. The official respondents have called applications to fill up the post of Khallasi i.e. of Group-D category. The Ministry of Railways have issued a letter to recruit local people in established diesel shed for the

post of Group-D category. The applicants have produced several notifications i.e. Annexure A-2, Annexure A-3 and Annexure A-4. The official respondents have filled up 100 posts under different categories. The respondent No. 7 has not followed the provisions as mentioned in Annexure A-4 and violated the prescribed mandatory norms and rules.

"The Unit for recruitment was Diesel Shed/Loco Shed, and Ratlam the employment exchange to Diesel Shed Ratlam was Ratlam employment exchange". Therefore convenience of serving Railway employees applications from their wards/ immediate dependents were to be entertained directly. As the Group-D vacancies generally attract local candidates, they were not considered at the time of selection. But illegally, applications more than vacancies advertised were called/invited from employment exchanges outside the jurisdiction of the recruitment unit which is illegal, as per norms. After scrutinising the applications the list of eligible candidates for interview was not pasted on any of the important ^{places of} notice boards through out the area. The list was also not signed by any of the competent authority.

The applicants submitted that the non-officials, co-opted members of the interview Board should not repeat, but they were repeated in many selection for different category of posts. Para 179 of IREM is extracted below :

"179. The following procedure shall apply in respect of recruitment of Class IV Railway Servants (other than Rakshaks (Sainiks) employed in the Railway Protection Force who are governed by the provisions of Railway Protection Force Act and Rules 1959)

(i) XXXXXXXXXXXXXXX

(ii) Recruitment Units :- The unit for recruitment shall normally be the Division, major workshops, Loco Sheds, C&W Sick lines PWI lengths, etc. etc. Recruitment for each category will be made separately. If necessary, there may be more than one unit for recruitment in a Division.

(iii) Eligibility for Recruitment:- No direct recruitment shall be made to higher grades in Group D except-

(a) in certain categories where serving employees in lower grades do not offer; and

(b) where they cannot be trained in time in case of expansion or for embarking on new projects.

(iv) xxxxxxxxxxxxxxxxxx

(v) xxxxxxxxxxxxxxxxxx

(vi) Procedure of Recruitment :- An employment Notice indicating the total number of vacancies, the no. of vacancies reserved for Scheduled Castes and Scheduled Tribes, scale of pay, qualifications prescribed etc. as well as the last date for receipt of applications, should be prepared in due time and issued to Employment Exchanges within the recruitment unit and to the recognised Associations of Scheduled Castes and Scheduled Tribes so that adequate publicity is given with a view to attracting the maximum number of local residents. Copies of these notices should also be exhibited on notice boards outside railway offices etc. situated in the area of recruitment.

Note : This should conform to provisions of Compulsory Notification of vacancies Act, 1959.

(vii) xxxxxxxxxxxxxxxxxx

(viii)(a) xxxxxxxxxxxxxxxx

(b) For the convenience of serving railway employees applications from their sons/immediate dependents may be received by the Railway Administration direct. They should be got registered in an Employment Exchange by deputing a Welfare Inspector, if necessary, for this purpose and will thereafter be eligible for consideration along with others. It is not necessary that their names should be nominated by the Employment Exchange concerned. In cases where the Employment Exchanges do not accept applications from such candidates and they require the candidate concerned to appear before them in person for registration of his application such applicants may be considered without their getting registered at the Employment Exchange. At the time of selection no discrimination can be made between a candidate applying direct to the administration and the one nominated by the Employment Exchange and only the most suitable ones will be selected for appointment. Applicants belonging to the Scheduled Castes and Scheduled Tribes even though they are sons/immediate dependents of serving railway employees may also be given the benefit of getting their applications registered at the Employment Exchanges through a Welfare Inspector as indicated above.

(ix) xxxxxxxxxxxxxxxxxx

(x) As Group 'D' vacancies generally attract local residents, the applications of such candidates received by the administrations should be given full consideration at the time of selection.

