

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2255/2015

Reserved on : 13.01.2017.

Pronounced on : 01.02.2017.

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)**

1. Sh. Rajeev Saxena, XEN,
Aged about 53 years,
S/o Late Sh. R.D. Saxena,
R/o C-164, 2nd Floor, Lohia Nagar,
Ghaziabad.
2. Sh. V.K. Singh, Retired XEN,
Aged about 68 years,
S/o Late Sh. Madan Pal Singh,
R/o F-65, Ground Floor, Executive
Residency, Sushant Lok-2,
Sec-57, Gurgaon.
3. Sh. Man Mohan Singh, Retd. XEN,
Aged about 65 years,
S/o Sh. Teja Singh,
R/o H.No. 5319, Sec-39 West,
Chandigarh.
4. Sh. Baljit Singh, Retd. XEN,
Aged about 60 years,
S/o Sh. Kali Ram,
R/o Village & Post Littani,
Distt. Hisar, Haryana. Applicants

(through Sh. M.K. Bhardwaj, Advocate)

Versus

Union of India & Ors. through:

1. The General Manager,
Northern Railway, Baroda House,
New Delhi.

2. The Secretary,
Railway Board, Rail Bhawan,
New Delhi-110001.

3. The Chief Personnel Officer,
Northern Railway, Baroda House,
New Delhi. Respondents

(through Sh. R.N. Singh, Advocate)

4. Sh. Vinay Kumar Gupta,
R/o 303, Millenia Tower,
Ramprastha Green,
Sec-7, Vaishali, Ghaziabad.Intervener/respondent

(In person)

O R D E R

Mr. Shekhar Agarwal, Member (A)

Vide Tribunal's order dated 27.07.2016, MA-3978/2015 filed by Sh. Vinay Kumar Gupta to be as intervener respondent, was allowed.

2. Undisputed facts of this case are that respondents initiated proposal of promotion from Class-III to Group-B against 70% vacancies of the post of AEN for the assessment year 1998-2000. A Notification was issued on 19.06.1998 whereby written test was to be held on 18.07.1998 for 34 vacancies. 155 candidates included in the main list were called to appear in the said selection. 41 names were kept in reserved list. A total of 71 candidates actually appeared. Therefore, a Notification for conducting supplementary written test on 31.10.1998 was issued in which 78 candidates were called to appear. This exam was postponed and was finally held on 21.11.1998. Three more candidates making a total of 81 candidates

appeared. Subsequently, 44 candidates, who passed the written test including both the main as well as the supplementary examinations, were called for interview on 18th & 19th January, 1999. A provisional panel of 31 persons was issued on 05.02.1999. Three more were subsequently empanelled.

3. One of the candidates Sh. A.S. Khurana filed OA-574/1999 before this Tribunal seeking preparation of separate year wise panels. He alleged that in the selection conducted by the respondents the number of candidates who were called to appear far exceeded the prescribed norm of three times the number of vacancies. This O.A. was decided on 21.03.2001 whereby provisional panel dated 05.02.1999 was quashed. The respondents were directed to hold selection strictly in terms of Instructions on the subject and the observations made in the judgment. A Review Application No. 251/2001 against the aforesaid order was dismissed on 09.07.2001. Thereafter, the respondents challenged the aforesaid order of the Tribunal before Hon'ble High Court of Delhi vide Writ Petition (C) No. 6006/2001. This Writ Petition was disposed of on 02.03.2007 as having become infructuous due to demise of Sh. A.S. Khurana.

