

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

Original Application No.312/2020

Dated this the 17th day of September, 2020

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Dr. A.K. Dubey, Member (A)

Chaina Ram,
Aged 26 (Date of Birth:10.07.1994)
Son of Shri Kachara Ram,
Presently serving as Pointsman "B" under S.S.Geratpur Stn.,
Vadodara Railway Division, Western Railway Zone,
Residential Address: House No.211, Navjivan Society,
Near Geratpur Railway Station,
Post:Geratpur, Ahmedabad – 382 435. Applicant

(By Advocate Mr.Joy Mathew)

Vs.

1. Union of India,
(to be represented through the Special Secretary
to the Govt.of India & the Ex Officio Chairman,
Railway Board, Ministry of Railways,
Rail Bhavan,
New Delhi 110 001.
2. Western Railway,
(to be represented through its General Manager (E),
W.Rly Zone,
Office of the General Manager (E), W.Rly, Hqrs.Office,
Church Gate,
Mumbai 400 020.
3. The Divisional Railway Manager,
Vadodara Railway Division, Western Railway,
O/o DRM, BRC,
Pratapnagar,
Vadodara – 390 004.
4. The Divisional Railway Manager (E),
Vadodara Railway Division, Western Railway,
O/o DRM (E), BRC,
Pratapnagar,
Vadodara – 390 004. Respondents

(By Advocate Mr.M.J.Patel)

O R D E R

Per:Jayesh V.Bhairavia, Member (J)

1. On behalf of applicant, his learned counsel Mr.Joy Mathew submits in the instant O.A. that in terms of provisions contained in IREM Vol.I, (Annex.A/5) there are categories of posts called Ticket Collector (TC), Train Clerk (TNC) and Assistant Commercial Clerk (ACC). As per para 126 of IREM Vol.I, 50% of the vacant posts in the aforesaid categories are to be filled up by Direct Recruitment through RRB, 33-13% by promotion from eligible Group D categories of staff prescribed in Para 189 of IREM Vol.I and the remaining 16-2/3% by promotion entirely on merit of Matriculate Group D employees from eligible categories, as specified by the Zonal Railways with a minimum of 2 years of regular service in the concerned unit, on the basis of competitive examination consisting of written test and record of service with weightage of 85 and 15 marks respectively. It is also stated that written test to be conducted for selection under 25% rankers' quota is not competitive test, it is only a qualifying examination to prepare a select panel.
2. On 21.01.2019 the respondent No.4 issued a Notification bearing No.ET/1025/2/13-Vol.III, dated 21.01.2019 (Annex.A/6) initiating selection for promotion to 32 vacant posts in the categories of Ticket Collector (17 vacant posts), Train Clerk, (3 vacant posts) and Assistant Commercial Clerk (12 vacant posts) earmarked under the 33-1/3% Rankers Quota, calling upon the eligible candidates to offer their candidature. The applicant herein had offered his candidature for the selection against the aforesaid vacant post by submitting formal application, in the prescribed format through proper channel.
3. The learned counsel mainly submitted that the applicant appeared in written test held on 26.05.2019 for promotion from Group 'D' to Group 'C' Post of TC/TNC/ACC against 33.33% Ranker Quota – Traffic Department. However, the result of said test declared vide Memorandum dated 23.07.2019 did not include his name. Subsequently, he came to know that under the provision of IREM, Vol.I, a non-selected candidate can raise any issue within a year of publication of

select panel. Accordingly, he made an RTI application dated 16.06.2020 requesting for supply of copy of his answer sheet. In response to it, vide letter dated 06.07.2020, (Annex./17) the Vadodara Railway Division supplied the information and furnished the copy of his answer sheet. On its receipt, he came to know that he was awarded only 57.42 marks for the correct answers; no mark was awarded to the right answer which he had given against question No.25 of the SET – C of the question paper and instead, a negative mark of 0.66 was awarded to the applicant against the said right answer.

