

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A.210/00289/2017

Dated this Monday the 09th day of March, 2020.Coram: Dr.Bhagwan Sahai, Member (Administrative)
Smt.H.P. Shah, Member (Judicial).

S. Mathiazagan,
Working as Chief Office
Superintendent/4MP section,
Controller of Stores (COS Office)
(Group "C" post), in
Central Railway, Headquarters Office,
Chhatrapati Shivajimaharaj Terminus
(CST), Mumbai - 400 001.
Residing at : E/503, Ambica Darshan,
Chittabai Patel Road, Kandivali (East),
Mumbai - 400 101,
State of Maharashtra. .. Applicant.

(By Advocate Shri R.G. Walia).

Versus

1. Union of India, through
General Manager,
Central Railway,
Headquarters Office, CSMT,
Mumbai - 400 001.
2. Controller of Stores,
Central Railway,
Headquarters Office, CSMT,
Mumbai - 400 001.
3. Chief Personnel Officer,
Central Railway,
Headquarters Office, CSMT,
Mumbai - 400 001. .. Respondents.

(By Advocate Shri V.D. Vadhavkar).

Order reserved on : 22.11.2019
Order delivered on : 09.03.2020

O R D E R
Per : Dr.Bhagwan Sahai, Member (A).

Shri S. Mathiazagan, has filed this O.A.
on 16.03.2017 seeking quashing and setting aside

reply of Chief Personnel Officer dated 05.12.2016 (Annex-A-3), notification of marks dated 06.12.2016 obtained by 13 candidates in the written test to be eligible for viva-voce (Annex-A-2) and direction to the respondents to include his name in the list of candidates who had passed the written test notified on 06.09.2016 (Annex-A-1), declaring that the applicant is entitled to appear for the interview, to hold his interview and if he passes in the selection, include his name in the panel for the post of Assistant Materials Manager (AMM) notified on 06.09.2016. He has also sought cost of this application from the respondents.

2. Summarized facts:

2(a). The applicant has stated that he is working as Chief Office Superintendent in the office of Controller of Stores in the office of Controller of Stores at Central Railway headquarters, CSMT, Mumbai. He has stated that he is eligible and due for promotion to the post of Assistant Materials Manager (Group 'B' in Pay Band Rs.9300-34800 with Grade Pay of Rs.4800/-).

2(b). In pursuance to the circular dated 17.05.2016, the respondents circulated a list of 18 eligible candidates on 03.06.2016 in the Stores Department for written test to be held on 09.07.2016 for selection to the post of Assistant

Materials Manager, and his name was at Sr.No.14 in that list (Annex-A-4).

2(c). He appeared for the written test on 09.07.2016 but in its result notified on 06.09.2016, his name was not there. A selection panel was declared vide order dated 16.11.2016 and employees included that panel were promoted on 16.12.2016, in which the applicant's name was not there (copy at Annex-A-6).

2(d). He submitted a representation on 20.10.2016 to Controller of Stores, Central Railway against cancellation of his candidature but it was rejected by reply dated 05.12.2016 stating that his answer book contained distinguishing marks which could lead to his identification and his answer book was rejected (Annex-A-3). He further submitted requests on 21.11.2016 and 13.01.2017 under RTI Act and got a reply dated 13.12.2016 containing a copy of instructions for the candidates to be followed during the written test (Annex-A-10).

2(e). On 08.07.2016, the respondents had issued further general instructions for candidates appearing in the written test (Annex-A-11), that is, only one day before the examination and they were not widely circulated. Those instructions were issued by the General Manager, who has no authority to issue such instructions, contrary to

the orders of the Railway board. The instructions dated 08.07.2016 were probably not received by the applicant and he did not know their contents. His candidature has been cancelled because he had innocently put some arrow marks in the answers to the questions. Therefore, his candidature has been wrongly rejected and he has been deprived of empanelment for the post of Assistant Materials Manager just because he belongs to a SC category. Therefore, this O.A. has been filed.

