

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**AHMEDABAD BENCH**

**Original Application No.34/2019**

**Dated this the 19<sup>th</sup> day of October, 2020**

**Date of Reserve: 16.09.2020**

**Date of Pronouncement:19.10.2020**

**CORAM:**

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

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

Mr.Hiren Himatbhai Makwana,  
S/o. Himatbhai Ramjibhai Makwana,  
Hindu (SC), Age 29, Business – Unemployed,  
Block 12, Gujarat Housing Board, Opp. Laxman Dham,  
Palace Road, Palitana – 364 270.  
Dist. Bhavnagar (Gujarat)

Applicant

(Party – in – Person)

Vs.

1. Union of India & Others  
Through Ministry of Railway  
Chairman,  
Railway Board, Rail Bhavan,  
New Delhi (India) 110 001.

2. Chairman,  
Railway Recruitment Board,  
1<sup>st</sup> Floor, Meter Gauge Railway Station Building,  
Ahmedabad (Gujarat) – 380 002.

3. Director,  
Railway Recruitment Control Board,  
Railbhavan, New Delhi (India) – 110 001.

4. Chief Officer,  
Research Designs and Standards Organisation (RDSO)  
Operating Department,  
Main Office Western Railway,  
Churchgate,  
Mumbai (Maharashtra) – 400 020

5. Director (Psycho Test)  
Research Designs and Standards Organisation (RDSO)  
Manaknagar,  
Lucknow – 226 011 (U.P.)

Respondents

(By Advocate Mr. M.J.Patel)

**O R D E R****Per:JayeshV. Bhairavia, Member (J)**

1. In the instant O.A. aggrieved by selection list notified on 22.01.2016 in connection with advertisement No.CEN No.1/2014 published on 18.01.2014 for the post of Assistant Loco Pilot (ALP) and Technician categories, since his name was not placed in the said selection list, the applicant has filed the present O.A. under Section 19 of the Administrative Tribunal Act, 1985 and sought relief as under:-

*VIII“(1) The Hon’ble Tribunal may be pleased to issue appropriate order or direction to appoint the applicant for the post of ALP.*

*(2) The Hon’ble Tribunal may be pleased to issue appropriate, order or directions to strike balance and to set aside all unfair, illegal, arbitrary and violation of the article 14, 16, and 17 of Constitution of India in the recruitment procedures.*

*(3) The Honourable Tribunal may be pleased to pass such other and/or further orders as may be deemed fit, just and proper in the interest of justice.*

*(4) Quash the impugned action of the respondents Nos.1, 2, 3, 4 and 5 whereby they did not allow the real beneficial qualified candidates to be selected for the posts as on the advt. CEN No.1/14 of Railway recruitment Board, being the action arbitrary, discriminatory, illegal, malice in law and corruption.*

*(5) I pray to the honourable Tribunal to take appropriate actions against the responsible officials of this scam under IPC, Corruption Act, and atrocity act in the interest of country and the Public Safety.*

*(6) Pass such other orders or reliefs as deemed fit and proper in the facts and circumstances of the case in the favour of the applicant and against the respondents Nos.1, 2, 3, 4 and 5.”*

2. The brief facts as contended by the applicant are as under:-

- 2.1 The advertisement No.CEN No.1/2014 published on 18.01.2014 for the post of ALP and Technician categories by Railway Recruitment Board (RRB), New Delhi (Annex. A/1).

- 2.2 The applicant had applied for the post of ALP under SC Reserved Categories. He appeared in the written test and result of it was declared

on 09.03.2015 wherein, he was found successful provisionally eligible for appearing in the Aptitude Test. However, no marks were shown in the result published by RRB, Ahmedabad (Annex. A/3).

2.3 The applicant appeared in the Aptitude Test. The RRB, Ahmedabad vide its notice dated 08.10.2015 published the list of total 1054 candidates who were found provisionally eligible for “verification of documents and genuineness of candidature” in Annex – I as also published the list of 169 candidates in Annex – II as wait listed candidates (Annex. A/5). Thereafter, on verification of documents the list of candidates who were found provisionally suitable for appointment was published on 22.01.2016 (Annex.A/6). In the said final list, the name of applicant was not included. Therefore, the applicant had sought information under the RTI Act and requested to supply the copy of his answer sheet of the written test and the Aptitude Test, also demanded the copy of mark sheet of SC and General category the first and last candidates who were called for the document verification along with additional information about how many SC candidates of Gujarat State and Other States passed in the recruitment process (Annex. A/7).

