

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

25

ORDERS OF THE BENCH

Date of Order: 26.04.2012

OA No. 309/2009

Mr. Nand Kishore, counsel for applicant.
Mr. Prashant Kumar Sharma, counsel for respondents.

Heard learned counsel for the parties.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)

MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 26th day of April, 2012

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1 **ORIGINAL APPLICATION No. 205/2009**

Chhotu Ram son of Shri Kana Ram aged about 56 years, working as First Class Coach Attendant Officiating as Booking Clerk, North Western Railway, Jaipur, resident of Village & Post Patwari Ka Bas, Tehsil Srimadhopur, District Sikar (Rajasthan).

(By Advocate : Mr. Nand Kishore)

... Applicant

Versus

1. Union of India through General Manager, North Western Railway, Hasanpura Road, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jaipur.
3. Shri Gafur Khan son of Shri Chhotu Khan, working as Junior Courier, under S.S. Jaipur, North Western Railway, Jaipur.
4. Shri Rajveer Kaushik son of Shri Surajbhan, working as Marker, under S.S. Jaipur, North Western Railway, Jaipur.
5. Shri Ram Singh son of Shri Pyranmal, working as Junior Courier, under S.S. Kanakpura Jaipur North Western Railway, Jaipur.
6. Kailash Chand son of Shri Jagdish, working as Gatekeeper, under S.S. Kachera, North Western Railway, Jaipur.
7. Amin Khan son of Shri Navab Ali, working as PFP, under S.S. Jobner, North Western Railway, Jaipur.
8. Pokar Mal Saini son of Shri Kalyan, working as Pointman, under S.S. Chaksu, North Western Railway, Jaipur.
9. Shakti Prakash son of Shri Badri Lal Sharma, working as Senior Khalasi, under T.W.S., North Western Railway, Jaipur.
10. Sharwan Lal son of Shri Nand Lal working as P.F.P., under S.S. Kachera, North Western Railway, Jaipur.
11. Prahlad Ray son of Shri Jagannath, working as P.F.P. under S.S. Jaipur, North Western Railway, Jaipur.
12. Om Prakash son of Shri Ramsukh, working as Marker, under S.S. Kanakpura, North Western Railway, Jaipur.
13. Sadhuram son of Shri Juglal Ranga, working as Bhisti, under S.S. Jaipur, North Western Railway, Jaipur.
14. Gyarsi Lal son of Shri Sanwalia, working as Waterman, Under S.S. Neema Ka Thana, North Western Railway, Jaipur.
15. Satyanarayan Meena son of Shri Yadram, working as P.F.P., under S.S. Vansthali Niwaj, North Western Railway, Jaipur.

... Respondents

(By Advocate: Mr. M.K. Meena)

2 **ORIGINAL APPLICATION No. 309/2009**

1. Purshottam Soni son of Late Shri Jagannath Soni aged about 53 years, working as Senior Khalasi, Phulera, scale Rs.5200-20200, pay band 1800, resident of 392 D AEN Colony, Phulera.
2. Amar Singh Yadav son of Shri Rajendra Singh Yadav, aged about 46 years, working as Senior Khalasi, Phulera, scale Rs.5200-20200 pay band 1800, resident of A-24, D.K. Nagar, Khatipura Road, Jhotwara, Jaipur.

... Applicant

(By Advocate : Mr. Nand Kishore)

Versus

1. Union of India through General Manager, North Western Railway, Hasanpura Road, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jaipur.
3. Shakti Prakash son of Shri Badri Lal Sharma, working as Senior Khalasi, under T.W.S. Jaipur, North Western Railway, Jaipur.
4. Sharwan Lal son of Shri Nand Lal working as P.F.P. under S.S. Kachera, North Western Railway, Jaipur.

... Respondents

(By Advocate : Mr. Prakash Kumar Sharma)

ORDER (ORAL)

The facts & circumstances of OA No. 205/2009 and 309/2009 are similar and, therefore, they are being disposed of by a common order.

2. The applicant, Chhotu Ram has filed the present OA claiming that the notification dated 08.04.2008 (Annexure A/2) and panel dated 24.02.2009 (Annexure A/1) may be declared bad in law, arbitrary and quashed and set aside. The persons who have been empanelled vide Annexure A/1 may not be deputed for training in pursuance to the said panel. Further the respondents be directed to conduct the selection afresh.

3

(Annexure A/1) may be amended by incorporating the name of the applicants and deleting the name of respondent nos. 3 & 4. They have further prayed that the applicants may be deputed for training in pursuance to the amended panel.

4. Brief facts of the case are that the respondents have notified a selection for the post of Ticket Collector, scale Rs.3050-4590 ranker quota 33.1/3% (Non-Metric) in Commercial Department for formation of the panel vide respondents letter dated 08.04.2008 (Annexure A/2). That the panel was to be formed on the following posts:-

General	09
SC	03
ST	<u>01</u>
Total	<u>13</u>

चयन विधि:

(4) यह चयन लिखित परीक्षा के आधार पर होगा । सभी पात्र कर्मचारियों को संयुक्त वरिष्ठता के आधार पर चयन विधि के अनुसार लिखित परीक्षा में बुलाया जायेगा लिखित परीक्षा तीन घंटे की होगी ।"

5. The applicants being eligible to appear in the written test and were successful. However, their names did not find place in the panel prepared by the respondents dated 24.02.2009 (Annexure A/1). Condition No. 4 of the notification dated 08.04.2008 states that the selection would be made on the basis of written examination, which is not correct in view of the Railway Board's Circular dated 07.04.2005 which provides that selection should be made on the basis of written test and record of service. The assessment of the record of service will be based on entries in the Service Book/ Personal File. 85% marks are to be awarded for written test and 15% marks are to be awarded for Service Record. The question paper prepared for the written



examination was against the provisions of RBE No. 123/2006 according to which 50% objective type question papers were to be set but the question paper under challenge had only 20% objective type question papers. Thus, it was against the provisions of the circular No. 123/2006 dated 30.08.2006.

6. The applicant no. 1 in OA No. 309/2009 has stated that he is senior to respondent nos. 3 & 4 and averments of the respondents to the contrary are not correct. The seniority of the applicants should have been decided on the old grade obtaining on 01.01.2006 i.e. before merger of the grade. The respondent nos. 3 & 4 were not senior on 01.01.2006. The applicants were working in the scale of Rs.2610/- 3540 before appointment of the respondent nos. 3 & 4 and, therefore, the applicants are senior to respondent nos. 3 & 4. Therefore, the names of the applicants should have been placed on panel dated 24.02.2009 instead of respondent nos. 3 & 4. That the applicants have qualified in the written examination and secured more than 60% marks. Therefore, they are entitled to be placed in the panel.

7. The respondents have filed their reply. They have stated that a notifications dated 24.02.2009 (Annexure A/1) and 08.04.2008 (Annexure A/2) are perfectly legal and valid. They have further submitted that once the applicants have participated in the selection process and after being unsuccessful cannot question the same at this belated stage. They have stated that applicant (Chhotu Ram) was declared passed in the supplementary examination after giving

Establishment Manual, Volume I. They have stated that after written examination is conducted, a list of the candidates, who qualified the same is drawn and then their service record is also assessed, which is based upon the entries in the Service Book regarding technical qualification, awards and punishments etc. and only on the basis of the marks obtained in both written test and the record of service, final panel is drawn by the Selection Committee. In the present case also, the written test was conducted for 100 marks and was scaled down to that of 85 marks and rest 15 marks were awarded as against the record of service. In fact the panel was formed as per Para 219 (g) of the Indian Railway Establishment Manual, Volume I.

8. With regard to OA No. 309/2009, the respondents have denied that applicants are senior to private respondent nos. 3 & 4. Shri Purshottam Soni had secured 64.25% marks and Shri Amar Singh had secured 69.35% marks but their names were not included in the panel. There were 9 seats for General, 3 seats of Scheduled Caste and 1 seat for Scheduled Tribe, therefore 13 seats were to be filled. Once the merit list was prepared, the names of all successful candidates was arranged in accordance with the interse seniority. The inter-se seniority was prepared on the basis of the date of their seniority in the pre-revised grade and that was correct according to Para No. 3(ii) of Railway Board letter dated 29.10.2008. The inter-se seniority clearly reflects that on the day of notification, both the applicants were working in the grade of Rs.2610-3540/- and the private respondents were in the grade of Rs.2650-4000/0. Therefore, as per above provision of the Railway Board, the private respondents were senior to both the applicants. Respondent nos. 3 & 4 are working in higher

grade than the applicant, therefore, they are senior to the applicants.

Under these circumstances, the OA deserves to be dismissed.

9. The applicants have also filed the rejoinder.

10. Heard the learned counsel for the parties and perused the documents on record. Learned counsel for the applicant reiterated the facts, which he has taken in the OAs. He argued that according to the notification dated 08.02.2008 (Annexure A/2), the criteria for selection was written examination and seniority has no role to play after the written examination but the respondents have prepared the panel on the basis of seniority at some place and on the basis of merit at another place. The respondents have not followed any one criteria while preparing the panel dated 24.02.2009. In support of his averments, he referred to order of the Hyderabad Bench of the Central Administrative Tribunal in the case of **C.V. Naga Laxman vs. the Chairman, Railway Board & Others**, decided on 26.08.2008, reported in All India Service Law Journal 2009 (2) CAT 64. He further referred to the case of the Hon'ble High Court of Rajasthan in the case of **Union of India & Another vs. Shri Vishnu Kumar Gautam** [DB Civil Writ Petition No. 981/2009 decided on 10.02.2009. He also referred to the circular of the Railway Board RBE No. 113/2009 dated 19.06.2009. He argued that the OAs be allowed.

11. Learned counsel for the respondents argued that the notifications dated 08.04.2008 and 24.02.2009 are perfectly legal and the action of

Caste and 1 seat was for Scheduled Tribe. Written examination was conducted and those who qualified in the written examination, their service record was also considered and final merit list was prepared on the basis of the marks obtained in the written examination as well as on the Service Record. The respondents have produced original copy of the marks awarded to the candidates before the Tribunal. Once the merit list was prepared then the panel was arranged in accordance with the inter-se seniority of the candidates who were declared successful. To be successful in the examination, it was necessary for the candidate to secure at least 60 marks out of 100 marks. Shri Chhotu Ram (applicant in OA No. 205/2009) had secured 51.92% marks under the relaxed standard and he was found suitable against SC quota. He argued that S/Shri Om Prakash, Sadhuram and Gyarsi Lal have been put on the panel as SC candidates and their total marks are 60, 70.2 and 65.52 respectively. Since these candidates had general qualifying marks of 60% and above, they were put in the panel. Applicant Chhotu Ram had secured 51.92 marks and was declared passed under relaxed standard, therefore, his name has not been included in the panel dated 24.02.2009.

12. With regard to applicants in OA No. 309/2009 (Purshottam Soni and Amar Singh), is concerned, learned counsel for the respondents submitted that they have qualified in the examination and have secured 64.25 and 69.35 marks and thus they were successful in the examination but their names could not be included in the panel because they were junior to other General category candidates who have been put in the panel. Therefore, no relief can be granted to the applicants.

Anil Kumar

13. Learned counsel for the respondents also submitted that the ratio laid down by the Hyderabad Bench of the Central Administrative Tribunal in the case of **C.V. Naga Laxman vs. the Chairman, Railway Board & Others** and the ratio laid down by the Hon'ble High Court of Rajasthan in the case of **Union of India & Another vs. Shri Vishnu Kumar Gautam** is not applicable in the facts and circumstances of the present case. He also argued that the provisions of Railway Board Circular RBE No. 113/2009 dated 19.06.2009 are also not applicable in the present case. He pointed out Para No. 3.2 of the circular, which read as under:-

“3.2 These instructions shall be applicable with immediate effect, i.e. from the date of issue of these orders, to all panels for promotion to General Posts. Any previous selection panel drawn up otherwise, before issue of this letter, need not be reopened”.

Since the selection was made prior to the issue of the circular, therefore, the provisions of this circular will not be applicable in the present case.

14. Having heard the rival submissions of the parties and after careful perusal of the documents on record and the case law referred to by the learned counsel for the applicant, we are of the view that the applicants have failed to make out any case for the interference by this Tribunal. The applicants were eligible to appear in the examination and, therefore, they participated in the selection process. So far as Shri Chhotu Ram (applicant in OA No. 205/2009) is concerned, he secured only 51.92 marks while three SC candidates who have put in the panel have secured higher marks than him. We have seen the original mark sheet prepared by the respondents. Shri Chhotu Ram has secured 51.92 marks while the other three selected candidates

S/Shri Om Prakash, Sadhuram and Gyarsi Lal have secured 60, 70.2 and 65.52 marks respectively. Shri Chhotu Ram was declared successful under relaxed standard but the other three SC candidates secured marks as per general standard. Therefore, their names were included in the panel dated 24.02.2009 (Annexure A/1). As far as the case law referred to by the learned counsel for the applicant is concerned, the ratio laid down by the Hyderabad Bench of the Central Administrative Tribunal in the case of **C.V. Naga Laxman vs. the Chairman, Railway Board & Others** and the ratio laid down by the Hon'ble High Court of Rajasthan in the case of **Union of India & Another vs. Shri Vishnu Kumar Gautam** is not applicable in the facts and circumstances of the present case. The provisions of Railway Board Circular RBE No. 113/2009 dated 19.06.2009 are also not applicable in the present case as is clear from Para No. 3.2 of the circular, as quoted above, by the learned counsel for the respondents since this selection was made prior to the issuance of this circular.

15. With regard the claim of applicants in OA No. 309/2009 is concerned, learned counsel for the respondents has made it clear that on the date of the notification, the applicants were working in the grade of Rs.2610-3540 while the private respondents nos. 3 & 4 were in the grade of Rs.2650-4000/- and since private respondents were working in the higher grade than the applicants, therefore, they are senior to the applicants. We are in agreement with the arguments advanced by the learned counsel for the respondents and, therefore, in our opinion, there is no mistake in the preparation of the panel dated 24.02.2009 vis-à-vis, private respondent nos. 3 & 4. Learned counsel for the respondents argued that the panel dated 24.02.2009 has been prepared on the basis of written examination as well as on the basis of

service record of the candidates who appeared in the selection process and once the merit list was prepared, the names of the candidates were arranged in order of their inter-se seniority. Therefore, there is no infirmity/illegality in the panel dated 24.02.2009. We are inclined to agree with the averments made by the learned counsel for the respondents. In our opinion, applicants of both OAs (OA No. 205/2009 and 309/2009) are not entitled for any relief from the Tribunal.

16. We find no merit in these OA and consequently they are dismissed with no order as to costs.

(Anil Kumar)
Member (A)

(Justice K.S.Rathore)
Member (J)

AHQ

copy given vide
No 498 To 93
01/5/12