(xi)(a) xxxxxxxxxxxxxxxxxx

(b) Nomination of outsiders co-opted as a Member of the Selection Board should be from a panel of names that may be formed by the Government. Non-officials whenever co-opted as members of the Interview Board should not be repeated in every Board. They should also be furnished with a detailed brief indicating the reservation for SC/ST according to rules, the procedure to be followed in the selection and other allied information as may be of help to him in conducting the interviews. The non-official member may be issued a free first class railway return journey pass and also permitted the free use of railway rest house, if available.

Note : - xxxxxxxxxxx

(xii) Panels :- The list of selected candidates will be pasted on important Notice Boards throughout the area of recruitment after each selection. The list will contain as many names as are likely to be needed against the bare anticipated vacancies in the course of six months or one year following the selection, depending on the frequency of recruitment. No allowance should be made for medically unfit candidates etc.

(xiii) xxxxxxxxxxxxxxxxxx

(xiv) xxxxxxxxxxxxxxxxxx

The series of roll No. 22, 23 and 24 had not been allotted to any candidate. The Railway Board have advised name of respondent No. 4, 5 and 6 long before amendment in para 179 of IREM. The advertisement was made for 199 vacancies. As per existing norms and procedure only 199 candidates names might have been called from the local employment exchange situated in recruitment unit. Railway Administration has violated the procedure laid down in para 179 of IREM. Hence the entire selection list is illegal and the same is liable to be cancelled.

2.1. The applicants further submitted that the selection process has been made with ulterior motives to give back door entries to relatives and wards of Railway employees who

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who are residing in Gujrat, Rajasthan, Haryana and UP, due to malafide intention, the railway employees union has made complaint to the DRM Ratlam that scrutiny committee has rejected the application forms of many wards of employees of Ratlam. That the respondent No. 1's circular to keep 25% vacancies to Apprentices, were not followed and large number of wards of Railway employees who has obtained apprentice trainee and passed ITI, were deliberately rejected in selection. The Railway is incurring lot of expenditures every year to render training to thousands of apprentice trainees, but burocrates are not feeling their responsibilities towards trained apprentices.

2.2. The Railway Board has taken a decision now in 19.6.1997 to increase three non-official co-opted members in the committee for conducting interview for recruitment to group C and D posts. A notification had been issued and the selection process initiated prior to revised amendment dated 19.06.1997, the Railway has no authority to direct the non-official member to conduct the interview by means of administrative order to amend the para 179 of IREM. The applicants have challenged the constitution of committee for selection for the post of Group C and D. The existing selection process on 30.05.1997 cannot be effected by subsequent amendment unless the amending rule is retrospectively in nature. The respondents Nos. 4, 5 and 6 have conducted the interview. Respondent No. 2 is the Chairperson of Dalit Sena. Respondent No. 2 has influenced the respondent No. 3 to enlist the name of respondent No. 4, 5 and 6 so they were nominated by the Railway Board. Respondents Nos. 4, 5 and 6 were allowed to conduct the interview of General recruitment of Group-D Category which is arbitrary, malafide and capricious in nature. The

respondent No. 4,5 and 6 while visiting the DRM Office, Ratlam on 8-11-1997 for conducting interview of the said selection has addressed to Press conference and admitted that Rail Minister is had of the Dalit Sena. Their admission in press conference itself shows that respondent No. 2 has put political pressure on respondent No. 3 for enlisting the name of respondent No. 4, 5 and 6 in the selection Board. The applicants have urged that in the selection Board the members of the Board have collected money by way of corruption to select the candidates. The same has been published in the daily newspaper. The respondent No. 4, 5 and 6 after conducting the interview have submitted the list of 80 candidates of their choice and given long ropas to Senior DPO i.e. Mr. Meena to do whatever he likes. The respondent No. 7 and 8 have declared manipulated list of eligible 674 candidates who have qualified in the written test. The entire selection process is done only by taking illegal gratification. The applicants have raised the malafides against the members of the committee. It is further mentioned in the pleadings that approximately 18,000 candidates applied for the post and 9,000 applications were rejected and 674 candidates were declared eligible for interview. The further allegation on the committee members is mentioned below :