Since no proper information was provided, he had filed an appeal under the RTI Act on 09.11.2015 and in response to it, the Appellate Authority under the RTI Act of RRB, Ahmedabad vide its communication dated 22.08.2016 (Annex. A/8) supplied the detailed information including the marks given to the applicant and the details of cut off marks for UR, SC and OBC category candidates. According to the said information, the applicant was awarded total 43.70% marks. In test No.1

he was given 65 marks, for test 2- 45 marks, for test 3- 64 marks, for test 4- 44 marks and for test 5- he was given 36 marks and in the result he was declared ineligible. It was informed that minimum 42 marks is required to become eligible since he had not received the said minimum 42 marks in one test, the applicant was not found eligible for the post of ALP, Technician Grade III (Signal) and TCAM Grade – III. Since the respondents had not supplied the copy of OMR answer sheet of his Aptitude Test, he had again sought the information from the higher Appellate Authority. Pursuance to it, vide communication dated 19.12.2016 the Appellate Authority of Western Railway, Headquarters informed the applicant that his case was re-examined and he had already been replied on 14.09.2016 to the effect that if applicant desired to inspect his OMR answer sheet of Aptitude Test, he can inspect the same with prior written intimation to the Office of Junior Scientific Officer (Psychology) (15 days before) on any working day after obtaining confirmation from the same. It was also informed under the RTI that as per the judgment passed by Hon'ble High Court New Delhi, OMR answer sheet of the Aptitude Test of the candidate is not required to be provided to the candidate.

2.4 Thereafter, applicant had submitted representations before various authorities and subsequently, vide letter dated 21.02.2017 (Annex. 10), the RRB, Ahmedabad informed the applicant that the marks obtained by him were below the cut off marks for the candidates called for document verification. The candidate has to obtain minimum T-score 42 in each

test to qualify in the Aptitude Test. He failed to score minimum T – score 42 in test and thus found unsuitable in Aptitude Test.

- 2.5 It is contended the National Mazdoor Organization had also raised the grievance of the applicant by submitting representations before the various constitutional authorities including before the National Commission for Scheduled Caste, GOI. However, the grievance of the applicant was not redressed. Hence this O.A
3. The applicant Mr.Hiren Himatbhai Makwana appeared as party-in-person and in support of the prayer sought in this O.A., he mainly submitted that the recruitment authority had illegally kept minimum T score of 42 marks as qualifying marks for each tests (sub tests) of the Aptitude Test. It is submitted that there was no such rule in previous recruitment. However, the respondents with malice intention applied the multiple cut off and qualifying mark in Aptitude Test vide letter dated 21.03.2005 (Annex. A/14). It is further submitted that the respondents had dropped the said criteria of minimum qualifying mark in Aptitude Test for departmental promotion exam. However, in the direct recruitment the said procedure has been allowed to continue. Therefore, the said discriminatory criteria of keeping minimum qualifying mark in Aptitude Test in direct recruitment is in violation of Articles 14 and 16 of Constitution of India.
4. The applicant further submitted that the respondents had accepted the objections against the condition of minimum qualifying marks in the Aptitude Test raised by certain candidates and others with respect to CEN No.1/2018 and consequently, the RRB had dropped the Aptitude Test with minimum qualifying marks in another recruitment i.e., CEN

No.1/2018. Therefore, the respondents ought not to have imposed conditions of minimum qualifying marks in the Aptitude Test with respect to CEN No.1/2014. The said illegal Recruitment process is under challenge in this O.A.

5. It is further submitted by the applicant that in the present recruitment, the RRB had adopted discriminatory and arbitrary procedure. It is stated that though most of the candidates who got good marks in the written test, however they were declared failed in the Aptitude Test whereas, the candidates received less marks in written test, they had obtained good marks in Aptitude Tests. In sum, the applicant submitted that selection must be made as per the merit of written test. He had obtained 43.70% marks in written test and 51% of marks in Aptitude Test. According to 70/30 ratio his merit is of 46%. However, the RRB, Ahmedabad has called the candidates for document verification having 31.87% in SC category which is less than his merit marks and thereby applicant has been deprived of recruitment/appointment as ALP.
6. Per contra; in their reply, the respondents have denied the contention of the applicant. The learned counsel for the respondents submits as under:-
  - 6.1 Centralised Employment Notice (CEN) No.1/2014 was issued on 18.01.2014 for the post of ALP and Technicians in which 546 vacancies were notified for RRB, Ahmedabad. The stages of exam were consists of (1) for ALP – Single stage written examination followed by Aptitude Test and verification of original documents and (2) for Technicians – Single stage written examination followed by verification of original documents.

