

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 13.08.2012

+ **W.P.(C) 3289/2012**

PAWAN KUMAR

... Petitioner

versus

UNION OF INDIA & ORS

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. S. Nand Kumar and Ms. Suveni Banerjee
and Mr. R. Satish Kumar, Advocates
For the Respondents : Mr. Rajinder Nishchal, Advocate

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is aggrieved by the fact that his original application being OA No. 2865/2010 was rejected by the Central Administrative Tribunal, Principal Bench, New Delhi by virtue of its order dated 24.10.2011.
2. The petitioner (Pawan Kumar) was a candidate for the post of Assistant Station Master (ASM). An advertisement had been issued for the same on 7.6.2008. That advertisement was for 53 posts of ASMs for the Ambala Division. The petitioner, like many others, had applied in response to the said advertisement.

The petitioner, however, was not within the top 53 candidates and his name was placed in the list of extra candidates. It is an admitted position that the petitioner's name in order of merit was at Sl. No. 5 in the said list of extra candidates. It was contended by the learned counsel for the petitioner that although 53 posts of ASMs had been earmarked for the Ambala Division, 18 out of these 53 posts were diverted to the Delhi division. This meant that out of the 53 persons, who were selected, only 35 of the candidates would be posted in the Ambala Division, and therefore, there remained a vacancy of 18 posts within Ambala Division. According to the learned counsel for the petitioner, the petitioner ought to have been considered for these 18 vacancies. He further pointed out that out of the 53 persons who were initially selected against the 53 posts which had been advertised, two persons did not clear the medical test and two did not join. This meant that there were four vacancies even in respect of the 53 posts which had been advertised.

3. According to the learned counsel for the petitioner, the petitioner ought to have been considered for filling in the 18 vacancies which remained at Ambala Division and that such vacancies should have been filled from the list of extra candidates/Replacement Panel which was drawn up, before those posts could be advertised again.

4. In response, the learned counsel for the respondents submitted that the

advertisement was for 53 posts. Those 53 posts have been filled up. He submitted that initially 53 candidates had been selected and out of those selected candidates, two did not pass the medical test and two did not join. As a result of which four slots were open. Those four slots were filled in by the first four candidates in the list of extra candidates/Replacement Panel. Thus, according to the learned counsel for the respondent, all the 53 posts of ASMs, which had been advertised, had been filled in and there was no vacancy in so far as the advertised posts were concerned. The petitioner, being at Sl. No. 5, obviously did not get the employment because there were four others who, being more meritorious than him, were selected for filling up the said four posts which had remained vacant due to the fact that the selected candidates had either not cleared the medical test or had not joined.

5. The learned counsel for the respondents also submitted that the list of 53 candidates which had been received from the Railway Recruitment Board (Chandigarh) had been distributed between the Ambala Division (35) and Delhi (18) with the approval of CP/NR (Competent Authority).

6. It was also contended that the number of candidates that could be empanelled for appointment (including that of replacement) could not exceed the advertisement vacancies under any circumstances and that the demand of 53 ASMs had already been finalized by forming a panel of 53 candidates.

7. It was further contended that in case vacancies existed in the ASM cadre in

the Ambala Division, the same would have to be filled up through the panel to be received from the Railway Recruitment Board against a subsequent demand for ASMs.

8. It was also contended that the requirement to divert 18 posts to Delhi Division had become necessary due to administrative exigencies and urgent need of ASMs in Delhi Division for a smooth, accident-free running of trains and to avoid hardship to passengers.

9. The learned counsel for the petitioner has placed strong reliance on the Railway Board Circular dated 7.7.2009 which is as under:

“SERIAL CIRCULAR No. 128 /2009

No. P[R] 563/VIII

Dated: 20 -08-2009

Copy of Board's letter No.E[RRB]/2008/25/10 dated 07.07.2009 together with their letter dated 25.07.08 is published for information, guidance and strict compliance. Board's letter dated 05.05.2006 quoted therein was circulated as SC No. 74/06.

Copy of Board's letter No. E[RRB]/2008/25/10 dated 07.07.2009 [RRCB No.2/09]

Sub: Replacement Panels/ Shortfall in Panels.