"The essence of malafides, discrepancies and fauxpas committed & manipulated by Railway administration in terms of this selection has been elucidated in this petition it is urgently and fervently prayed for, that this selection of intensive and malafide nature of dubious impregnations be vitiated quashed and nullified to safeguard the rights of natural justice and fundamental rights of candidates, that have been discriminated against for not being able to provide the extraneous demands of corrupt nature which has been the sole contention of dispute and disparity for selecting candidates in this selection. It is against the Government policy to tolerate bribery and corruption in selecting candidates of class B type selection and foul play cannot be made the basis of any fair and just selection and must be brought to book with a heavy hand of prevailing justice so deservingly & justly."

The relief of the applicants are that since the selection process is not in a fair manner the list of selected candidates should be cancelled and there should be a fresh selection on the basis of Para 179 of IREM.

3. Per contra the official respondents have filed their reply denying the allegations and averments made in the Original Application. They have taken a specific contention that the entire selection has been made in accordance with rules and they have not violated any kind of rules and all the allegations regarding corruption are denied. The official respondents have admitted that respondents Nos. 9 to 13 have secured such number of marks as would entitle them for inclusion of their names for interview. However, through the typographical error the respondents Nos. 11, 12 and 13 have not been included in such list and instead ~~of~~ candidates having roll Nos. 10101, 10107 and 10108 were included, and when this mistake was detected, it was corrected and instead later three respondents Nos. 11, 12 and 13 were included in the list called for interview as they were successful in the written examination. Hence they were rightly called for interview and when found suitable and eligible were selected. As alleged by the applicants the outside members were not nominated with a view to have pick and choose method or with a view to suit or with a view to have malpractice. The allegations of the applicants are vague. There is ~~not~~ rule to intimate the candidates who are disqualified or failed or non-eligible. According to the notification the local people means the people residing within the territory of Ratlam Railway Division. The notification was sent to various employment exchanges situated within the jurisdiction of Ratlam Division. In terms of Sub-prara (vi) of para 179 of

IREM, there is no violation of any policy related to the recruitment of Group D posts. There is no provision that only local persons be selected i.e. only from Ratlam.

Applications for the post of Diesel Cleaners/Khallasis - Group D were called for through proper channel and the applications of Railway employees wards received directly as per rules. No vacancies were advertised in the news papers. The applications which does not fulfil the terms dated 25.06.1997 and conditions were rejected. The said notification to fill vacancies of Group-D from up 99 candidates of open market was altered vide corrigendum dated 30.06.1997 and the vacancies from 99 was altered to 199. The vacancies can be altered without giving any information/notification. The list of roll numbers for interview was pasted on the important notice board. Non-official member for interview was nominated by the Railway Board. No relative of Railway employee was given back-door entries. The applications were considered and which fulfills all conditions were rejected. The minimum qualification for direct recruitment to the post of Artisan/Khallasi in Diesel Shed/Electrical Locos/EMP Sheds-Maintenance trades is SSC and ITI Diploma in Mechanical/Electrical/Electrical engineering was to be treated as an additional desirable qualification. The selection was done as per rules. The applicants failed to reach the required standards, hence their names were not considered. The selectors do keep in mind all relevant factors including their duty to bear in mind, the expenses done on training the Apprentices but this alone cannot be a ground to select the incompetent persons who cannot reach the mark even after the training. The applicants have mis-construed Annexure A-10. The allegations made against respondent No. 2 is baseless and after thought. The contention of the applicant that all the members of the selection board