The applicant submitted an application for ALP as also for Technician Grade III and Tele Communication Maintainer Grade III in SC category. The written test for the post of ALP and Technicians was held on 15.06.2014, 13.07.2014 and 20.07.2014. The applicant appeared for the written examination on 15.06.2014, he obtained 43.70% marks and provisionally short listed for Aptitude Test since he had applied for ALP also. Accordingly, he participated in the Aptitude Test, applicant obtained marks as under:-

Test 1	Test 2	Test 3	Test 4	Test 5	Remarks
65	45	64	44	36	Not Suitable

6.2 It is submitted that to qualify in Aptitude Test, the candidates are required to obtain minimum T - score of 42 in each tests. As per Railway Boards Letter dated 21.03.2005 (Annex. A/14), if, a candidate scores less than the cut off marks in any sub test of Aptitude Test, he should be eliminated from the selection process. The same instructions of Railway Boards were also published on the RDSO website for the perusal of the candidates which is annexed as (Annex.A/21) in the O.A. In the present case, the applicant failed to obtain T – score 42 in one sub test i.e. (Test No.5) of Aptitude Test. Hence, he was not found suitable in the Aptitude Test. Therefore, he was he was not found qualified for the next stage of the recruitment process i.e., verification of original documents. Accordingly, the RRB had not included his name in the list published on 08.10.2015 (Annex. A/5). The decision of the RRB, therefore, cannot be faulted.

6.3 It is further submitted that the applicant was not correct in its contention that the rule of multiple cut off marks was not kept in the CEN No.1/2018. Infact the instructions about Aptitude Tests were available on Page No.11, para 13.3 of the said CEN No.1/2018. The said notification was also available on the website of RRB, Ahmedabad (Annex. R/1). In the said Employment Notice it was also made clear that the candidates need to secure a minimum score of 42 marks in each of the tests batteries to qualify. This is applicable to all candidates and no relaxation is permissible. The ALP merit list will be drawn only amongst candidates qualifying in the Aptitude Test with 70% weightage for the marks obtained in Part A of the second stage CBT and 30% weightage for the marks obtained in computer based AT. In the said CEN candidates were also advised to visit website of RDSO for question patterns and other details of AT as the said details were in depth explained by the Recruiting Authority (Annex. R/2). The RRB had kept the identical condition in CEN No.1/2018 for Aptitude Test as it was stipulated in CEN No.1/2014. Therefore, it is wrong on the part of the applicant to state that the RRB has adopted different criteria for CEN No.1/2014 and CEN No.1/2018.

6.4 The respondents had supplied all the relevant information under the RTI to the applicant and denied the supply of copy of mark sheet of Aptitude Test in light of judgment passed by Hon'ble Delhi High Court in W.P.(C) No.2173/2013 and C.M.No.4120/2013. Even the applicant was advised that if he desired to inspect OMR sheet of his Aptitude Test, he could



inspect the same with prior intimation of the competent authority. The applicant did not avail the said opportunity.

6.5 It is further submitted that once the applicant participated in the recruitment process, but subsequently, remained a failure in the said process, he has no vested right to challenge the validity of terms and conditions of the Employment Notice. As such, the applicant has no indivisible right to claim for appointment without qualifying the requisite minimum qualifying criteria as stipulated under the CEN No.1/2014. It is stated that the respondents have followed the terms and conditions as well as instructions for conducting just and fair recruitment process for CEN No.1/2014. Since the applicant failed in the Aptitude Test which was mandatory, hence, he is not entitled for any relief as claimed for in this O.A.