4. It is also contended that the question No.25 i.e., “What is the Capital of Telengana and the options given were (a) Hyderabad, (b) Vishakapatnam (c) Vijaya Vada and (d) Guntoor. As a matter of fact, the applicant herein has given the correct answer by selecting option (a) i.e., “Hyderabad”, which is evident from the answer sheet supplied to him (Annex.17). Therefore, the learned counsel Mr.Joy Mathew submits, the answer of the applicant was not all rightly assessed and treating the said right answer as a wrong answer by the evaluator, a negative mark of 0.66 (being $\frac{1}{3}^{\text{rd}}$ of the mark) was deducted from the total marks. Accordingly, a total of 57.42 marks was awarded to him and the applicant was erroneously declared as not qualified in the written test and consequently his name was not included in the list of qualified candidates, published vide Memorandum dated 23.07.2019 (Annex.A/1).
5. It is a case of the applicant that if, he was correctly awarded 2 marks against the correct answer to the aforesaid question No.25, he would have secured a total of 60.08 marks ($57.42+0.66+2= 60.08$), thereby he would have been entitled to be included in the list of those qualified candidates. It is also stated that the candidates who had secured 60 marks in the written test, had been included in the list of successful candidates and subsequently, they had been sent for further consideration before the DPC. However, in the case of applicant, he has been deprived from fair assessment of his answers given in the written test, which has caused serious prejudice to his opportunity to compete in the selection process for promotional post.

6. The applicant has contended that on realization that he was not awarded correct mark to his answer, immediately thereafter had submitted his representation dated 14.08.2020 (Annex.18) before the competent authority, requesting to kindly rectify the mistake committed by the evaluator in awarding the marks given to him and include the name of applicant as qualified candidate in the said selection for the promotional post.
7. It is further contended that while the applicant was awaiting a positive response on his representation, suddenly, the respondent No.4 issued Memorandum dated 25.08.2020 whereby the written test which were held on 26.05.2019 and 02.06.2019 for filling up the vacancies of TC/TNC/ACC earmarked under 33-1/3% Ranker Quota was cancelled on administrative grounds (Annex.A/3). Further, vide Memorandum dated 01.09.2020 (Annex.A/4) decided to hold a fresh written examination on 26.09.2020 in two shifts. Hence, this O.A.
8. The relief sought by the applicant in this O.A. is as under:-

- A. *Call upon the respondents herein to place before this Hon'ble Tribunal for its perusal the entire original file / noting file / documents exchanged amongst all the official respondents herein, which can be said to have given rise to the passing of the impugned document at Annexure-A/1 to Annexure-A/4 hereto by the Office of the respondent 4 herein.*
- B. *Upon the close scrutiny and perusal of the aforesaid original file / noting file / documents, your Lordships may be graciously further pleased to:-*

B-1 hold and declare that the applicant has duly qualified in the written examination held on 26.05.2019 in view of the fact that by virtue of his entitlement to 2 marks against the right & correct answer given by him against the question No.25 in SET C Question Paper set for 26.05.2019, he should be declared to have obtained a total marks of 60.08 marks (as against the total marks of 57.42 as awarded by the railway administration), which is more than the prescribed minimum of 60 marks for a selection held under 33-1/3% Rankers Quota.

B2 quash and set aside the impugned Memorandum dated 23.07.2019 at Annexure-A/1 hereto, in so far as it does not include the name of the applicant herein as one of the qualified candidates in the written tests held on 26.05.2019 and 02.06.2019.

B3 quash and set aside the impugned Memorandum dated 04.09.2019 at Annexure-A/2 hereto, in so far as it does not include the name of the applicant herein as one of the candidates on the select panel against the remaining 14 unfilled vacancies earmarked for the general category;

B4 hold and declare as arbitrary, unreasonable whimsical, discriminatory and without any competence and authority of law on the part of the respondents no.3 and 4 herein, the impugned decision to cancel the result of the written tests held on 26.06.2019 and 02.06.2019 held in pursuance of the selection initiated by the respondent no.4 herein on 21.01.2019 to fill up the vacant posts in the categories of TC/TNC/ACC against 25% rankers' quota.

B5 quash and set aside the consequent impugned Communication bearing No.ET/1025/2/13-VoL.II, dated 25.08.2020 at Annexure-A/3 hereto.