3.1 Separately, one Sh. Khalid Akhtar also filed OA-726/2004 before this Tribunal on similar lines as the OA of Sh. A.S. Khurana. This O.A.

was disposed of by the Tribunal on 31.01.2005 in terms of the Tribunal's order dated 21.03.2001 in OA-574/1999. This order was also challenged by the respondents in Writ Petition (C) No. 11019-20/2005 before Hon'ble High Court of Delhi. Hon'ble High Court of Delhi upheld the order of this Tribunal vide their order dated 05.08.2010. The respondents were also advised by Railway Board not to file SLP against the aforesaid order of Hon'ble High Court of Delhi and implement the same. Accordingly, respondents issued order quashing the panel dated 05.02.1999 and also informed the officers who were likely to participate in fresh selection to be in readiness. They also consulted Railway Board regarding assessment of vacancies and were advised to follow the following guidelines:-

- "(i) Persons who had failed the test on an earlier occasion but were eligible to take test pertaining to the year when vacancy arose would be permitted to participate in the selection process.
- (ii) Retired employees are also to be called in the selection.
- (iii) The orders are to be implemented as a special case/one time exemption, not to be quoted as a precedent."

3.2 Separately, in Writ Petition No. 6882/2011 filed by Sh. Rakesh Kumar Kushwaha & Ors. , who were affected by the cancellation of panel, Hon'ble High Court of Delhi passed the following order:-

"there shall be no recovery and benefits already extended shall not be recalled from those who have retired. The employees who have already been selected and drawing salary, there shall be no recovery of salary as they have performed their duty on the promotional post. We have said so

as the new selection process has commenced. The said selection process should not be stalled and interdicted. The petitioners shall not be reverted pursuant to the fresh selection for a period of six weeks after the selection takes place. We grant liberty to petitioners to approach the Tribunal in case they are aggrieved by the fresh selection. Any other issue barring the quashing of the selection list of 1998-1999 is kept open."

3.3 SLP No. 32272/2011 filed by Sh. Rakesh Kumar Kushwaha against the aforesaid order of Hon'ble High Court dated 20.09.2011 was dismissed by the Apex Court vide order dated 29.10.2013. The order of the Tribunal dated 21.03.2001 thereafter attained finality.

3.4 In compliance of the aforesaid order the respondents now propose to prepare separate panel for each year after bifurcating 34 vacancies in two years i.e. 01.04.1998 to 31.03.1999 and 01.04.1999 to 31.03.2000. To formalise this, the respondents propose to prepare a zone of 51 candidates for each year of selection. Thus, for preparing fresh panels, the respondents had scheduled a written examination for the assessment period 01.04.1998 to 31.03.1999 on 18.07.2015 in which the applicants herein were also called to appear.

4. The applicants then filed this O.A. before us seeking the following relief:-

- "(i) To quash and set aside the impugned letter dated 15.04.2015.
- (ii) To declare the action of respondents in forcing the applicants to appear again in the written test in which they were declared qualified in 1999, as illegal, arbitrary and

unjustified and issue appropriate directions to treat the same examination as valid for all purposes.

(iii) To declare the action of respondents in forcing the applicants to appear in an examination to get promotion to the two rung lower posts i.e. AEN/NR as illegal and arbitrary and allow the applicants to continue on the promotional post with all consequential benefits.

(iv) To allow the OA with exemplary costs.

(v) To pass any such other order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

4.1 On 07.07.2015 the following interim directions were given:-

"However, in the interest of justice, we give option to the applicants who are in service to write the examination, if they so desire, subject to outcome of this OA. As regard the retired employees are concerned, they need not write the examination. In any case, the respondents shall not pass any adverse orders until further orders of this Tribunal."

5. The contention of the applicants is that the respondents have failed to consider that the written test for the said vacancies has already been held and found justified. Therefore, no such examination can be held again. The applicants have further stated that persons who have been directed to appear in the written test after 16 years of passing the order have got further promotions and many of them have retired from service. Some of them have become as old as 74 years and are suffering from various ailments. In the guise of holding fresh selection, the respondents are threatening them with cut in pension or reversion in case they do not

appear in the examination again. Applicants have quoted example of one Sh. Tara Chand, who according to them, was accommodated in the same panel from which his name got inadvertently excluded. In their case the applicants have submitted that they have been deprived of appearing in several examinations after the one which the respondents are proposing to hold again. The respondents were actually required to only prepare year-wise panel and that too as per seniority.