3. Contentions of the parties:

In the OA and rejoinder, and during arguments of his counsel on 22.11.2019, the applicant has contended that -

3(a). cancellation of his candidature for the post of Assistant Materials Manager is wrong, illegal, arbitrary and unconstitutional as it is violative of Articles 14 and 16 of the Constitution. This action of the respondents is against principles of natural justice. He has a habit to put a small arrow before the next sentence to ensure continuity of the answer and he was ignorant of this but it does not cause prejudice to the administration in any way and it was not his intention to get him/his answer-sheet recognised by somebody. The instructions dated 08.07.2016 did not come to his notice;

3(b). he had not made any distinguishing mark for the purpose of identification of his answerbook by the evaluator. Instruction No.4 reads as under:

"Candidates should write their Name, Roll No. and other details on the fly-leaf in such a way that no impression of the same appears on the top-sheet of the answer books. If it is found that impression of the Name, Roll no. and other details appears on the top-sheet of the Answer-Books, the candidate will stand disqualified."

But these instructions did not specify not putting of arrow/dash marking as the reason for disqualification and the instructions mentioned under Exhibit R-3 also did not specify about symbols i.e. arrow/dash marks, etc;

3(c). the CPO issued guidelines to evaluator on 25.09.2008 and 26.08.2011 that the evaluator should return the answer-book to CPO without evaluation in case any deviation was found. Since the applicant's answer-sheet was evaluated, it means that the evaluator did not find anything wrong in his answer-sheet. As an after-thought, the evaluator referred the matter to the Personnel Branch for their opinion only to debar him from qualifying for the second stage of the selection process i.e. interview, etc;

3(d). the contention of the respondents that the applicant's representation dated 13.01.2017 had been replied on 03.04.2017 is not correct as he did

not receive that letter. He had not noted the additional instructions issued on 08.07.2016 and those instructions did not mention that they were to be applied for the examination commencing from 09.07.2016 and no such announcement was also made on the date of examination and no acknowledgment was obtained from the candidates and those instructions were without approval of the competent authority as the General Manager had no power to overrule the orders/instructions of the Railway Board and Indian Railway Establishment Code does not permit CPO to issue such instructions;

3(e). those instructions applied for the examination held on 09.07.2016 were not applied during subsequently held examinations i.e. LDCE/LGS held on 18.02.2017 and 18.11.2017. This gives an impression that the instructions of 08.07.2016 were fabricated only to disqualify the applicant and to pass a particular candidate. Therefore, this O.A. should be allowed.

3(f). during the written test, candidature of four candidates including the applicant was cancelled, which was excessive;

3(g). the contention of the respondents is not correct that the present application suffers from non-joinder of necessary parties. Joining of the successful candidates as respondents was not

required as they are not necessary parties;

3(h). the O.A. of the applicant seeks relief only to be interviewed and not in terms of final selection and, therefore, the respondents should accommodate him by creating supernumerary post if he gets selected. Hence the O.A. be allowed.

In their reply, additional reply and during arguments of their counsel on 22.11.2019, the respondents have contended that -

3(i). the notification dated 17.05.2016 was issued for selection of candidates for promotion to Group B service as Asstt. Materials Manager in the Stores Department against 70% vacancies and along with that notification, a list of five eligible employees arranged as per their seniority was also mentioned. In addition, 30 standby employees were also notified who were otherwise eligible to qualify for the written test in the event of eligible employees dropping out. In the list of the eligible candidates, the applicant's name was at Sr.No.18 and in the list circulated on 03.06.2016, the applicant was at Sr.No.14 (page no.22 of the OA);

3(j). the applicant also acknowledged the letter dated 03.06.2016 with which the provisional list of eligible candidates was circulated as shown by his initials as token of receipt (page 22 of the OA).

