

(Reserved on 03.04.2019)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 331/00291/2014

Dated: This the 02nd day of May 2019.

PRESENT:

HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

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

1. Amar Singh Yadav, S/o Teras Lal Yadav, R/o Village Pabnah, Post – Atrampur, Police Station – Nawabganj, District - Allahabad.
2. Ram Naresh Meena, S/o Shri Murli Meena, R/o Village – Ishwana, District – Alwar (Rajsthan).
3. Ramesh Chand Meena, S/o Gore Lal Meena, R/o Village Jhajhirampura, Dausa, Jaipur, (Rajsthan)

. . . Applicant

By Adv: Shri Anil Kumar Singh

V E R S U S

1. The Union of India through General Manager, North Central Railway (NCR).
2. The Railway Recruitment Cell through its Chairman/ Secretary, North Central Railway (NCR), Allahabad, District Allahabad.
3. The Additional Chief Personnel Officer / Railway Recruitment Cell, North Central Railway (NCR), Allahabad District Allahabad.
4. The Assistant Personnel Officer, Railway Recruitment Cell, Nawab Yusuf Road, near Valmiki Chauraha, Civil Lines, Allahabad, District - Allahabad.

. . . Respondents

By Adv: Shri A.K. Pandey

ORDER

Delivered by Hon'ble Ms. Ajanta Dayalan, Member(A)

The present OA has been filed by Amar Singh Yadav and two others seeking directions to the respondents to declare final select list of Group 'D' posts in pursuance of advertisement dated 22 – 28 December 2007. Directions are also sought to respondent no. 1 to fill up unfilled vacancies by preparing waitlist and to appoint the applicants, if found suitable in

merit list or waitlist. Directions are also sought to include the name of the applicants in the select panel dated 06.03.2012 issued by the respondents.

2. The learned counsel for the applicants stated that an advertisement was published in widely circulated news papers for recruitment of 2968 posts of Group 'D' in North Central Railways in December 2007. The minimum qualification was 8th class pass and age limit was 18 to 33 years as on 01.01.2008. There was age relaxation for SC/ST and OBC candidates. According to the applicants, they being fully eligible applied for these posts and after long wait, appeared for physical eligibility test in April-June 2011. After qualifying in PET, the applicants appeared in the written examination on 16.10.2011 at Allahabad. The result was declared on 30.11.2011 wherein against 2968 posts, 3562 candidates (including the applicants) were declared successful (Annexure A-4). Thereafter, the applicants were called for documents verification and medical examination which was held in January-February 2012 at Allahabad. According to the applicants, they were declared successful therein. In support of this contention, the applicants have attached true copy of their certificates of physical fitness as Annexure A-6. The selection list was published on 06.03.2012 (Annexure A-7). In this list, result of only 2764 candidates was declared against notified posts of 2968 in the advertisement. Thereafter, another list of 136 candidates was published by the respondents. But the name of the applicants did not find place in either of the two lists. The learned counsel for the applicants stated that even after the supplementary list, total selected candidates were only 2900 against 2968 posts advertised. On query by some of the candidates regarding status of unfilled vacancies, the department informed them in 2012-2013 that the result of 68 unfilled vacancies shall be declared soon (Annexure A-8). But till date no result for unfilled vacancies has been declared. The

respondents in their reply further informed that unfilled vacancies have to be filled from 20% extra candidates. The learned counsel for the applicants states that this effectively means that unfilled vacancies are required to be filled by preparing a wait list.

3. The learned counsel for the applicants further stated that even out of 2764 candidates selected in the first list, about 300 candidates did not join and hence there are vacancies which are unfilled with reference to number of posts advertised in December 2007 but the respondents are not issuing directions for filling of the said posts.

4. The case of the applicants is that advertisement was issued for 2968 Group 'D' posts in North Central Railways in December 2007. Till date only select list of 2900 candidates has been issued. Thus there are 68 clear unfilled vacancies. Besides, about 300 candidates have not joined from the first select list itself. Hence, there are substantial unfilled posts. But the department is not taking any action for filling of the same even though eligible candidates are available and the department has itself stated in 2012-13 that the result for remaining vacancies will be declared as soon as possible. Due to this action of the respondents, the applicants are suffering for last so many years. The applicants have also pleaded that denying appointment on the Group 'D' posts to the applicants by the respondents' department is wholly illegal, arbitrary and is not sustainable in the eyes of law and is, therefore, liable to be quashed. Hence, directions have been sought by the applicants to the respondents department to complete the selection process.

