

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 635/ 1989.
~~EX-N~~

DATE OF DECISION October 20, 1989.

Shri Munshi Ram & Another Applicant (s)

Shri B. S. Maine Advocate for the Applicant (s)

Union of India & Another Versus Respondent (s)

Shri O.N. Moolri Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman (J).

The Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes.*
2. To be referred to the Reporter or not ? *No.*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No.*
4. To be circulated to all Benches of the Tribunal ? *No.*

JUDGEMENT

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicants who have been working as Asstt. Superintendent in the Northern Railway, on an ad-hoc basis, with effect from 24.3.1987, have, inter-alia, prayed for quashing the impugned order No.42-E/95/EiiiA, dated 17.3.1989 by which 19 persons found eligible for viva voce test as a result of written tests held on 21.1.89 and 2.2.89 for the posts of Asstt. Superintendent (Grade Rs.1600-2660) were called on 5.4.1989. The applicants have further prayed for a direction to the respondents to regularise them since they have already put in more than two years of ad-hoc service and the selection proceedings taken by the respondents are in violation of the Railway Board's orders.

2. The facts of the case, in brief, are as under: -

The applicants were appointed as L.D.C. on 8.11.64 and 2.9.65 respectively in the grade of Rs.260-400. They had

(Signature)

been holding the posts of Head Clerk substantively and were promoted as Assistant Superintendent on an ad-hoc basis with effect from 24.3.1987 in the revised pay scale of Rs.1600-2660. The post of Assistant Superintendent is a 'Selection' post and it is admitted that selection to this post provides for a positive act of selection including written test as well as viva-voce. The respondents initiated the selection vide their letter dated 20.12.1988 (Annexure A-3 to the Application) and called 30 persons for the written test. The applicants were also called for the written test and they did appear in the same, which was held on 21.1.1989. Later a supplementary test was also held on 2.2.1989 in which five candidates appeared. The applicants failed in the written test held on 21.1.1989 and hence/not called for the viva voce test. They have now assailed the selection proceedings on the basis of some general instructions issued from time to time, which according to them, have not been followed by the respondents in the instant case. In particular, they have invited attention to the Railway Board's circular No. E(NG)I/83/PMI/65 (PNM)/NFIIR, dated 17.4.84 (Annexure R-1 to the Rejoinder), wherein it had been decided "that wherever a written test is held for promotion to the highest grade selection post in a category, objective type questions may be set for about 50% (fifty percent) of the total marks for the written test. The remaining questions could continue to be of the (conventional) narrative type. It may be made clear here that the figure of 50% for objective type of questions is intended to be for guidance only; it should not be taken as constituting an inflexible percentage". They have also alleged that the recommendation of the Railway Reforms Committee with regard to the adoption of the system of confidential roll numbers, as contained in Annexure R-2 to the Written Statement of Respondents, has not been implemented. They have also stated that in accordance with Railway Board's circular No. Hindi/81/CL/14/12, dated 14.1.1982, a few questions

Cec

on official language and official language rules and at least one question in regard to public amenities were expected to be set in the paper, but this has not been done. They have further pleaded that all posts of Assistant Superintendent which had arisen from 1.1.1984 to 31.12.1986 were to be filled up on the basis of viva-voce test alone under one time exemption given by the Northern Railway, but this directive has also not been made applicable in the present case; nor any weightage has been given to the seniority. According to the applicants, the selection procedure adopted by the respondents is absolutely arbitrary and opposed to the principle of natural justice and that the impugned order is mala-fide.

3. We have heard the learned counsel for the parties and have gone through the pleadings carefully.

4. The respondents have admitted that the applicants are working as Assistant Superintendent purely on ad-hoc basis w.e.f. 24.3.1987, but the one time exemption given by the CFO was not applicable to all the posts of Asstt. Superintendent which had fallen vacant from 1.1.1984 to 31.12.8 and that the said exemption is not relevant to the instant selection. The selection procedure for these posts provides for a written test and viva-voce test and the applicants were also given a chance to appear for the written test in which they failed. The direction with regard to 50% objective type questions as given in the Railway Board's letter dated 17.4.84 is only directory and not mandatory and it is not binding on the officer to set questions of objective type to the extent of 50% of the total marks.

5. Learned counsel for the applicants referred to the judgement dated 9.12.1988 by the Central Administrative Tribunal, Chandigarh Bench (circuit at Jammu) in O.A. 596/JK/87 (Chuni Lal and two others Vs. Union of India through General Manager, Northern Railway, Ferozepur and one other) which was allowed on the sole ground that the

(eas)

Question Paper which ought to have contained 50 per cent questions of objective type in accordance with the Railway Board's instructions, did not comply with the directive and as a result, the panel made on the basis of the written test as well as *viva voce* was quashed. A copy of the judgement dated 9.12.88 in O.A. 596/JK/87 has been placed on this file.

6. Learned counsel for the respondents who undertook to produce/supply necessary documents in support of his contentions, has since placed on record a copy of the Question Paper for the post of Assistant Superintendent/Elect. and a copy of the Railway Board letter dated 5.9.85 on the subject of 'Recommendations of Railway Reforms Committee in Personnel matters instructions regarding'.

7. On going through the Question Paper produced by the learned counsel for the respondents, we observe that all the questions are of narrative type and not a single question is of objective type. In an objective question, the candidate is asked to select one of the several suggested answers to the question or to classify a statement as true or false.