Ref: [1] Board's letter No. E[RRB]/2004/3/8 dated 05.05.2006 [RRCB 8/2006]

[2] Board's letter No. E[RRB]/2008/25/10 dated 25.07.2008 [RRCB 9/2008]

Some Railways had brought to the notice of the Board that out of the candidates whose names are borne on RRB panels, a fairly large number either do not report or fail in the medical

examination. Due to this, the actual materialization of the panel is often short of the total vacancies for which the panel had been prepared. To overcome this problem, Board had issued directives vide reference [1] above permitting 20% extra candidates to be called for certificate verification and kept in readiness in case the indenting Railway / Unit asks for a replacement panel. This percentage was revised to 30% vide reference [2] above. This subject was also discussed in CPO's conference held on 01.05.2009.

2. It has, however, been observed that a number of Railways / Units are not making use of the facility of Replacement Panels. They are adding the vacancies of the previous indent to the next indent. Due to this, on one hand the vacancies remain unfilled and on the other, time, money & energy are wasted in forming a fresh panel. It is, therefore, reiterated that Railways / Units must make full use of the provision of Replacement panels. From now on whenever a fresh indent is placed on RRB, it should carry a certification that the previous panel for the post has been exhausted and the provision for Replacement Panel has been made use of. If not, reasons for the same should be spelt out.

Copy of Board's letter No. E[RRB]/2008/25/10 dated 25.07.2008 (RRCB No.09 /08)

Sub: Calling of candidates over and above the number of vacancies for document verification in case of Group 'C' posts – modification thereof.

In partial modification of Board's orders No. E[RRB]/2004/3/8 dated 29.4.2006 [RRCB No.7/2006] and 5.5.2006 [RRCB No. 8/2006] on the above subject, it has been decided by the Board that the number of candidates called for document verification shall now be increased to 30% over and above the number of vacancies, with other proviso remaining the same."

10. A reading of the circular makes it clear that it has been issued in the back

drop of the factual position that out of the candidates whose names are borne in the Railway Recruitment Board panels, a fairly large number either don't report or fail in the medical examination. In other words, the circular applies to a situation where a vacancy arises because the candidates who have been selected either don't report or fail in the medical examination. In order to avoid a situation which would require a fresh recruitment process in respect of such vacancies, the Board had earlier issued a directive dated 5.5.2006 directing 20% extra candidates to be called for certificate verification and to be kept in readiness in case the intending Railway/Unit asked for a Replacement Panel. That percentage was revised to 30% by virtue of the Railway Board letter dated 25.7.2008. It is in this context, that the said circular of 7.7.2009 had directed that the Railways/Unit must make full use of the provision of Replacement Panels. It further directed that from then whenever a fresh indent is placed, it should carry a certification that the previous panel for the post has been exhausted and the provision for Replacement Panel has been made use of.

11. The circular also makes it clear that such a direction was given because it had been observed that a number of Railways/Units were not making use of the facility of Replacement Panels and were adding the vacancies of a previous indent to the next indent. As a result of which, on the one hand, the vacancies remained unfilled and, on the other, time, money and energy were wasted in forming a fresh

panel.

12. It is abundantly clear that the direction given by the Railway Board Advertisement in the said Circular dated 7.7.2009 of exhausting the Railway Replacement Panels was only in the context of vacancies in respect of particular indents. In the present case, we find that 53 posts had been advertised and those 53 posts were filled up in the first instance by the 53 most meritorious candidates, however, two out of them did not join and another two failed the medical test. As such, four vacancies remained unfilled. Those four vacancies were subsequently filled from the Replacement Panel of Extra Candidates prepared by the Railway Recruitment Board. Therefore, the four vacancies which had remained in respect of the advertisement for 53 posts were also completely filled from the Replacement Panel. As such there were no further vacancies which could be filled in from the candidates placed in the Replacement Panel of extra candidates.

13. Thus, the direction given by the Railway Recruitment Board of exhausting the vacancies from the Replacement Panel has been fully complied with and there is no occasion to work out the circular any more in respect of the 53 posts.

14. We note that in the impugned order, the Tribunal has rightly observed that though initially the demand was for filling up the vacancies in the Ambala Division, they could not find any embargo on the powers of the respondents in

distributing the said vacancies between Ambala and Delhi Divisions, particularly when the situation so demanded. Therefore, the petitioner cannot have any grievance on this account also.

15. In view of the foregoing, we see no reason to interfere with the order passed by the Tribunal and the writ petition is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

AUGUST 13, 2012
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