5. The applicants have also stated that candidates with lower qualification than the applicants have been selected on the basis of extraneous consideration and that the respondents are adopting pick and choose policy and are manipulating the entire result.

6. The applicants have also relied on a number of judgements as brought out in para 4.39 of the OA, in support of their contentions.

7. The respondents have contested the claim of the applicants. They have stated that the Railway Recruitment Board, which is the designated body to conduct exam, advertised for 2968 vacancies in Group 'D' cadres. The applicants applied for the same and appeared for physical efficiency test. After their successfully clearing the same they were called for appearing in written examination. Railway Recruitment Cell declared list of 2968 plus extra list of 20% eligible candidates including the applicants and others for documents verification and medical fitness. A list of 2768 successful candidates was declared on 05.03.2012 and result of 204 candidates was withheld for examination of their documents by the Government Examiner of Questionable Documents. Documents of 44 candidates were detected with some discrepancies and hence candidature of these 44 candidates was rejected and the concerned candidates were informed. Result of remaining 160 eligible candidates was declared on 12.08.2013. The department has categorically stated that the name of the applicants were within 20% extra candidates who had acquired merit in extra list of 20% candidates and were kept in readiness in case indenting railway units asked for replacement of the panel. But no request for replacement of the panel has been received by the Railway Recruitment Cell, Allahabad till now. This could be because of Railway Board Letter dated 08.12.2011 whereby recruitment of Group 'D' post was to be done annually.

8. The respondents have also stated that the Annexure A-1 annexed by the applicants is not the advertisement and the applicants are giving incomplete information of selection process. The complete advertisement has been annexed as CR-1. The respondents have however, admitted that the recruitment process involved various stages – firstly physical efficiency

test, then written examination, then documents verification and medical fitness. Only candidates who qualified in physical efficiency test, were entitled to appear in written examination, and after clearing the same by merit marks obtained therein, the candidates were called for documents verification and medical fitness. If found suitable in both as per standard of merit, they were considered for appointment. The respondents have also stated that delay in issuance of call letter for physical efficiency test was caused due to interim order dated 17.03.2008 passed by this Tribunal in OA No. 111/2008. This OA also got linked with another OA No. 180/2008 and only after final decision in both these OAs, the selection process could be started again.

9. The respondents have also stated that the applicants were entitled to document verification and medical test as they had acquired position in merit list of 20% extra candidates. But their names could not be kept in final list. The respondents have further stated that 44 persons who were declared disqualified due to discrepancies detected in their documents have filed cases before various courts including this Tribunal which are still pending. Hence, no step towards appointment against these vacancies can be taken without finalization of these cases.

10. The respondents have further stated that in view of Railway Board's Letter dated 10.01.2014, no replacement is to be given against non-joining of selected candidates as recruitment in Pay Band -1 with Grade Pay Rs. 1800 is now done annually in terms of Board's letter dated 08.12.2011. The department has also stated that the reply given to the applicants was based on position of the period when information was received. However, the present position is as given in the counter affidavit. The respondents have stated that all the applicants have secured rank which comes in 20% extra candidates but not in merit selection list; hence they will be entitled to appointment when list of 20% extra is called for. The respondents have

also categorically denied that there is any malafide. They have stated that the applicants have not produced any proof of malafide and have not given any specific instances. The respondents have further stated that the action of the respondents should be in the manner provided by Act and statute and not otherwise. Further, as the entire action was taken by the respondents as per the rules and procedure by the Railway Board, there is no ground for interference. The respondents have also stated that putting the names of the candidates in list of selection does not confer any right to appointment. Further currency period of panel is only two years. Besides, 20% extra candidates need not be called for appointment, if there is no requirement. There is no compulsion or hard and fast condition to appoint them.

11. We have heard the learned counsels for both the parties and have gone through the pleadings of the case. We have also given our thoughtful consideration to the entire matter.

12. We observe that there is no dispute that advertisement was issued for recruitment of 2968 posts in various Group 'D' cadres in North Central Railway in December 2007. There is also no dispute that all the applicants applied against these posts and qualified in physical efficiency test and thereafter in written test. They were called for documents verification and medical fitness. However, their names did not appear in either of the two select lists declared by the respondents in March 2012 and August 2013. The respondents have clearly asserted that against 2968 advertised posts, results have been declared only for 2928 (2768 in March 2012 and 160 in August 2013). Candidature of 44 candidates, whose results were initially withheld due to discrepancies in their documents, was later cancelled. These candidates have approached the Courts including this Tribunal and the OAs filed by them are still pending and as such, no final decision in regard to these posts can be taken. It is admitted by the respondents that

initially they had called 20% extra candidates for documents verification and medical examination and all the three applicants belong to this 20% extra list.