B6 issue appropriate directions commanding the respondents herein to forthwith include the applicant's name in the impugned Memorandum dated 23.07.2019 at Annexure-A/1 hereto, having regard to the fact that the applicant herein is entitled to the award of a total 60.08 marks in the written test held on 26.05.2019 taking into account his true and correct / right answer to the question no.25 in the SET C of the question papers set for the written test held on 26.05.2019.

B7 issue appropriate directions commanding the respondents herein to take consequential steps, as flowing from the aforesaid directions at B-7 & B-8 hereinabove, to send the applicant herein to the Zonal Railway Training Institute, Udaipur, to undergo the requisite pre-service training followed by local practical training Vadodara Railway Division, at par with those 18 persons placed on the impugned select panel;

B9 in the event of the successful completion of the aforesaid mandatory trainings by him, the applicant herein shall be offered appointment by way of promotion under 33-1/3% Rankers Quota, to one of the unfilled 14 general category vacancies notified in the initial Notification dated 21.01.2019;

B-10 permanently restrain the respondents herein from proceedings any further in pursuance of their impugned communication bearing No.ET/1025/2/13-VOL.III, dated 25.08.2020 at Annexure A/4 hereto and also the consequent Memorandum bearing No.ET 1025/2/13-VOL.III dated 01.09.2020 at Annexure-A/4 hereto;

9. The learned counsel for the applicant further submitted that the impugned decision of cancelation of written test and further decision to conduct fresh written test is contrary to the provision of Rule 126 of IREM Vol.1.
10. It is further submitted that the information supplied to the applicant under the RTI Act clearly established the fact that the evaluator has not correctly assessed the answer sheet of the applicant and for the fault of respondents, his right for fair consideration of his answer sheet in the written cannot be snatched away. The impugned decision of cancellation of written test is erroneous and arbitrary as also in violation of Articles 14 and 16 of the Constitution of India.
11. On the other hand, Standing Counsel Mr.M.J.Patel appears on behalf of the respondents on receipt of advance copy of this O.A. He submits that the applicant is the unsuccessful candidate. The result of written test was declared in the month of July, 2019, and the selection process was over. However, due to administrative reason the competent authority had cancelled the entire written test vide order dated 25.08.2020 and decided to conduct fresh written test and in this regard, the respondents had issued Memorandum dated 01.09.2020, wherein the name of eligible candidates were also declared. Accordingly, the applicant can avail the benefit of the same.
12. He further submits that with regard to wrong assessment of answer sheet of the applicant herein had submitted his representation only on 14.08.2020. As such,

applicant does not have indivisible right to claim appointment and he is not entitled for the reliefs as sought for.

13. Heard the parties and perused the material on record.
14. It can be seen that the as per the answer sheet of the applicant though the answer to question No.25 was given correctly, no mark has been awarded to the applicant and same was considered as wrong answer by the evaluator. Not only that as per the marking pattern 0.66 marks have been deducted for the so called wrong answer which was actually not wrong. Therefore, it is the grievance of the applicant that though the applicant was entitled for total 60.08 marks he was wrongly given 57.42 marks. Considering this aspect of the case, the applicant has made out the case for re-examination of his answer sheet and more particularly, the marks of question No.25 of the said written test. The applicant is entitled for correct assessment of his answers. In the present case, prima facie as noted hereinabove, the evaluation process appears to be faulty and thus, the respondents are required to look in to the claim of the applicant.
15. At this stage, it is relevant to mention that the successful candidates of the very said selection process had challenged the decision of the respondents dated 25.08.2020 for cancellation of written test by way of O.A. No.226/2020 and the said O.A. was allowed by this Tribunal vide order dated 17.09.2020 and the order dated 25.08.2020 was quashed. In this O.A. the applicant has also challenged the very said order dated 25.08.2020 passed by respondent No.4. Under the circumstances, in our considered view, to meet the ends of justice, we dispose off this O.A. with a direction to respondent Nos.3 and 4 to consider the pending representation of the applicant dated 14.08.2020 (Annex.A/18) expeditiously and certainly not later than 30 days from the date of receipt of copy this Order and intimate the decision thereon to the applicant. No cost.

(Dr.A.K.Dubey)
Administrative Member

(Jayesh.V.Bhairavia)
Judicial Member