The applicant along with others took the written test on 09.07.2016. List of employees who qualified in the written test and became eligible for viva-voce was notified on 06.09.2016 and total marks secured by the candidates were also circulated on 06.12.2016 (Annex-A-2, page 19); **3(k)**. the above mentioned list mentioned cancellation of candidature of 4 candidates (applicant and 3 others) due to identification marks found on their answer-books in violation of instruction no.4 pasted on the answer-books. The candidates appearing for the written test were instructed for not making any identification marks on the answer-books which may be identified as distinct marks by the evaluator. However, the evaluator found that the applicant had mentioned in his answer-book arrow/dash marking in answers 2(i), 2(iv), 2(v), 2(vii), 9(a), 5(d), 5(e) and submitted that decision about those marks contained in the answer-book may be taken by Personnel Department as deemed fit and as per rules. In view of this report of the evaluator, the CPO constituted a committee which remarked that distinctive marks were found in the answer-book of the applicant which may disclose identity of candidate and these are against the instructions given. Further candidature from this point onwards is cancelled.

Candidates not to be allowed for next stage of viva-voce. Therefore, the applicant was debarred for participating in further process of the selection;

3(l). a panel of selected candidates was published on 17.11.2016 (copy at Annex-R-5) but the applicant has not made any of them as party respondents and, therefore, this O.A. suffers from non-joinder of necessary parties;

3(m). the contention of the applicant that he did not receive and did not know the contents of the instructions dated 08.07.2016 is not correct as revealed by Exhibit at R-4, which has his initials/signatures in token of having read the instructions (Annex-R-4, page 81);

3(n). the applicant himself has confessed that he had put some arrow marks in the answer-book and, therefore, he was not entitled for participation in the further selection process because of violation of applicable instructions;

3(o). all the candidates were to follow the instructions issued by the respondents for fair selection but the applicant did not follow those instructions deliberately and, therefore, he himself is liable for cancellation of his candidature;

3(p). inspite of clear instructions and reminder to the applicant in writing (which he acknowledged) for not putting any identification marks such as arrow/dash in the answer-sheet, he did that and thus violated the instructions. In view of this having been pointed out by the evaluator, the committee of the respondents cancelled the candidature of the applicant for further participation in the selection process;

3(q). the claim of the applicant that only Railway Board can issue the instructions is irrelevant because the authorities conducting the examination can also issue additional / supplementary instructions as was done in the present case with the approval of the competent authority;

3(r). the respondents have also relied on caselaw i.e. decision of this Tribunal dated 19.06.2012 in O.A.341/2008 holding that the instructions had not only been published by the respondents on the notice board, the invigilators had read out those instructions in the examination hall before commencement of the examination and they had been noted by the candidates, hence the O.A. was dismissed. Therefore, based on similar facts, the present OA be dismissed.

4. Analysis and conclusions:

4(a). We have perused the OA memo and its annexes, rejoinder of the applicant, reply and additional reply filed by the respondents, caselaw cited by the respondents and considered the arguments advanced by both sides on 22.11.2019.

4(b). The main relief sought by the applicant in this O.A. is for setting aside of the reply of the respondents dated 05.12.2016 to the applicant for cancellation of his candidature because of distinguishing remarks put by him in the answer-books which could lead to his identification, and cancellation of his candidature in the list of eligible candidates for interview for the posts of Asstt. Materials Manager dated 06.12.2016. He seeks declaration that he has passed the written test to allow him to appear in the interview and if he passes in the selection, then include his name in that panel.

4(c). These are the undisputed facts of the case -

(i). for forming a panel for the posts of Asstt. Materials Manager, Group 'B' against 70% selection quota in the Stores Department, the respondents published list of 18 eligible employees on 03.06.2016, which included the applicant's name at Sr.No.14 mentioning that the written test would

be held on 09.07.2016 at 10 AM. With that list, a set of instructions was also circulated.

Instruction No.4 in them read as under:

"4. Candidates should not writer their name, initials, designation, signature, address or any other identification any where on the answer paper, as this will disqualify him for the selection. They should not draw any symbol, sign or any thing such as SHRI GANESHAYA NAMAH, HARI OM, OM SHRI SWAMI SAMARTH etc. on their answer book. They should use same coloured ink either blue or black for writing the answers any one colour."

