

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1003/2003.

New Delhi this the 13th day of February, 2004.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (ADNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Sh. Jagdish Chand,
S/o Sh. Chmaru Ram
2. Sh. Milap Chand,
S/o Sh. Mangat Ram
3. Sh. Harish Chand,
S/o Sh. Khem Chand
4. Sh. Tejpal,
S/o Sh. Nanak Ram
5. Sh. Rohtash Singh,
S/o Sh. Khaniyalal

-Applicants

(By Advocate Shri S.K.Sawhney)

-Versus-

1. Union of India through
the General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
D.R.M. Office, New Delhi.
3. Divisional Personnel Officer,
Northern Railway,
D.R.M. Office, New Delhi.
4. Sh. Surinder Kumar
5. Sh. Rajinder Kumar
6. Sh. Balkar Singh
7. Sh. Khushal Singh
8. Sh. Ramesh Kumar
9. Sh. Ravi Kumar
10. Sh. Jagdish Sehgal
11. Sh. Ajay Kumar
12. Sh. Ashok Kumar
13. Sh. Anil Kumar Gupta
14. Sh. Hari Ram
15. Sh. Jitender Kumar
16. Shri Atul Aggarwal

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17. Sh. Tilak Raj
18. Sh. Ram Lal
19. Sh. Ravinder Kumar
20. Sh. Prem Chand
21. Sh. Rakesh Kumar
22. Sh. M.P. Singh
23. Sh. Manoj Kumar
24. Sh. Gurpreet Singh
25. Sh. Rajinder Kumar
26. Sh. Anil Kumar
27. Sh. B.B. Sharma
28. Sh. Paramjit Singh
29. Sh. Ajay Kumar
30. Sh. Harjit Singh
31. Sh. Shamsher Nath Tiwari
32. Sh. Kishan Kumar
33. Sh. Narinder Pal

-Respondents

(By Advocates Mr. Anju Bhushan and Sh. Khairati Lal)

ORDER

By Mr. Shanker Raju, Member (J):

In the light of the decision of the Apex Court in *Raj Kumar v. Shakti Raj*, (1997) 9 SCC 527 once participated in a selection process one is ~~not~~⁴ estopped from challenging it unless there is an illegality in the procedure or the selection is vitiated by mala fides.

2. In the wake of the aforesaid dicta applicants who have participated in the selection held for the post of Loco. Inspectors and failed to qualify have challenged participation of respondents No.4-33 on the ground of their ⁴ ineligibility having not physically worked as Driver. *Notification*

✓
(3)

was issued on 27.8.2002, which, inter alia, provided an avenue for promotion to Driver (Mail) and Senior Passenger and Senior Goods Driver and Driver (Goods) as feeder categories. For Driver (Goods) an experience of three years working as Driver was mandatory.

4. In pursuance of notification a list of eligible persons was circulated on 4.10.2002 and written examination was fixed which was postponed due to imparting of insufficient pre-selection coaching to SC/ST staff. By a selection dated 9.10.2002 three years footplate was required for eligibility of all the Driver whether Mail Passenger/Goods Train but has not been made applicable to the selection process which has already been initiated like the present one.

5. Written examination was held in May, 2000 and the result was declared on 16.6.2003 and 13 candidates were declared qualified and called for viva voce on 2.7.2003. A provisional panel of 18 candidates was declared on 25.07.2003 keeping five posts vacant due to non-availability of ST eligible employees and all have been promoted as Loco Inspector.

6. Applicants who appeared in the written examination had not qualified.

7. Learned counsel for applicants Sh. S.K. Sawhney relying upon Railway Board's letter dated 16.5.96 contends that for a Goods Driver to be appointed as a Passenger Driver at least at least three years experience as Driver is mandated. As none of the respondents had three

years required experience they are not eligible to appear in the selection and have been wrongly selected. It is stated that the working of Drivers and supervision is part and parcel of the duties of Loco Inspector having no experience of driving it is not possible for them to supervise as they are ineligible for the job.

8. On the other hand, official respondents vehemently opposed the contentions and stated that three years foot plate experience is applicable to only Goods Driver and the circular dated 9.10.2002 which makes three years foot plate experience as an eligibility condition for all Drivers is not applicable to the selection which had initiated prior to coming into force of PG 12527. It is also stated by the learned counsel that the selected candidates were eligible and having no mala fides or irregularities in the procedure applicants are estopped from challenging the selection.

9. Learned counsel for private respondents vehemently opposed the contentions and stated that respondents are duly eligible and qualified and as per Board's letter dated 25.11.92 in so far as filling up the posts of Loco Running Supervisor a common selection from Loco ~~✓~~ Running ~~✓~~ staff ~~✓~~ which ~~✓~~ includes Mail/Express/Passenger/Goods Drivers has to be conducted and seniority group of Power Controllers, Crew Controllers and Loco Inspector are equivalent cadres. Moreover, it is stated that respondents have been promoted from Goods Drivers to Passenger Drivers and having not challenged the earlier promotion the applicant is estopped from challenging the same.

10. Shri Sawhney in his rejoinder referring to letter dated 17.6.87 of the Board regarding training of loco running staff contends that a Goods Driver who was to be promoted as Driver Passenger no relaxation in Footplate experience was accorded to him. This shows that the requirement of three years Footplate service was *Sine qua non* for promotion as Passenger Driver.

11. We have carefully considered the rival contentions of the parties and perused the material on record.

12. In so far as PS issued in 1996 is concerned, the same refers to Goods Driver with at least three years experience as Driver. Having been promoted as Passenger Driver the aforesaid contention cannot be insisted upon.

13. Thee selection notified for the post of Loco Inspector through notification dated 27.8.,2002, inter alia, requires as a feeder category Passenger Driver and the condition of three years experience was only applicable to Goods Driver.

14. Moreover the notification dated 9.10.2002 where the condition of three years Footplate experience was made applicable to all the Drivers cannot be applied to the selection already initiated and is prospective in application.

15. Having not challenged the promotion of respondents as Passenger Driver being fully eligible we do not find any infirmity in the selection. There is neither any illegality of the procedure nor mala fides to vitiate the selection.

16. In the charter of duties of Loco Inspector one is not to drive the loco. Moreover, the selected candidates have requisite experience.

17. Having participated in the selection and failed to qualify the written examination applicants are estopped from challenging the selection. More so, when they have not made any case for judicial review.

18. In the result, for the foregoing reasons, OA is dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Vice-Chairman (A)

13/2/04