

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.175/2003

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New Delhi, this the 7th day of ^{May} ~~April~~, 2003

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri Govindan S.Tampi, Member(A)

1. Mrs. Bandana Ray W/o Sh.
Shyamal Ray Head
Clerk/'P'Br.BH
2. Sh. A.K. Bhatnagar
S/o Sh. R.K. Bhatnagar,
Head Clerk/'P'Br.BH
3. Sh. V.P. Singh S/o
Sh. Hardev Singh, Head
Clerk/'P'Br.BH
4. Sh. P.K. Khosla S/o
Sh. J.L. Khosla Head
Clerk/'P'Br.BH
5. Ms. Alka Kharbanda W/o
Sh. S.S. Kharnad Head
Clerk/'P'Br.BH
6. Sh. Kulbir Singh S/o
Sh. Bhachan Singh, Head
Clerk/'P'Br.BH
7. Sh. Ramesh Kumar S/o
Sh. Man Singh, Head
Clerk/'P'Br.BH
8. Sh. Satya Prakash S/o
Sh. Kewal Singh Head
Clerk/'P'Br.BH

.... APPLICANTS.

(By Advocate: Sh.B.S. Mainee with Sh.S.K. Sawhney)

VS.

UNION OF INDIA
THROUGH:
THE GENERAL MANAGER
Northern Railway,
Baroda House, New Delhi. RESPONDENT

(By Advocate: Shri D.S. Jagotra)

O R D E R

Shri Govindan S. Tampi:

MA 469/2003 disposed of.

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2. The reliefs sought for in this OA filed by Smt. Bandana Rai and seven others are as below:-

"8.1 That this Hon'ble Tribunal may be pleased to allow this application and quash the impugned order.

8.2 That this Hon'ble Tribunal may be further pleased to direct the Respondents to produce the concerned file in which the case of the Applicants has been considered before the impugned order was passed and subsequently also when the case was reconsidered on the representation of the applicants.

8.3 That this Hon'ble Tribunal may be further pleased to direct the Respondents to finalize the selection in continuation of the result of the written test which has been declared vide letter dated 29.8.2002 and finalize the same.

8.4 That any other or further relief which the Hon'ble Tribunal may deem fit and proper on the facts and in the circumstances of the case may kindly be awarded in favour of the applicants.

8.5 That the cost of the proceedings may kindly be granted in favour of the Applicants."

3. All the applicants are working as Head Clerks in the scale of Rs.5000-8000 in the Personal Branch of the Northern Railway Headquarters and have already put in 10 to 15 years of service in that capacity. The Headquarters officeS maintain separate seniority list for promotion within. The applicants are eligible for being promoted as Office Superintendent Grade-II in the scale of Rs.5500-9000, subject to passing a written examination followed by a viva-voce test. In terms of Northern Railways letter dated 19.6.2002 process of selection was initiated for filing

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up 28 vacancies in the grade of O.S.-II, Out of which 24 were in UR, 3 in SC and 1 in ST categories. The Notification also had a list of 84 individuals, who were eligible for consideration, in this test which was being held for the first time after 1996. The written examination was held on 10.8.2002 and 20.8.2002, result whereof were declared on 29.8.2002 and 25 candidates were called for viva voce test on 16.9.2002. This included 3 persons, who were called on the basis of their notional seniority and ~~while~~ 7 persons, who had already cleared the written test on relaxed standards. On 02.9.2002, some action was taken by the Vigilance Branch on the basis of some complaints about the conduct of the test. On 03.9.2002, a few candidates, who had failed in the examination, made a representation that the selection process should be scrapped as (a) the selection had been delayed inordinately, (b) to favour junior persons, the selection should have been deferred till implementation of the cadre review (restructuring), (c) certain unfair means had been adopted, (d) seniority marks have been distributed among all the candidates called for written examination, (e) Vigilance Branch had seized the papers concerning examination, (f) some of candidates were not able to put up noting and drafting properly and (g) the number of vacancies had not been arrived properly. All the above allegations were baseless and only meant to foment trouble. A few of the complainants filed OA No.2407/2002, which was disposed by the Tribunal on 16.9.2002 with a direction to the respondents to consider the representation and pass a speaking order. By the resultant order passed by General Manager, on 16.01.2003, the complaints have been rebutted but in para 2 of his order, ^{6/M} held that on _{A 2}

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account of the cadre review and formation of new zones, vacancies were likely to be reduced and therefore cancelled the selection process, which was more than half way through. The present applicants filed representation on 18.9.2002 to the General Manager protesting the decision to have the selection process cancelled. The applicants filed their protest to Hon'ble Minister of Railways vide their representation dated 14.1.2003. Applicants further pointed out that though 84 candidates were originally called, only 25 persons had been declared eligible for the interview, out of whom three were so declared with notional seniority marks and seven with relaxed standards. The only objection Vigilance Branch had ^{was 44} ~~had only 26 vacancies~~ ^{Personnel} ~~Personnel~~ were to be filled, which is opposed by the ~~Personnel~~ Branch. The persons called for interview should have been empanelled. Instead, the respondents have incorrectly cancelled the selection leading to the filing of this OA.