(ii). in addition to these instructions circulated with the list of eligible candidates, on 08.07.2016 the respondents further circulated among the candidates before the examination supplementary instructions which were also duly read by the applicant himself and he initialed in token thereof. This has been verified by us from the original record produced by the respondents for our perusal.

(iii). Along with other candidates, the applicant also appeared in the written test on 09.07.2016. However, he was not included in the list of candidates who qualified in the written test for the interview.

(iv). The applicant himself has admitted in the O.A. that he had put arrow/dash before a number of answers in his answer book, which the evaluator found against answers to question no.2(i), 2(iv),

2(v), 2(vii), 9(a), 5(d), 5(e).

(v). The panel of selected candidates was notified by the respondents on 06.12.2016 which mentioned cancellation of candidature of four candidates (which also included the applicant) due to identification marks found on their answer books in violation of instruction no.4 of the instructions pasted on the answer books.

4(d). As regards the contention of the applicant that only the Railway Board is competent to issue instructions and the General Manager of the Railways is not competent, the respondents have explained that the instructions dated 08.07.2016 circulated among the candidates on the date of examination were general instructions and were supplementary in nature i.e. they were in addition to the instructions already circulated with the list of eligible candidates. Instruction No.3 of those supplementary instructions specifically mentioned that the candidates should not use arrow marking to highlight a point. Instruction No.5 mentioned that the candidates should not use any other signs such as round dots, triangle hash tags, etc as bullet marking to highlight a point/sentence.

4(e). We are unable to accept this contention of the applicant. The instructions dated 08.07.2016

were circulated by the Sr. Personnel Officer, Personnel Branch, Headquarters, Mumbai CSMT, with approval of General Manager, Central Railway. They were just to supplement the already circulated instructions and they were meant for and circulated among all the candidates who appeared in that written test, they were not specifically meant only for the applicant. Thus there was no discrimination against any particular candidate and they were general instructions only to facilitate answers to the questions and there was nothing wrong in doing that. Therefore, the submission of the respondents in this regard is acceptable.

4(f). The contention of the applicant that he did not receive the instructions dated 08.07.2016 is totally false and misleading. The original record submitted by the respondents (photocopy of which has also been brought on record as Exhibit-R-4) revealed that the applicant himself had read the instructions and signed in token thereof on that day before commencement of the examination.

4(g). Instruction No.4 in the set of instructions circulated with the list of eligible candidates and instructions 3, 4 and 5 of the supplementary instructions very clearly prohibited writing of name, initial of signature or any other identification such as arrow, marking anywhere on

the answer book which will disqualify the candidate for selection. Since admittedly the applicant himself deliberately used the arrow mark before answers to a number of questions, he himself was liable for disqualification from the selection process. The instructions contained a clear warning to the candidates but in spite of that, the applicant himself put the arrows and, therefore, he was liable for getting disqualified as has been rightly done by the respondents.

4(h). For violation of those instructions, the candidature of not only the applicant was cancelled but that of 3 other candidates was also cancelled. So there is no basis in the contention of the applicant that just because he belongs to SC, he has been wrongly discriminated and disqualified.

4(i). It is also true that the applicant has failed to join as respondents the candidates who qualified in the selection process under reference, because in case the applicant succeeds in the O.A., result of the already qualified and selected candidates would get affected and, therefore, this is a valid contention raised by the respondents.

4(j). In view of these clearly brought out facts, we find that the applicant himself was responsible for violating the clear instructions and warning of the respondents in attempting

answers to the questions in the written examination and, therefore, as per already published/notified instructions, action of the respondents in disqualifying the applicant was totally justified and it was correct. The Tribunal has also took the same view in O.A.341/2008 involving similar facts.

4(k). Considering all these facts of the case and analysis as above, we find no merit in the present O.A. It is a wasteful litigation carried out by the applicant. Hence the OA deserves dismissal.

5. Decision:

The O.A. is dismissed. No costs

(Smt. H.P. Shah)
Member (J)

(Dr. Bhagwan Sahai) J[✓]
Member (A).

H.

JD
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