8. An extract from the Railway Board's letter No. E(NG)I/83/PMI/65 (PNM)/NFIR, dated 17.4.84 (Annexure R-1 to the Rejoinder) reads as under: -

"..... It has now been decided that wherever a written test is held for promotion to the highest grade selection post in a category, objective type questions may be set for about 50% (fifty per cent) of the total marks for the written test. The remaining questions could continue to be of the (conventional) narrative type. It may be made clear here that the figure of 50% for objective type of questions is intended to be for guidance only; it should not be taken as constituting an inflexible percentage."

9. The directive of the Railway Board is very clear as to the style of the paper, and it can safely be stated that the Question Paper produced before us is not in accordance with the guidelines contained in the letter of the

(Signature)

Railway Board. We have gone through the judgement in O.A. 596/JK/87 (supra) relied upon by the applicants. The very instructions on the setting of the Question Paper and the type of questions set in the written test for promotion to the post of Carriage Foreman were the issues for examination, and the Bench of this Tribunal, finding that the Railway Board instructions had not been complied with, held the written test as illegal and void and directed the respondents to quash the results of the written test as well as the *viva voce* test held and also ^{ed} quash the panel made and any subsequent action taken for promotion to the grade of Carriage Foreman.

10. The facts of the case before us on the type of Question Paper are similar to the ones cited in the aforesaid judgement and we agree with the conclusions arrived at therein.

11. It is also found that the Question Paper, a copy of which has been made available to us by the learned counsel for the respondents, does not contain any question on official language and official language rules, nor is there any question in regard to public amenities, which was prescribed by the Railway Board's circular dated 14.1.1982. The contention of the applicants that the Question Paper given for the written test held on 21.1.1989 was also repeated for the supplementary test held on 2.2.1989 has also not been effectively rebutted by the respondents. This is also a serious irregularity. The impugned written examination, thus, is found not to have been held in accordance with the instructions of the Railway Board, which have a binding force. The applicants have also contended that the Railway Board's guidelines after acceptance of the recommendation of Railway Reforms Committee for adopting a confidential system of examination, have not been followed in this case. The respondents' case is that the guidelines issued by the Railway Board, vide their letter dated 17.5.89 were not applicable to this case as these were issued after the written test was held. A copy of the relevant letter filed by the applicants

(13)

along with rejoinder, shows that the following recommendation of the Railway Reforms Committee was accepted by the Railway Board and communicated vide their letter dated 5.9.85, but it was observed that these instructions were not being followed in any division or extra divisional offices: -

"To bring greater confidence among the staff, selection tests should be on confidential system with Roll Numbers (Para 6.12, Chapter VIII of RRC recommendations)."

With a view to implement the recommendations of the RRC, the guidelines were given for strict compliance vide the Railway Board's letter dated 17.5.89, referred to above. These guidelines provided nomination of one Executive Officer from department concerned to supervise the selection; each answer book is to carry a fly leaf and both the fly leaf and the answer book are to be stamped and signed by the Executive Officer so nominated to supervise the examination; the employee is required to write his name, designation and station of posting etc. on the fly leaf only; the fly leaf is to be removed and allotted a Roll Number which will also be simultaneously recorded on the corresponding answer book by the nominated Executive Officer; and the answer book is to be sent to the Examiner with the Roll Number alone indicated on the answer book etc. As these guidelines were issued after the written test was held, it cannot be said that these were violated in the impugned written tests.

12. The prayer of the applicants that the respondents be directed to regularise them in view of the fact that they have already put in more than two years of ad-hoc service in a satisfactory manner cannot be accepted because it is not disputed that the post of Assistant Superintendent is a 'selection' post and is to be filled up by a positive act of selection.

13. There is also a prayer that the respondents be directed to fill up the posts only by viva-voce test in respect of the vacancies which arose prior to 31.12.1986. According to the

(See)

applicants, of the 10 vacancies for which selection was held, five had arisen prior to 31.12.1986 and that these five vacancies should have been filled up on the basis of viva-voce alone as per exemption granted in letter dated 27.1.1986 (Annexure A-4 to the application). The respondents have rebutted this contention of the applicants and have stated that "This is a third selection, after restructuring". The pleadings of the parties are not adequate enough on this point to enable us to come to a positive finding either way on this point and we, therefore, refrain from giving any findings on this issue.

14. In view of the above discussion, we hold that the written test held by the Northern Railway on 21.1.89 and 2.2.89 for the posts of Assistant Superintendent, the viva-voce tests held based on the results of the aforesaid written test, and the empanelment of candidates based thereon are hereby quashed and set aside. The interim order passed by us on 7.8.1989 to the extent that two posts of Assistant Superintendents shall not be filled till the final decision of this case is also hereby vacated. The respondents shall hold a fresh selection in accordance with the relevant rules and orders and make regular appointments on the basis of the results of the fresh selection. In the meantime, the applicants and the employees already working on these posts on the basis of the selection which is being quashed, shall be allowed to continue to work as such on an ad-hoc basis. The application is, thus, partly allowed on these lines. The parties shall bear their own costs.

(C.C. 29/1/89)
(P.C. JAIN)
MEMBER (A)

(B.W.M. 10/1/89)
(P.K. KARTHA)
VICE CHAIRMAN (J)