6. In their reply, the respondents have narrated the facts of the case, which have been mentioned above. According to them no cause of action has accrued to the applicants as no enforceable right of theirs has been infringed. They have also claimed that the O.A. was bad for non-joinder of necessary parties inasmuch as the applicants have not impleaded any person, who is likely to be adversely affected in case this O.A. is allowed. Further, they have submitted that the O.A. is barred by res-judicata and constructive res-judicata as the issue raised by the applicants has already been adjudicated upto the level of Apex Court. In their reply, the respondents have not made any response to the averments made by the applicants that many of them have now become too old to appear in the examination.

7. We have heard learned counsel for both sides including the private respondent Sh. Vinay Kumar Gupta and have perused the material placed on record. We do not agree with the respondents that this O.A. is barred by res-judicata. This is because the applicants are only seeking the relief of not being forced to appear in the re-examination being conducted by the respondents. This subject has not been adjudicated before in any of the Court cases decided on this issue. Nor do we agree with the respondents that this O.A. is barred by non-joinder of parties as none of those likely to be adversely affected in case the O.A. was allowed have been impleaded. This is because the relief claimed by the applicants is that they be not forced to appear in the re-examination. Even if this relief is allowed no one is likely to be adversely affected by the same.

7.1 We have also gone through the history of litigation in this case. We find that the respondents are now implementing the order of this Tribunal dated 21.03.2001 passed in OA-574/1999. The operative part of this order reads as follows:-

“7. In the facts and circumstances of the case, Annexure-A-1 and A-2 are quashed and set aside and the respondents are directed to hold the selection for promotion to Group ‘B’ afresh strictly in terms of rules and instructions on the subject and observations made above within a period of four months from the date of communication of a copy of these orders. However, it is made clear that those who have already been selected and appointed as group ‘B’ officers on the basis of the

selection held, will not be disturbed till the fresh selection. No costs."

7.2 This order has been upheld by Hon'ble High Court vide order dated 05.08.2010 in Writ Petition (C) No. 11019-20/2005 with the following observations:-

"11. The only clarification which we need to issue is that persons who had failed the test on an earlier occasion but were eligible to take test pertaining to the year when vacancy arose would be permitted to participate in the selection process.

12. The writ petition is dismissed but subject to para 11 above.

13. No costs."

7.3 A perusal of this Tribunal's order extracted above reveals that only the panel dated 05.02.1999 has been set aside. No infirmity has been found in the entire selection process comprising of the written test, viva voce and assessment of service record. We, therefore, failed to see as to why the applicants are being subjected to re-examination. The applicants before us are those, who had successfully participated in the earlier selection process and were selected. They have even earned further promotion and some of them have also retired from higher posts. In this regard on 27.10.2016 we had directed the respondents to file an additional affidavit indicating the promotions earned by the applicants and some other similarly placed persons. In compliance thereof, the respondents filed an affidavit on 07.12.2016 in which they have indicated the

various promotions earned by those candidates who were empanelled against selection as Assistant Engineers against 70% vacancies for the year 1998-2000. This chart indicates that many of them earned two promotions and retired as Superintendent Engineers. These promotions were granted by the respondents on their own and not on directions of any Court or Tribunal. There was also no misrepresentation on the part of the applicants while earning these promotions. Thus, there is merit in their contention that at this stage of their life they cannot be forced to appear in the examination to be conducted again. With passage of several years now their memory has got faded and they cannot be asked to appear in a competitive examination as they are too old even to sign or to hold the pen.

8. In our opinion, there is no need to force the applicants herein to appear in the examination again. Tribunal has only set aside the panel as the zone of consideration had got enlarged due to clubbing of vacancies. Since no infirmity has been found in the Court's order regarding the selection process, the assessment made by the respondents regarding the applicants when they first held the examination in the year 1998-1999 can very well be used.

9. We, therefore, allow this O.A. and direct the respondents not to force the applicants to appear for the re-examination. The

assessment made with regard to these applicants when the examination was first held in 1998-1999 may be used to determine their position in the panel. No costs.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

/Vinita/

