

Reserved
(On 25.07.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the 21st day of August 2018

Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application Number. 330/01618 of 2004

1. R.S. Yadav, S/o Shri K.S. Yadav, R/o A-129, Deen Dayal Nagar, Near Bharat Mata Mandir, Jhansi.
2. J.S. Rathore, S/o Late Shri Kedar Nath Singh, R/o 71/4, Prem Ganj, Sipri Bazar, Jhansi.
3. M.C. Sharma, S/o Shri R.K. Sharma, R/o 1146/A-B, Pushpa Vihar Colony, Khati Baba, Jhansi.
4. K.K. Rajpoot, S/o Shri Naim Singh, R/o 1118, Isai Tola, Khati Baba, Jhansi.

.....Applicants.

By Adv: Shri Shyamal Narain

VER S U S

1. Union of India through the General Manager, North Central Railway, Nawab Yusuf Road, Allahabad-1.
2. The Financial Advisor & Chief Accounts Officer (General), North Central Railway, Sangam Place, 3rd Floor, Allahabad.
3. The Senior Divisional Finance Manager, North Central Railway, DRM Office Compound, Jhansi.

.....Respondents

By Adv: Shri P. Mathur

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member (A)

This OA has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

- "i. To issue a writ, order or direction in the nature of Certiorari quashing both the impugned orders dated 21.09.2004 as well as 25.11.2004 issued by the respondents (Annexure-A-I & A-II).*
- ii. To issue a writ, order of direction in the nature of Mandamus directing the respondents to decide the controversies with regard to seniority and then to initiate a fresh selection.*
- iii. To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.*

iv. To award cost of the petition.”

2. The facts in brief as stated in the OA are that the applicants are challenging the letter dated 21.09.2004 by which selection for promotion from Group 'C' to Group 'B' in the Accounts Department on the post of Assistant Accounts Officer (Class II) grade Rs. 7500 – 12000 against 70% vacancies of selection quota as well as the result dated 25.11.2004 of the written examination held on 30.10.2004 / 09.11.2004 in pursuance of the aforesaid letter / notification dated 21.09.2004 (Annexure A-I & A-II to the OA). All the applicants are posted under the control of the respondent No. 3 with over all administrative control of respondent No. 2. The quota for filling up the post of Assistant Accounts Officer in the pay scale of Rs. 7500 – 12000 by promotion is 70% through selection and 30% through limited departmental competitive examination. The staff working in the cadre of Senior Section Officer (Accounts Department), Sr. TIA and Sr. ISA,, in the order of seniority, are eligible to be called as per 1x3 formula as per the recruitment rules.

3. The FA&CAO, North Central Railway (respondent No. 2) issued seniority list dated 31.07.2003 (Annexure A-III) showing inter-se seniority as on 01.07.2003 correctly reflecting the seniority of the applicants No. 1 to 4 at Sl. No. 95, 78, 133 and 114 respectively. The applicant No. 4 filed a representation dated 08.09.2004 (Annexure A-IV), that he was not assigned correct inter-se seniority and on that basis the applicants were not called to appear for selection. In the subsequent seniority list dated 01.11.2003 (Annexure A-IV), the applicant's seniority was not correctly assigned. The applicants made a joint representation dated 18.10.2004 (Annexure (A-V), but no action was taken.

4. However, the written examination was held on 30.10.2004 for selection against 70% promotion by selection quota vide impugned notification dated 21.09.2004 (Annexure A-I) and the result of the written examination was published on 25.11.2004. This exercise was undertaken without addressing grievances of the applicants who had submitted representations earlier. Prior to declaration of the result of written examination on 25.11.2004, it was decided to prepare a panel of 22 persons against 70% selection quota of vacancies for promotion out of which 03 posts for SC and 02 posts for ST were reserved and remaining 17 posts were for general candidates vide letter dated 27.08.2004 (Annexure IX). Applicants have further submitted that against 17 posts of general category, 51 persons should have been called on the basis of formula, 1x3, whereas, 60 candidates have been called including the candidates with whom the seniority dispute of the applicants existed on which no decision has been taken by the competent authority before conducting the written examination. According to the applicants extra 09 persons called for the examination included the juniors to the applicants, who were not called to appear the said examination and out of the extra 09 persons, 04 persons were declared to have passed. Being aggrieved by this action of the respondents, the OA has been filed.