4. Grounds raised in this OA are that:-

(i) the impugned order dated 16.1.2003 was factually incorrect and legally untenable;

(ii) grounds raised by the complainants against the examination were false and baseless and accepted to be so by the General Manager;

(iii) grounds raised by the General Manager were wrong as cadre review would indeed have increased vacancies;

(iv) Instead of cancelling selection the selected candidates could have been transferred to new zones, where by become operative;

(v) the General Manager's order was vague and non-speaking;

(vi) the vacancies have been correctly worked out by the Personal Branch, and they were not likely to be reduced;

(vii) before cancelling the selection proceedings, if it is found that some candidates had originally made the grades, they could have been adjusted against future vacancies,

(viii) those who had appeared in the examination and failed can not challenge the selection procedure as held by the Hon'ble Supreme Court;

(ix) as the complaints did not have any basis at all the selection process should not have been cancelled and should have been gone through and from among those selected the juniormost could have been transferred to other zones, if it became necessary.

In view of the above, the OA should succeed and the respondents be directed to finalise the Selection pleads the applicants.

5. In the short reply filed on 17.2.2003 by the respondents, it is pointed out that the impugned order 16.1.2003 was issued by the respondents in terms of the

Tribunal's order dated 16.9.2002 while disposing of the OA No.2407/2002. The applicants' request to consider those who had cleared the written test, including them also for appointment, can not now be taken up, as General Manager has already cancelled the selection procedure. Even otherwise, the applicants have not acquired a right for selection as the selection has been cancelled. The applicants contest the above in their rejoinder and state that the cancellation of the examination was not justified.

6. In their detailed reply dated 06.3.2003, the respondents point out that the impugned order has been issued in obedience to Tribunal's order dated 16.9.2002 in OA No. 2407/2002. The applicants in this case have only cleared the written examination and have not been finally selected. They have not acquired any right so far. The respondents had got the right to cancel examination if it is found that the conduct of the examination had been irregular. The respondents had felt that such irregularity would affect the reputation of the organisation and have, therefore, correctly cancelled the selection procedure. The impugned order followed the direction of the Tribunal dated 16.9.2002 issued while disposing of the OA No.2407/2002. In the said OA, certain irregularities in the selection and assessment of the vacancies had been referred to. Therefore, the respondents were correct in reassessing the situation and cancelling the selection procedure. They point out that they had undertaken the selection process for filling up of about 28 posts of Office Superintendents Grade-II in the Personal Branch of the Northern Railway Headquarters for which tests were

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conducted on 10.8.2002 and 17.8.2002 for 84 candidates.

25 employees were declared to have been passed in the test and qualified for the viva voce but on account of the advice of the Vigilance Branch, not to go ^{ahead} with the selection, the interview was kept in abeyance. In the meanwhile, a few of the employees, who had failed in the test, filed OA 2407/2002 which was disposed of by the Tribunal on 16.9.2002 with the directions to the General Manager to dispose of the representation of the applicants preferably by the speaking order. After considering all the points not in dispute, the General Manager passed impugned order cancelling the selection process. The impugned order was passed taking into consideration the facts brought on records with an intention to conduct the fresh selection. This can not be questioned. Representation dated 14.1.2003 filed by persons contained all the points raised in the representation dated 18.9.2002 and the same can not be reviewed. The General Manager also had considered the need for reduction in the number of vacancies on account of the cadre review and proposed transfer of staff to new zones. All the points raised in the impugned order were correct and, therefore, the Tribunal should not interfere in the matter, according to the respondents.

7. In their detailed rejoinder the applicants point out that the action taken by respondents were wrong and, therefore, they have been put to inconvenience. Further, in MA No. 469/2003 filed by the applicants it is pointed out the entire issue had been dealt with in file 752/E-1-Part(1)/Selection OS/GR-II E-IIA, which should be called for. He also referred ⁴² the decision of the Delhi High Court in the case of Iqbal

Singh Vs. U.O.I. General Manager Northern Railway [1974 (2) SLR 557] to show that if larger number of candidates were permitted for examination by mistake, the same would not vitiate the selection.

8. We have carefully considered the matter and examined all the relevant facts brought on record. We have also perused File No.752/E-I part-I/Selection/OS Grade- II/E-II A.

9. The impugned order dated 16.1.2003 issued by the respondents ^{Yeads} as under:

Sub Selection for the post office
Supdt.-II grade Rs.5000-9000, Personal
Branch, HQ, Baroda House, New Delhi.