7. The applicant has filed rejoinder and reiterated his submission. Additionally, the applicant has raised various contentions as how to improve the recruitment process. He also placed reliance on judgment passed by Hon'ble Supreme Court in the case of Narender Pal Sharma vs. State of Punjab reported in [(1995) 1 SCC 532] (Annex. RJ/1). He also placed reliance on the judgment passed by Apex Court in the case of BIR Singh vs. Delhi Jal Board and Ors. (Annex. RJ/3), as also the order passed by CAT, Allahabad Bench in the case of Vijay Dwivedi vs. Union of India (O.A. No.1161/2017 decided on 10.01.2019) (Annex RJ/4) and abstract of conditions stipulated in Centralised Employment Notice (CEN No.1/2018) and submitted that the respondents ought to have adopted the fair procedure by keeping 35% as qualifying marks. The respondents ought to

have adhered to the mandate of Constitution of India for providing just and fair condition for SC/ST/OBC in public employment. It is submitted that the instructions contained in Railway Boards Letter dated 31.03.2005 with regard to minimum qualifying marks in Aptitude Test are contrary to the mandate of Articles 14, 16, 46 and 335 of Constitution of India. The candidates who performed well in written test, however, in the Aptitude Test the respondents arbitrarily gives less marks and had given total go by to the marks obtained in written test. The Government of India had abolished the psycho test. However, the Railway Board had again introduced the same under the guise of new name i.e., Aptitude Test. The said Aptitude Test becomes remote control to select the candidate which is not permissible under the mandate of Constitution of India.

8. Heard the parties and we have carefully perused the material on record.
9. It is noticed that the applicant herein had applied for the post of ALP (ALP) as also for the post of Technicians pursuance to Centralised Employment Notice (CEN) No.1/2014 dated 18.01.2014 published by RRB for Ahmedabad. The said CEN indicates the stages of exam i.e., (for ALP single stage written examination followed by Aptitude Test and verification of original documents) and for Technicians (single stage written examination followed by verification of original documents). It is further noticed that the General Instructions No.7 of the said CEN No.1/2014 was about the **“Recruitment process”**. The Instructions No.7.04 and 7.05 reads as under:-

7.04 “Candidates who have opted for ALP only/ALP & Technician, will be shortlisted as per the performance in the written examination and call for Aptitude Test. Such shortlisted candidates should produce the vision certificate (Annex. 6) as per the prescribed Format during

**Aptitude Test failing which they will not be permitted for Aptitude Test.**

**7.05 Based on the performance of the candidates in the written examination (for Technician), Based on the performance of Candidates in the Written Examination and Aptitude Test (ALP), Candidates equal to the number of vacancies are called for document verification in the main list. In addition, 30% extra candidates are also called as standby and they are considered for enrolment only if there is shortfall in empanelment (on the main list. During document verification, candidates will have to produce their Original Certificates, no additional time will be given and the candidature of the Candidates not producing their Original Certificates on the date of verification is liable to be forfeited.”**

From the aforesaid conditions, it can be seen that the said conditions stipulate to be qualified for selection for the post of ALP, the candidate has to clear 3 stages contemplated in condition No.7.04 and 7.05 which include the Aptitude Test.

10. It is further noticed that based on the Written Examination held on various dates, total 6,456 candidates were found provisionally eligible for appearing in the Aptitude Test as per the Notice/Result declared by the RRB vide their communication dated 02.02.2015. In the said list the roll number of the applicant was also included and accordingly, he was called to appear in Aptitude Test scheduled on 12.03.2015. At this stage, it is also important to mention that while declaring the list of provisionally eligible candidates for Aptitude Test the RRB in their Notice dated 02.02.2015 categorically issued the instructions to the effect that “for details of Aptitude Test, candidates may please visit Website [www.rdso.indianrailways.gov.in](http://www.rdso.indianrailways.gov.in).”

11. After accepting the aforesaid conditions and instructions since the applicant had applied for the post of ALP, he appeared for the Aptitude Test. Thereafter, the RRB, Ahmedabad vide Notice dated 08.10.2015 **based on the written examination followed by Aptitude Test** declared the list of total 1054 candidates, who were found provisionally eligible for

3<sup>rd</sup> stage of exam i.e., for verification of documents and genuineness of candidature on 08.10.2015 (Annex. A/5). Since the applicant not secured minimum qualifying T score of 42 in sub test No.5 of Aptitude Test, he was not found suitable in the Aptitude Test therefore, he was not found eligible for 3<sup>rd</sup> stage of the exam i.e., document verification and his name was not included in the aforesaid list.

