

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

O.A. No. 2778/2011

New Delhi, this the 27<sup>th</sup> day of July, 2016.

**HON'BLE MR. P.K. BASU, MEMBER (A)**  
**HON'BLE MR. RAJ VIR SHARMA, MEMBER (J)**

Mohd. Shahzad  
S/o Sh. S.A. Qadri,  
R/o T-54/5, Subzi Mandi, Railway Colony,  
Delhi-07.

....Applicant

(By Advocate : Shri Yogesh Sharma)

Versus

1. Union of India,  
Through the General Manager  
Northern Railway, Baroda House,  
New Delhi.
2. The Divisional Railway Manager,  
Northern Railway, Delhi Division,  
State Entry Road, New Delhi.
3. The Divisional Personnel Officer,  
Northern Railway, Delhi Division,  
State Entry Road, New Delhi.

....Respondents

(By Advocate : Shri V.S.R. Krishna with Shri A.K. Srivastava)

**ORDER (Oral)**

**By Hon'ble Mr. P.K. Basu**

The applicant has applied for appointment as Head TTE. The process adopted by the respondents include a written test followed by DPC. In the written test, the applicant qualified and was placed

at Sl.No.51 in the merit list. However, after the DPC was held and the final panel declared, his name was not on this panel. In fact, against the vacancy of 49 UR posts, only 44 names were shown in the panel. With regard to balance 5 posts, the impugned order dated 14.10.2009 issued by the respondents states that they were in sealed cover due to non-finalisation of major penalty charge-sheets against them.

2. It is admitted that two other candidates, viz. Shri Shiv Narayan Sharma (Sl.No.6) and Shri Ajay Kumar Sharma (Sl.No.37) shown in the final panel, their names should not have been indicated in the final panel and this was an inadvertent error and when this came to the notice of the respondents, this was rectified and while issuing the promotion order on 09.07.2008, their promotion was withheld.

3. This matter had come up before this Tribunal earlier and the O.A. was allowed vide order dated 16.01.2014. However, a Review Application No.102/2014 had been filed by the respondents on the ground that the O.A. had been disposed of under the presumption that Head TTE was filled by non-selection method, whereas it was actually a selection method. The Review Application was allowed vide order dated 05.09.2014 and in para 3.1 of the order, the following was observed :

“3.1 It is clear from the above that while deciding the case we had applied Para-3.4 (a) of the Circular No. E (D&A) 92 RG 6-

149 (A) New Delhi dated 22.01.1993. This para deals with non-selection posts and provides that posts meant for those employees who are under cloud may be filled in officiating capacity till the finalization of the proceedings against them. However, learned counsel for the respondents argued that no such provision exists for post to be filled by selection method. Thus, an error apparent on the face of the record has crept into our order. This Review Application, therefore, deserves to be allowed.”

4. In O.A. 2421/2008, the same issue had come up before this Tribunal and vide order dated 17.08.2009, the Tribunal had directed the respondents as follows:

“11. In view of the forgoing, we find the present case an apt one where there is a need for a re-look at the claim of the applicants and the decision of the respondents to keep a large number of vacancies as unfilled. The OA is disposed of with a direction to the respondents for treating the OA as a representation and pass a speaking and reasoned order taking a view in accordance with law and instructions on the point.

Needless to say while doing so, the respondents would also keep in mind our observations in the body of this order. This may be done within a period of three months from the date of receipt of a copy of this order. No costs.”

5. In compliance of that order, the respondents have issued the impugned order dated 14.10.2009 rejecting the claim of the applicant for promotion.

6. The applicant states that when the panel was prepared after written test, he was placed at Sl.No.51 and all the candidates upto Sl.No.1 to 50 have been included in the final panel. Even the fact that two names in the panel mentioned above had been wrongly included and 5 posts had not been filled up due to the fact that certain disciplinary proceedings were pending against 5 persons, is against the provisions of Railway Board's letter dated 22.01.1993.

7. It is argued that since the applicant had qualified the written test and was just one below the person who has been included in the panel and two people included in the panel were incorrectly included and there was no provision for keeping posts vacant for the 5 persons, who had disciplinary proceedings against them, his name should be automatically considered for appointment. In fact, it is further pointed out that in the case of Sl.No.11 in the final panel list, viz. Shri Satish Kumar Dahiya, a post has been kept blocked for a period of 10 years, which is his punishment period.

8. The learned counsel for the respondents stated that the distinction between a selection process and a non-selection process had been overlooked by the Tribunal while passing its earlier order dated 16.01.2014. Hence, the Review was filed and the Review was allowed on the ground that it was a selection process. In the selection process, candidate can be included in the panel only if he is found fit to be included in the panel. It is argued that when the applicant had not been included in the panel, whether or not wrong persons were included in the panel or that some posts have been kept vacant for those against whom some proceedings were pending, is not relevant at all. The short point is that the applicant failed to qualify after the DPC process to be included in the panel and the panel would be treated as final. Those not included in the panel cannot claim on the basis of the written test alone that if

there has been a wrong inclusion of anyone in the panel and that name is deleted, his name should be included. In this regard, the learned counsel for the respondents drew our attention to para 37 of the Circular dated 22.01.1993, which states as follows:

“In the case of promotion to selection posts, if the disciplinary cases against all the staff for whom vacancies have been reserved are finalised within a period of 2 years of the approval of the provisional panel, the panel should be finalised by interpolation of the names of such persons at the appropriate places. Otherwise the panel has to be kept as provisional till the finalisation of the last pending case. In so far as promotion to non-selection posts are concerned, the provisional suitability list should be finalised after the finalisation of the disciplinary cases against all the staff for whom vacancies have been reserved by interpolation of the names of suitable persons at the appropriate places. The list has to be kept as provisional till the finalisation of the last pending disciplinary case.”

9. There can be no dispute on the fact that in the process of appointment through selection in which a panel has been prepared after written test as well as DPC, candidates included in the panel have only to be considered. The applicant in his relief clause has prayed as under:

“That the Hon’ble Tribunal may graciously be pleased to pass an order declaring to the effect that the whole action of the respondents not including the name of the applicant in the penal (sic. panel) dt. 3.7.2008 for the post of Hd. TE, inspite of facts that the posts are vacant and the applicants have passed the selection, is illegal, unjust, arbitrary and consequently pass an order directing the respondents to issue the revised penal (sic. panel) in continuation of the penal dt. 3.7.2008 to fill up the remaining 16 vacant General category posts from the same selection.”

10. It would be clear that the applicant seeks inclusion of his name in the panel on the ground that posts are vacant and the

applicant has passed the written test. The selection comprises of two parts – written test and the DPC. While the applicant is right in stating that he had passed the written test, order dated 03.07.2008 indicates that he could not qualify to be included in the panel. As stated earlier, whether the vacancy remained or not is not relevant in this case as it is a selection process and, therefore, the revised panel dated 03.07.2008 cannot be questioned on that ground. We, therefore, dismiss this O.A. No costs.

**(Raj Vir Sharma)**  
**Member (J)**

**(P.K. Basu)**  
**Member (A)**

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