

Govt. of India
National Commission for Minorities
Lok Nayak Bhawan, Khan Market, New Delhi-3

Petitioner: Shri Parvinder Singh

Respondent: Railway Board, New Delhi

File No. S/PN/20/0030/09

The Bench of the NCM meeting on 20.4.11 consisted of:

- i. Shri Wajahat Habibullah, Chairperson
- ii. Shri H.S. Hanspal, Member
- iii. Ms. Spalzes Angmo, Member
- iv. Ms. Syeda Imam, Member
- v. Shri Vinod Sharma, Member

2. Joint Secretary, Director and Legal Officer assisted the bench.

Brief record of hearing held in the Conference Room of the National Commission for Minorities held at 11:00 A.M.

Present:

- (i) Shri Parvinder Singh, petitioner, who has complained of discrimination in grant of promotion,
- (ii) Shri P.K. Sharma, Addl. Member (Staff), Railway Board, Shri B. Majumdar, Director (GP), authorised representative of Shri Vivek Sahai, Chairman, Railway Board
- (iii) Shri G.S. Hira, FA & CAO/P, RCF and Shri O.P. Yadav, Dy. FA&CAO, RCF.

Shri Vivek Sahai, Chairman, Railway Board was, on his request, granted leave of absence.

3. The petitioner stated that he had been subjected to discrimination by the respondent in grant of promotion against 30% LDCE Exam conducted for the post of AFA in Jan. 2006 despite being the only qualified candidate. On 5.08.2006 before the result was declared, it was stated that the petitioner approached the concerned authority regarding irregularities in selection and promotion of Shri Raman Kumar as AFA. It was also alleged that Shri Raman Kumar was awarded 10 marks whereas he had attempted only eight questions

carrying one mark each. It was also submitted that a Vigilance enquiry revealed that there was malpractice in the marking. As per the Railway Board's letter dated 17.06.2008, it was advised that in case irregularities are noticed in selection, corrective measure need to be taken from the stage at which the irregularities have occurred and the entire selection need not be cancelled. According to petitioner, the Railways Authority discriminated even in interpreting the Railway Board's advice to deprive him of his legitimate claim inasmuch as re-evaluation of answer papers was not called for and only a fresh panel had to be prepared as per the correct marks allotted in the first evaluation. There are no rules for re-evaluation.

4. Shri P.K. Sharma, Railway Board on the other hand submitted that out of 19 candidates eligible for the post, 14 candidates appeared in the written examination and only two candidates got more than 60% marks and were declared successful for interview, namely Shri Raman Kumar and the petitioner. The interview was fixed on 04.08.2006 and the panel was declared on 11.08.2006 duly approved by the GM/RCF in which Shri Raman Kumar was found fit for the post of AFA and he was promoted. It was also submitted that on the complaint of the petitioner Shri Parvinder Singh regarding irregularity in the said selection a Vigilance investigation was conducted and it was established that irregularities in evaluation of answer sheets had taken place in the form of over writing, wrong allotment/ reduction of marks etc. and as such corrective measures were taken from the stage the irregularities had occurred. Accordingly, the competent authority ordered for re-evaluation of all answer sheets of the said selection by an independent authority outside RCF. On re-evaluation of the answer sheets, no candidate including Shri Raman Kumar as well as petitioner secured the qualifying 60% marks. As such the matter was referred to the Railway Board. The Railway Board vide letter dated 17.11.2009 conveyed their decision of canceling the panel of AFA. Shri Raman Kumar aggrieved by the cancellation of panel filed a petition in the Central Administrative Tribunal (CAT) wherein CAT disposed of the petition with direction to the Railway Authority to hear Shri Raman Kumar in person and also show him the answer sheet to his full satisfaction and thereafter pass an appropriate order supported with reasons. The Railway Authorities complied with the directions

and after considering all the facts reversion order was passed by the Railway's Authority. Shri Raman Kumar again approached the Hon'ble Tribunal against reversion. The Hon'ble Tribunal vide order dated 07.12.2010 set aside the reversion order. It was further submitted that against the order dated 07.12.2010, the Railway Authorities filed a writ petition in the Hon'ble High Court of Punjab and Haryana. It was also submitted that in pursuance to the Vigilance inquiry a major penalty was imposed on the first evaluator.

5. The Punjab & Haryana High Court vide its order dated 03.02.2011 set aside order dated 07.12.2010 passed by the Tribunal and directed Railway Authority to start a fresh process for filling up the sole post of AFA, within four months. In this process the candidates who competed earlier alone were to be permitted to participate. The Hon'ble Court also observed that in view of the stand taken by both counsels, if Shri Raman Kumar succeeds in selection and accordingly appointed, then for the purposes of seniority his appointment shall date back to the date of his earlier appointment, which was made on 12.08.2006, without any monetary benefit. It was also informed by the Railway Authority that a fresh process has been started and in May 2011 itself a date has been fixed for written examination.

6. Shri Parvinder Singh, the petitioner contended that he had not approached CAT earlier in the hope, proved later to be unfounded, that his employer would show understanding, and that the judgment of the Hon'ble High Court is a consensual judgment, to which he was not party.