5. In the counter reply, filed by the respondents, it has been submitted that during the formation of North Central Railway, options were called from the willing staff of different Railways and on the basis of option, the staffs are posted in North Central Railway. Thereafter, seniority of staffs belonging to Accounts cadre for different designations was prepared on the basis of Railway Board's letter No. E(NG) 1/96/TR 36 dated 06.12.1996 and E(NG) 1 – 2004 / TR / 3

dated 16.03.2004 (Annexure R-1). To promote eligible Grade 'C' staff to Grade 'B' staff, a notification dated 27.08.2004 was issued advertising number of vacancies in selection quota (70%) and the quota (30%) in Grade 'B' for promotion from Grade 'C' in Accounts Department through Limited Departmental Competitive Examination (in short LDCE). An integrated seniority list as per Para 203.5 of Indian Railway Establishment Manual (in short IREM) was issued. The integrated seniority list was circulated, objections were also invited. Willing staffs were also asked for to appear in the selection from the staff borne out of the seniority list. After receiving the representations, inter-se integrated seniority for promotion to Grade 'B' was finalized and notification for 70% selection quota was issued vide notification dated 21.09.2004 (Annexure A-I). In terms of para 203.4 and 203.6 of IREM the number of employees to be called for selection in order of seniority will equal to the 03 times of the total number of vacancies. If adequate number of SC/ST candidates were not available within this field, the field should be extended to 05 times the number of vacancies and only those SC/ST employees coming in the extended field are to be considered. The Railway Board vide their letter dated 07.08.2002 have further clarified the above position. It was further averred that the number of employees have been correctly called to appear in the written examination and as stated in OA, it will be incorrect to call only 51 candidates, as the panel for 22 employees including 17 general category was to be prepared for which 66 candidates were to be called. But the number was less since number of eligible SC/ST staff was less.

6. The applicants have filed rejoinder reply on 06.04.2005 in which they have submitted that in terms of Railway Board's letter 06.12.1996

and 16.03.2006 the inter-se seniority of some of the staffs in the seniority list has been wrongly fixed. Since the batch-wise seniority has been violated and the length of service has been shown on the basis of joining date of SO/ISA instead of senior SP/Sr. ISA since the examination was conducted for the senior Accounts Supervisory Grade. Further, instead of calling for 68 candidates, the respondent should have called only 48 plus 4 SC candidates for the written examination for 22 vacancies of Grade 'B' posts vide Railway Board's letter dated 19.11.1993 (RBE No. 166/93) copy of which has been enclosed in the Suppl. Rejoinder filed on 22.02.2005. They have further submitted that Railway Board's letter No. 2004/AC-II/22/34 dated 14.12.2004 is applicable for forming the seniority since administration accepted that the North Central Railway has come into force w.e.f. 01.04.2003 having some of the posts for Central Railway, Northern Railway, North Eastern Railway. The name of applicant No. 3 was placed below the juniors and batch-wise seniority has not been adhered to. The administration has submitted that the seniority of Shri R.S. Yadav will be corrected before finalising the result, but it was not corrected. The batch-wise seniority has been overlooked. In terms of FA & CAO, NCR Allahabad letter No. 2004/FA/Admn/Gaz/Proper/GZB dated 21.09.2004, supplementary written examination for absentee will be held on 09.11.2004 prescribing medical certificate from Railway Medical Authority, but in case of Mr. Rizvi who has been selected for Group 'B' post, private Doctor's certificate was accepted by the administration which is illegal. Subsequently, supplementary examination was held on 09.11.2004. Further, LDCE (30%) examination is also proposed to be held on 02.04.2005 and 03.04.2005 as per the letter dated 04.01.2005. It is also prayed in

Para 26 of the Rejoinder affidavit filed on 06.04.2005, to stay the proceedings for LDCE selection.