13. Regarding 20% extra candidates, we observe that there is no dispute and the department itself has admitted that 20% extra candidates were called for documents verification and medical examination. This was with a view to keep them in readiness, in case requisite number of eligible candidates within the original merit list were not available. We do not find any impropriety in this action of the department. The call letters for documents verification and medical examination do not give the candidate any right for appointment. Had the situation been that within the original merit points, number of candidates had to be rejected due to medical unfitness or on the ground of document verification, a situation could have arisen what the department would have been obliged to take persons below the original merit points and from this 20% extra pool. However, in the instant case, such situation did not arise and the applicants were not issued any appointment letter

14. The respondents' department has also stated that unfilled vacancies due to non-joining of selected candidates cannot be filled by waitlisted panel or extending the panel as the recruitment in Group 'D' post is to be done annually as per Railway Board Circular dated 10.01.2014. In terms of these instructions, vacant posts due to non-joining of selected candidate cannot be taken into consideration for extending that particular year's select panel.

15. On the applicants' side, they have stated that the advertised posts have not been filled specially if we keep in mind the vacancies due to non-joining of selected candidates. According to the applicants, these vacancies themselves are around 300. The applicants are basically

insisting on filling up the vacant posts with reference to advertised number of 2968 posts

16. We observe that the respondents' main reason for not filling unfilled vacancies due to non-joining of the selected candidates is on the grounds of Railway Board' Circular dated 10.01.2014. It is true that this circular does state that no replacement panels are to be given against non-joining of selected candidates, as recruitment in Pay Band-1 with Grade Pay Rs. 1800 is now done annually in terms of instructions contained in Board's letter dated 08.12.2011. However, this order of the Railway Board being relied upon by the respondents' department is of 10.01.2014. We also observe that posts in question were advertised way back in December 2007. The candidates appeared in physical efficiency test in April to June 2011. They appeared in the written test in October 2011. The result of the written test was declared in November 2011. The documents verification and the medical examination were conducted in January - February 2012. Even the first selection list was published on 06.03.2012. The supplementary selection list of 160 candidates was published in August 2013. Hence, one may safely conclude that whole selection process was undertaken and the same reached conclusion prior to issue of Railway Board Circular dated 10.01.2014. The Railway Board Circular dated 10.01.2014 can and should only have prospective effect and cannot have retrospective effect. The selection process in question was started way back in December 2007 and was successfully concluded with the declaration of the result of written examination in March 2012 and August 2013. In fact, the result was declared on 30.11.2011 – that is even prior to 08.12.2011 when instructions referred to in the Board's circular dated 10.01.2014 were issued. The instructions of 08.12.2011 have not been placed on record by the respondents and hence we have no way of knowing the contents thereof. As these

instructions are only referred to in the circular dated 10.01.2014 and are not independently relied upon by the respondents, for us what the relevant is circular dated 10.01.2014. Admittedly, the selection process including declaration of original select list as well as supplementary list was concluded prior to this date in respect of Group 'D' examination in question. Hence, we do not see the relevancy or the applicability of this circular for the selection process in question.

17. In view of the above discussion, we are of the view that the selection process in question is to be governed irrespective of the Railway Board's circular dated 10.01.2014. Once this position is clear, we are of the view that once the department itself has decided to put 20% extra candidates in the provisional select list for getting the candidates in readiness to join in case of various contingencies, it is logical for the department to consider the candidates from this list to the extent of filling vacancies due to non-joining of candidates from original select list. It is made clear that no directions are being given to the department to appoint candidates beyond advertised number of posts. We, however, are of the view that the department should complete the selection process that was initiated way back in 2007 by filling up unfilled posts due to non-joining of selected candidates.

18. In view of the above discussions, the OA is partly allowed. The respondents are directed to consider the claim of the applicants as well as other candidates, from extra list of 20% candidates for appointment against vacant posts due to non-joining of selected candidates from select lists issued by the department in March 2012 and August 2013.

19. The OA is disposed of in above terms. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Ajanta Dayalan)
Member (A)

Anand...