is a false story. They have not produced any document to support their claim. The averments made in the Original Application is imaginary. Hence the applicants have failed to prove their case for grant of reliefs as prayed for and the OA is liable to be dismissed. As the applicants have not been selected, they are frustrated and unnecessary allegations have been made against the respondents. It is specific contention of the respondents that the applicants have not impleaded all the selected candidates as parties in this case, as if the Tribunal quashes the selection, rights of the selected candidates will be affected as they are not parties in the application. Thus the OA is also liable to be dismissed on the point of non-joinder of necessary parties. The applicants have made some of the selected candidates as party. If the relief is granted to the applicants then the entire selection will be effected. When there is no violation of any rules, the question of setting aside the entire selection process does not arise. The respondents have relied on the judgment of the Hon'ble Supreme Court in the case of M. Bheemaih and others Vs. Deputy Commissioner of Excise, Hyderabad and others reported in 2002 SCC(L&S) 1004

4. Subsequent to filing the reply the applicants have filed their rejoinder clarifying the reply.

5. Heard the learned counsel for the parties and perused the pleadings and documents which are placed on record.

6. The official respondents have constituted a committee to fill up the posts vide notification dated 25.06.1997, which was later altered vide corrigendum dated 30.06.1997. The notification was issued in accordance with

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para 179 of IREM. According to the said notification the candidates names of the ~~were~~ were called from the employment exchange and the wards of the Railway employees. After scrutinising the applications the respondents have prepared the select list for the interview. After conducting the interview the selection list has been prepared. Accordingly the appointment orders were issued and the candidates are working now. The grievance of the applicants are that the respondents have violated the procedure as prescribed in para 179 of the IREM. The respondents have taken a specific contention that the applicants are not qualified. Their applications were rejected for not complying the terms and conditions of the notification. Unnecessarily they have made allegations against the committee members. There is no illegality or irregularity committed by the respondents while preparing the select list. Admittedly the applicants have not made all the selected candidates as necessary parties in the OA, though they have the list of selected candidates.

6.1. The respondents have relied on the judgment of the Hon'ble Supreme Court in the case of M. Bheemaiah & Ors. (Supra). The relevant portion of the judgment is extracted below :

"Seniority-Judicial review-Non-joinder of necessary party - Effect - It was an acknowledged fact that appellants' upgradation was delayed on account of administrative delay in their district while their counter-parts in other districts got upgradation earlier - However, the Supreme Court refusing to grant them notional upgradation from an anterior date because this would adversely affect inter se seniority of their counterparts in other districts, who were not impleaded as parties - Civil Procedure Code, 1908, Or. 1 R. 9 proviso.

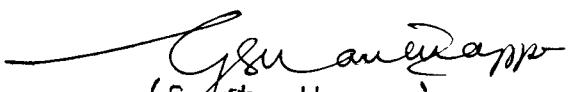
8. Though it is possible to contend that the appellants are not at fault, we find that assigning them any date anterior to the dates assigned to those in other districts is likely to affect the seniority of all the candidates in other districts. Candidates of the other districts

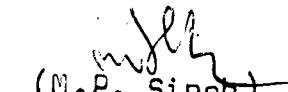
have not been made parties before the Tribunal nor in this case. In the circumstances, as all the necessary parties are not before us, we are not inclined to interfere in this appeal. The appeal is, therefore, dismissed."

7. After careful consideration of the pleadings and the documents we are of the considered view that the respondents have issued the notification under Para 179 of the IREM, as they have asked the local employment exchange to give the names of the candidates and also from the wards of the Railway employees. They have scrutinised the applications and those who have complied the terms and conditions of the notification have been/interview and the list has been published in the notice board. The candidates called for interview appeared before the committee and committee has rightly conducted the interview and selected the candidates. The select list was published on the notice board and accordingly, the appointment order was issued. Hence the applicants have failed to prove the malafides urged against the members of the committee and other candidates who ~~have~~ ^{are} ~~paid~~ ^{alleged to have been} the amounts as alleged to the members of the committee.

8. For the reasons recorded above the Original Application is dismissed. No costs.

9. The Registry is directed to enclose a copy of the memo of parties of this Original Application, while issuing the certified copy of this order.


(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman