

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Original Application No. 610 of 2012

Dated: This the 01st day of November 2018.

PRESENT:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. Amod Kumar S/o Shri Krishna Kant Roy aged about 25 years months, OBC community R/o Railway Colony No. L/163, Achnera, Agra.
2. Jitendra Mahto S/o Shri Kanhaya Mahto aged about 30 years R/o Railway Colony Quarter No. RB – 3, Kosikalan.

. . . Applicants

By Adv: Shri Rakesh Verma.

V E R S U S

1. The General Manager, N.C.Rly., Subedarganj, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Agra Division, Agra.
3. The Sr. Divisional Personal Officer, North Central Railway, Agra Division, Agra.

. . . Respondents

By Adv: Shri N. C. Srivastava

O R D E R

BY HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. The present Original Application has been filed by Amod Kumar and another seeking the following relief :-

"That the applicant seeks redressal of their grievance of not having been approved despite having completed three years regular service on 15.02.2012 vide (Annexure A-1) dated 15.02.2012 and the Hon'ble Tribunal is respectfully urged upon to protect the candidature of applicants."

2. The details of the applicants are as under:-

1. Amod Kumar: appointed as Trackman on 24.07.2008
Temporary Status on 22.11.2008
Regularised on 18.01.2010
10 + 2 both science and Maths
2. Jatinder Matho: Appointed as P-Way supervisor on 07.02.2009
Temporary status on 08.06.2009
Regularised on 18.01.2010
BSc with science and maths
3. Annexure-2 dated 18.01.2010 is an Office Order issued by DRM, (P) Agra and is the list of fresh face substitute trackman as regularised by the Screening Committee w.e.f. dates mentioned against each individual thereon including applicant No.1 from 22.11.2008 and applicant No. 2 from 08.06.2009.
4. Both applicants applied for Departmental Limited selection for Senior Supervisor having 25% quota for railtrack supervisor in response to advertisement issued on 15.02.2012. Applicant submitted application on 27.03.2012 and applicant No. 2 on 04.03.2012. The applications of applicants were not considered since they had not completed 3 years of regular service.
5. In the O.A., it has been averred that:
"details of scrutiny of the list of candidates declared eligible to hold departmental examination for 25% quota for Railway supervisor issued under memo No. P/P - Way supervisor/selection/LDC/Eng.-III dated 03-04-2012 annexure A-3 may reveal that certain candidates not fulfilling eligibility prescribed in memo No P/P-way supervisor/selection/LDCE/Eng.-III dated 15.02.2012 Annexure A-1 have been approved though their names have been approved for undertaking the propose examination. Without due

eligibility when other eligible candidate like applicants were available.

That the applicant No. - 1 & 2 have not completed the regular service in the grade as on 15.02.2012 (Annexure – A1) as shown in the list with memo date 03.04.2012 annexure A-3 on page No. 6 and also ensure that the candidature allowed named n page 1 to 5, whether do fulfil this prescribed eligibility.

That re-scrutiny of names of candidates on page 1 to 5 and page 6 those held as not eligible are completed by respondent, the Hon'ble court may also direct the respondents to hold the written test for proposed selection only after due scrutiny."

6. In the short counter filed by respondents it has been averred that the applicants have not completed 3 years of regular service as on 15.02.2012 and therefore not eligible for filling up the vacancies. The representations filed by the applicants have been disposed of by the respondents on 15.5.2012. Respondents have further averred that in Para No. 1 and 2 of the O.A., applicants have themselves admitted that they were regularised on 18.01.2010. As per respondents both applicants were appointed as fresh face substitute trackman on 07.02.2009. Admittedly, both applicants were regularised on recommendation of screening committee on 18.01.2010. The rules of Railway Board have been followed regarding the exam to be conducted on 27.05.2012.
7. In this regard, respondents in their supplementary counter affidavit filed on 5.9.2012 averred that neither applicants had served copy of interim order dated 1.6.2012 nor they approached or appeared before the authorities till the date of examination i.e. 3.6.2012 and the result was declared on

11.7.2012 withholding two vacancies subject to the outcome of the interim order dated 1.6.2012.

8. In reply, applicant No. 2 filed supplementary rejoinder affidavit on 29.7.2013 wherein it has been averred that copy of order dated 1.6.2012 was served upon the respondents on 3.6.2012 much earlier than the time schedule for examination but the respondents did not receive the order and also did not allow him to appear in the examination.
9. We have heard and considered the arguments of the Learned Counsels for the parties and gone through the material on record.
10. At this stage, note has to be taken of order dated 01.06.2012 which reads as:

"Present matter is placed before us on the Order passed by the Hon'ble H.O.D. in the Expedite Application, the applicant seeks interim protection from this Tribunal to direct the respondents to allow the applicants to appear in the examination which is scheduled to be held on 03.06.2012. Shri Mohan Yadav holding brief of Shri R. K. Yadav. Counsel for the applicants submitted that the respondents have wrongly interpreted the provisions to the effect that they are counting three years regular service from the date of passing of regularisation order. He argued that interpretation is totally against the Railway Board circular, which mandates that the service rendered prior to regularisation is also to be counted. He produced a copy of the instructions issued by the Railways Board, where the Railway Board has decided as under:

"१३ - पात्रता ग्रुप 'डी' से ग्रुप 'सी' के पदों में पदोन्नति :
(अ) पात्रता - ग्रुप 'डी' कर्मचारियों की पदोन्नति ग्रुप 'सी' की कुछ कोटियों में चयन के आधार पर की जाती है, जिसमें लिखित तथा मौखिक परीक्षा शामिल होगी. ३ वर्ष की रेल सेवा पूरी कर

लेने वाले कर्मचारी इस परीक्षा में बैठने के अधिकारी है, यदि वह अन्य शर्तें पूरी करते हो. समूह 'घ' में नियमित होने से पहले जिन व्यक्तियों ने परियोजना पर मज़दूर की सेवा की हो तो उनकी परियोजना पर की गयी सेवा तीन वर्ष की अवधी की गणना में शामिल की जाएगी."

In view of the above, he submitted that since the applicant is having more than 3 years service, therefore, he is eligible to appear in the examination. On the other hand, Shri R. K. Srivastava submitted that since the applicant do not have three years' regular service, therefore, his candidature has been rejected.

We have given our thoughtful consideration to the entire matter.

As an interim measure, we direct the respondents, let the applicants – Amod Kumar and Jitendra be allowed to appear in the examination scheduled to be held on 03rd June, 2012 provisionally. Result will be subject to final outcome of this O.A.

List this matter on the date fixed i.e. 16th July, 2012 for admission.

The respondents may file the C.A. during this period.

Copy of the order be given to counsel for the parties today."

11. In contradiction to the Railway Board instructions produced by learned counsel for applicants which finds mention in order dated 01.06.2012, learned counsel for respondents has referred to instructions of Railway Department R.B.E. No. 63/95 (Annexure – 2 to short counter reply). It reads as :

"The question of re-introducing the said scheme has been under consideration of the Board for some time. After considering the matter in detail, Board have decided that henceforth 25% of the vacancies in the post of Permanent Way Mistries will be fulfilled up through Limited Departmental. Competitive Examination from amongst Keymen and Gangmen

who have the same qualification as for direct recruitment and have put in a minimum of three years of regular service after regularisation. In case, adequate number of serving eligible employees do not qualify in the said Limited Departmental Competitive Examination, the shortfall shall be made good by direct recruitment from open market through Railway Recruitment Boards."

12. Both the learned counsels for the parties have relied upon circular issued by the Railway authorities. Learned Counsel for applicant relied upon the circular which finds mention in the order dated 01.06.2012. It is not clear that the contents of the circular as mentioned in the order dated 01.06.2012 if the said circular is applicable for the recruitment/selection in question. It is also noted that the applicants failed to appear in the examination held by the respondents. Hence, even if the applicants are considered to be eligible for the examination/selection in question, it will not be possible to extend any relief since they did not appear in the examination held for the purpose and no specific relief has been prayed for in the O.A. for not being allowed to appear in the examination in spite of the interim order dated 1.6.2012. Further, the R.B.E. No. 63/95 which clearly specifies the requirement of 3 years of regular service as an eligible criterion for selection has not been challenged in the O.A.
13. It is further noted that as mentioned in para 7 of the supplementary counter affidavit (in short S.C.A.) filed on 5.9.2012 that the respondents have declared the final result of the examination/selection vide the order dated 11.07.2012 (Annexure No.1 to the S.C.A) and posts have been filled up leaving the vacancies pending disposal of the O.A. Neither the result declared vide order dated 11.07.2012 has been challenged, nor the selected persons have been impleaded in this O.A.

14. In the circumstances as discussed above, it is not possible for this Tribunal to allow the reliefs prayed for in this O.A since that will not affect the selection of the applicants for the said post as they have not appeared in the examination (test conducted for the purpose. The selection of the candidates vide order dated 11.07.2012 (Annexure No.1 to the S.C.A) cannot be interfered with as it has not been impugned in this O.A. The O.A is liable to be dismissed and accordingly, it is dismissed. No order as to costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(GOKUL CHANDRA PATI)
MEMBER-A

Manish/-