7. On being asked by the Commission regarding the marks obtained in the written examination it was informed by the Railway Authority that Shri Parvinder Singh had got 93 out of 150 in first paper and 90 out of 150 in second paper whereas Shri Raman Kumar had obtained 90 marks each in both first and second papers out of 150 respectively. In the interview both candidates obtained equal marks of 12 out of 25 each but for the service performance Sh. Raman Kumar and Sh. Parvinder Singh got 23.5 and 18.5 marks respectively out of 25. The Commission also wanted to know from Shri P.K. Sharma why Shri Raman Kumar was allowed to continue to occupy the post of AFA even after the Board's

decision of cancellation of the panel of November 2009. No satisfactory reply was forthcoming.

8. It was also informed that Shri Parvinder Singh has filed a petition in the CAT in Feb. 2011, seeking relief for promotion to the post of AFA as the re-evaluation of the answer sheets of the candidates are not sustainable in the eyes of law wherein the Railway Authority has filed a reply.

Discussion

9. The Commission, after hearing both the parties is of the view that the petitioner i.e. Shri Parvinder Singh has not been given fair treatment, whereas Shri Raman Kumar has been favored by the Authority, which is prima-facie a case of clear discrimination, which in view of this Commission's mandate we consider resulted from communal animus. Making any observation and giving direction to the Railway Authority providing any relief to Shri Parvinder Singh, in view of the orders of the Hon'ble High Court dated 03.02.2011 may amount to modifying the order, which this Commission is not empowered to do. As the matter with regard to the promotion of the petitioner is sub-judice, the observation made above is without going into the merit of the case pending in the Tribunal and the Commission reserves its decision in the matter. The Commission is also of the view that Railways, a vast national organization, cannot give the impression of being whimsical in such a situation, and must always appear compassionate to its employees.

Decision Notice

10. In **CWP No. 124 of 2011**, Union of India through Dy. Financial Adviser and Chief Accounts Officer, Rail Coach Factory, Kapurthala vs. Shri Raman Kumar, Asst. Financial Advisor, Department of Rail Coach Factory, Kapurthala and Central Administrative Tribunal, Chandigarh, the Bench consisting of Learned Justices Shri M.M. Kumar and T.P.S. Mann J ruled as follows:

“Having heard learned counsel for the parties and in view of the fact that fair stand has been taken by both the learned counsel, we are of the view that the direction issued by the Tribunal is unsustainable in law and accordingly, order dated 07.12.2010 (P11), is set aside. However, in the fresh process for filling up the sole post of AFA, by promotion, **applicant-respondent No. 1 and all other candidates**

who competed earlier alone shall be permitted to participate¹.

If applicant-respondent No. 1 succeeds in selection and is accordingly appointed then for the purposes of seniority his appointment shall relate back to the date of his earlier appointment, which was made on 12.8.2006. However, we make it clear that he would not be entitled to any monetary benefit except the right of notional fixation of pay. The whole selection process he carried out within a period of four months.”

From the above it is clear that present petitioner Shri Parvinder Singh's allegation of malafide has not been taken into account in the judgment simply because Shri Parvinder Singh was not party. Objection of Shri Parvinder Singh is also not sustainable because he was not party in the CAT petition either for the reasons that he has explained, but which nonetheless was the subject of challenge under Writ. Nevertheless, the fact that Shri Raman Kumar the petitioner before the High Court, has continued to hold office as AFA even though the selection had been declared null and void, because of the nature of financial control of the office occupied by him, could give rise to suspicion of corrupt intent. But investigation in this direction is admittedly, not within the mandate of this Commission.

Nevertheless, we have however, found as discussed above that the promotion process leaves grounds for malafide exercise of authority. This stems from the fact that the marking is made under three heads:

1. Paper, which is a written examination
2. Viva Voce
3. Service Performance

The last of these being simply a subjective assessment, would clearly render the process one of which the conclusion can be held in doubt. It is also in this very sector that Shri Raman Kumar has scored over petitioner, Shri Parvinder Singh despite the fact that in the written test which can be expected to be a test of the grasp of subjects by examinee, the latter scored well ahead of Shri Raman Kumar, having scored 93 out of 150 marks in paper 1 as against Shri Raman Kumar's 90 out of 150.

¹ Emphasis ours

11. Under the circumstances, whereas the Railway Board is expected to comply with the order of the Punjab and Haryana High Court, as highlighted in the decision quoted above, we also advise that the process of selection be revised in order to leave no room for exercise of any animus that could cripple the process in its ability to decide the matter on merit alone. This would call for a review of procedure as adopted in order not only to ensure fairness of selection but also to ensure transparency in order to demonstrate to the employees of the Railway Board that the process is indeed fair. In this case, therefore, it is expected that Shri Parvinder Singh will be given the full benefit not only of his service, but also in taking into account the arguments that he has placed before this Commission. A report on action will be sent to Ms Esther Kar JS of this Commission within twenty working days of receipt of this Decision Notice

Reserved in the hearing, this decision is announced on 4th May, 2011

(Wajahat Habibullah)
Chairperson

(H.S. Hanspal)
Member

(Spalzes Angmo)
Member

(Syeda Bilgrami Imam)
Member

(Vinod Sharma)
Member