7. Heard learned counsels for both the parties, who were also allowed to file written arguments by 08.08.2005 vide order dated 25.07.2018. However, no written arguments have been filed by the learned counsels.

8. Main dispute in this case is on account of the grievance of the applicants on their inter-se seniority with some staffs, mainly on the ground that the principle of the batch-wise seniority has not been followed by the respondents, as averred by the applicants. As a result, the applicants seek to quash the order dated 21.09.2004 (Annexure A-I) which fixes the date of written examination for 70% selection quota for promotion of Group 'C' to Group 'B' cadre and the order dated 25.11.2004 (Annexure A-II) where the list of successful candidates was issued by the respondents. It is noted that the applicants, instead of seeking any specific relief pertaining to their seniority vis-a-vis some other employees, they are seeking to quash the result of an examination for promotion, without including the persons who are likely to be affected adversely as parties in the OA. Hence, prima-facie, this OA suffers from non-joinder of essential parties.

9. Further, it is seen that the prayer to stay the process of the selection through LDCE (30% quota) has been made in the Rejoinder filed on 06.04.2005, but nothing has been mentioned as to how the LDCE Selection process is affected by the disputes with regard to seniority in this case. Further, this interim prayer made in the OA as well as in the Rejoinder were not pressed by the learned counsel for

the applicant as revealed from the order sheets of the case. Since, no interim order was passed, it is not known if this selection process is pending or not.

10. On merits, main grounds advanced by the applicants include the dispute on seniority vis-a-vis their juniors in terms of their batches of selection / recruitment. The respondents, in their Counter Reply have stated in para 25 and in the letter dated 14.12.2004 (Annexure R-7 to the counter) that the applicants have been informed about the decision of the respondents on the question of their seniority. This averment has been routinely denied in the Rejoinder filed on 06.04.2005, without specifying what exact grievance of the applicants that is still outstanding after disposal of their representation by the respondents. Further, if the applicants still feel aggrieved by the decision of the respondents in this regard, appropriate steps as per law could have been taken. There is nothing on record, if the applicants have moved appropriate forum for redressal of their grievance on seniority issue, which seems to be still unresolved, as revealed from para 23 of the Rejoinder. Without taking steps to get the main grievance relating to seniority redressed as per law, the applicants are trying to nullify the selection process for promotion to Group 'B' post mainly on the ground that the respondents had gone ahead with the selection against 70% quota without redressing grievance of the applicants on seniority and wrongly calling some other employees to appear in the test with whom the applicants have seniority related disputes.

11. Another ground for challenging the impugned selection process is that the respondents have called 68 persons to appear in the written examination which is against the Railway Board's Circular dated

19.11.1993 (copy of which is enclosed in Supplementary Rejoinder filed on 02.05.2008). However, the respondents have justified their action to call the staffs from the seniority list as per the formula specified in para 203.4 of the Indian Railway Establishment Manual (in short IREM), copy of which is annexed at Annexure R-2 of the counter. Para 203.4 of the IREM specifies zone of consideration for the promotion to be three times the number of vacancies, when the number of vacancies is more than 04. Hence, for 22 vacancies, the respondents have treated the zone of consideration to be 66 as per the said para 203.4 of IREM. It is not explained whether the provisions of para 203.4 of IREM was subsequently overruled by the Railway Board letter dated 19.11.1993 referred to be the applicants in Supplementary Rejoinder annexed at Annexure SRA-2. Hence, this ground advanced by the applicants does not have enough force to call for quashing of the selection and promotion process initiated in 2004 as per the provisions of para 203.4 of the IREM.

12. In the facts and circumstances as discussed above, we are of the view that the OA lacks merit and is liable to be dismissed. Accordingly, the OA is dismissed. There will be no order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
(Member (A))

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