12. The main grievance of the applicant is that since he had obtained 43.70% marks in the written examination and had also performed well in the Aptitude Test. After receiving information under the RTI, he came to know that only 36 marks for Test No.5 of Aptitude Test was awarded to him, which is much below than the requisite T – score 42 cut off marks, hence, he was not considered to be qualified in the Aptitude Test. The applicant submits that the respondents have arbitrarily introduced minimum cut off T – score of 42 marks for each sub tests of the Aptitude Test.

It is stated by the applicant that neither the details of minimum T-score for Aptitude Test nor the result of the said test were declared by the RRB. It is also argued that the applicant being not even aware the criteria of minimum qualifying marks for Aptitude Test as the same came to know only after he received information under the RTI on 22.08.2016 and 19.12.2016 (Annex. A/8), there was no occasion to pose any challenge by him before the said date of reply under the RTI. It is further submitted by the applicant that the respondent ought to have given more weightage to the marks of written test since the instructions/conditions of CEN stipulates that selection was strictly as per

merit on the basis of written examination, but the respondents have introduced the Aptitude Test illegally and not only that arbitrarily kept minimum qualifying marks for each sub tests of the Aptitude Test and thereby deprived fair selection of the candidates including the applicant. The RRB has adopted unfair practice in the Recruitment process and deprived the applicant for fair assessment of his candidature.

The respondents have refuted the said submission on the ground that applicant remained unsuccessful in the Aptitude Test and not open to challenge the Recruitment process.

13. The proposition that a candidate, who participates in selection without demur taking a calculated chance to get selected, cannot turn around and challenge the criteria of selection, is well settled. The Hon'ble Apex Court in the case of *MadanLal vs. State of J & K*, (1995) 3 SCC 486 laid down following in para 9:-

**"9..... It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *OmPrakashShukla v. Akhilesh Kumar Shukla*, 1986 Supp SCC 285, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."**

- 14 The Hon'ble Apex Court in the case of **Ashok Kumar vs. State of Bihar** reported in (2017) 4 SCC 357, the para 13 of the said judgment reads as under:-

**"13. The law on the subject has been crystallised in several decisions of this Court. In *Chandra PrakashThivari vs. ShakuntalaShukla*, this Court laid down the principle that when a candidate appears certain examination without objection and is subsequently found not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise were a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, nearly because the result is not**

palatable. In UOI vs S. Vinod Kumar, this Court held that ..”18. It is also well settled that those candidates who had taken part in the said selection process knowing fully well the procedure laid down therein not entitled to question the same. (see Munindra Kumar vs. Rajiv Govil (1991) 3 SCC 368 and Reshmi Mishra vs. M.P. Public Service Commission (2006) 12 SCC 724).”

15. In the present case, undisputedly, in the CEN No.1/2014 stipulates the instructions/conditions that for the post of ALP the selection will be based on written test followed by Aptitude Test and the document verification. The call letter issued to the candidates including the applicant to appear for the Aptitude Test also contend the instructions to the effect that the candidates were advised to visit website of RDSO and the said examining body has in clear term made it clear that the candidates needs to secure a minimum score of 42 marks in each of the test batteries to qualify in the Aptitude Test. Before the recruitment process began the RRB had declared all the terms and conditions including the requirement of minimum qualifying marks for the Aptitude Test, by accepting the said conditions undisputedly, the applicant herein participated in written examination as well as Aptitude Test. However, only upon being unsuccessful in the Aptitude Test, he was challenging the result of the said Recruitment process in the present O.A. It is not open to the applicant to challenge the validity or reasonability of the terms and conditions stipulates in the Employment Notice. In view of this, position, the principle of estoppel would operate in the present case. Further, in absence of any material on record, it cannot be said that the RRB had hidden or suppressed any condition of the Recruitment process or change the rule of the game after the Recruitment process began. Therefore also, the submission of the applicant that respondents ought not to have kept the Aptitude Test and even the minimum qualifying marks for Aptitude

Test is not tenable. The judgment cited by the applicant are also not applicable in the facts and circumstances of the present case.

16. In view of aforesaid discussion and in the light of the law laid down by Hon'ble Apex Court in the case of Madan Lal (supra) and Ashok Kumar (supra), we are of the considered opinion that the O.A. lack merit. Consequently, the O.A. stands dismissed. No order as to cost.

**(Dr.A.K.Dubey)**  
**Administrative Member**

**(JayeshV.Bhairavia)**  
**Judicial Member**

SKV