Written test for promotion to OS-II grade Rs.5000-9000, Personal/Branch was held on 10.08.2002 and 20.08.2002 and result of the written test was declared on 29.8.2002.

Competent Authority has decided that the above-mentioned selection may be treated as cancelled and fresh selection may be initiated after re-assessment of vacancies.

-Sd-
for General Manager/P

The enclosure (pages 23 and 24 of the paper book) Speaking order dated 13.1.2003 reads as under:-

"I have gone through the representation dated 11.9.2002 (although the same is mentioned as dated 12.9.2002 in Hon'ble CAT/DLI's order dated 1.9.2002) and also the supplementary representation dated 3.10.2002 submitted by Smt. Manorama Sharma, Shri V.K.Batra, Smt. Dakshina Sharma and Smt. Madhu Sharma, who were applicants in OA No.2407 of 2002 and which was disposed off by CAAT/dli vide their orders dated 16.9.2002 directing me to dispose of the representation within a period of 4 months from the date of the receipt of the certified copy of the order.

The important issues raised in the main representation and the supplementary representation are: (i) non conducting of selection since 1996; (ii) wrong assessment of vacancies and also not taking in to

account the reduction in the number of posts due to cadre review and as well as transfer of posts to new zones and (iii) adopting of unfair means by the candidates, which was allowed by the invigilators.

The contentions of the applicants have been considered and the same are disposed of as under:

- i) The selection could not be conducted after 1996, when the last panel had exhausted, on account of seniority disputes mainly between General and SC/ST candidates, resulting in contentious litigation even at the Apex Court level. Another reason for non conducting of selection was enhancement of superannuation age from 58 years to 60 years in May, 1998, with the result that for almost 2 years, no vacancies could become available and even in those categories, where panels were available, the same could not be exhausted.
- ii) Railway Board's letter dated 31.5.2002/6.6.2002 directing cadre reviews with effect from 1.4.2002 was received in Headquarters and circulated on 2.7.2002. It was only after a few months receipt/circulation of this letter that the Board decided to defer the cadre review to 1.4.2003. Similarly, there was already clear and adequate indications that new zone(s) is/are to come into existence from 1.10.2002 resulting in transfer of posts to new zone(s). On these two accounts, there was, *prima facie*, a need to reduce the numbers assessed for the said selection.
- iii) There have been a number of instances in selection, where senior employees had failed and juniors had passed. However, the issue regarding of adopting of un-fair means by the candidates has been looked into and it is found that no un-fair means have been adopted by the candidates who have qualified in the written examination.

Keeping in view the total position obtaining in this case, I have ordered to cancel the said selection of OS II/Personnel Branch and to initiate fresh selection in this case after assessment of vacancies."

10. It is thus observed that while General Manager, Northern Railway did not find any basis in the allegations of the failed candidates about the alleged

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malpractices, he observed on the examination of the position in the Department that re-assessment in the ^{num} number of vacancies call for. He, therefore, thought it fit to have a fresh selection and accordingly ordered, the cancellation of the process, which had gone only ² half way through. We do not know how we can set in judgement over the said policy decision. Even if the allegations raised by certain employees who did not clear the promotion test had been effectively disposed, the respondents were at full liberty to re-assess the vacancy position and to take action accordingly. Respondents are the best judge to determine the vacancies and the requirements of the staff in their organisation and it is not for the applicants to suggest to the Organisation exactly the number of vacancies to be filled up. The same falls within the exclusive domain of the Organisation. It is also not for the Tribunal to tell the organisation, as to how many vacancies they should fill and when. Except the fact that completing the viva-voce and finalising the list with reduced number of candidates would have given the present applicants the advantage of early promotion, nothing has been brought on record by them to successfully assail the findings of the respondents that vacancies need to be reworked for a fresh selection. Further, the applicants have not at all acquired any vested right for selection merely because they had passed the written test and become eligible for inclusion in the viva voce list. No right of theirs has been violated. The Hon'ble Supreme Court have in their decision in Shankarsan Dash Vs UOI [(1991) 17 ATC

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95] has held that even those who have been placed on the panel for a selection does not have any indefeasible right for appointment. When such is the position in the case of even selected candidates, how can the applicants, who have only become eligible for the viva voce test claim that the same be gone through so that their selection is facilitated? It is for the respondents to determine and reassess the exact number of post to be filled in their Organisation and it is not for the Tribunal to issue directions in this regard.

11. Perusal of the File No.752/E-1-Part(i) /Selection /Grade-II E-IIA, makes it clear that the respondents have completed all the necessary formalities in accordance with law and nothing further remains to be done by them.

12. In the above view of the matter, we are convinced that the applicants have not made out any case for our interference. OA having no merit fails and is accordingly dismissed. No costs.

(Govindan S.Tampi)
Member (A)

Kuldip Singh
Member (J)

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