

3

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2621/2004

New Delhi this the 18th day of July, 2005

Hon'ble Mr. M.P.Singh, Vice Chairman (A)
Hon'ble Mrs. Meera Chhibber, Member (J)

Girish Kumar Sharma,
S/O Shri M.P.Sharma,
Ex-Casual Labour (Typist),
In the office of Assistant Engineer,
Northern Railway, Chandausi (UP)
C/O JP 51 Maurya Enclave,
Pitampura, Delhi 110088

..Applicant

(By Advocate Shri G.D.Bhandari)

VERSUS

Union of India through :

1. The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Moradabad (UP)

..Respondents

(By Advocate Shri R.L.Dhawan)

O R D E R

(Hon'ble Mrs. Meera Chhibber, Member (J)

By this OA, applicant^a seeking ~~a~~ a declaration that interview proceedings are vitiated being illegal in view of the fact that the Selection

8

Committee was illegally constituted and to quash and set aside the order dated 27.9.2004 whereby applicant was informed that after the interview he has not been found fit by the Selection Committee for the post of Clerk-cum-Typist (page 40).

2. It is submitted by the applicant that he had been engaged as a casual labour on 1.9.1980 but his services were utilized as Typist. He had also completed 212 days upto 14.4.1981. Therefore, he filed OA 1101/1992 claiming temporary status and regularization which was finally allowed on 3.10.1997 with the following directions:

"In the circumstances, we are of the considered view that in accordance with Rule 2007(3) of the Indian Rly. Establishment Manual, respondents are directed to consider the regularization of the services of petitioner as Typist namely in Group 'C' in accordance with relevant scheme and as and when the next vacancy arises after passing of this order in case the petitioner is found eligible in accordance with the rules and available, the respondents shall grant relaxation of age and consider his case for appointment as a Group 'C' Typist, giving benefits of the temporary status, which he has already acquired by working more than 120 days, in accordance with the Rules. In the circumstances of the case, we are not inclined to give any benefits such as the back wages or any other service benefits except the benefit of the Temporary status until the petitioner is considered for appointment to the next available vacancy in accordance with the Rules".

Department filed review application and applicant filed Contempt petition.

A Writ Petition was filed by the respondents against the order dated 3.10.1997 which was dismissed on 21.9.2000. In the Contempt petition,



respondents were directed to implement the Tribunal's order as expeditiously as possible and in any case within four months vide order dated 26.2.2001.

3. Ultimately respondents held selection for promotion from Group 'D' to Group 'C' in which applicant was found unsuccessful. He was again called for selection against 33-1/3 % promotee quota of Clerk-cum Typist. Applicant was qualified the written test but no interview was held thereafter due to administrative reasons. Therefore, applicant again filed OA 2471/2003 which was disposed of vide order dated 22.4.2004 by directing the respondents to revive the process of selection which was stated to have been cancelled by the respondents on 13.2.2004 and to hold applicant's interview for the post of Clerk-cum-Typist against the 33-1/3 % promotee quota and complete the process within a period of one month from the date of communication of the order. It is further directed that in the event applicant is found suitable in the interview so conducted, applicant shall be appointed forthwith, as it has already been held above that vacancies are available for which selection had been initiated (page 39).

4. It was pursuant to these directions that applicant was called for interview and was informed vide letter dated 27.9.2004 that he has not been found fit for the post of Clerk-cum-Typist.



- 11 -

6

5. Applicant has now challenged this letter and the action of the respondents in holding the interview and also the constitution of the Selection Committee on the following grounds:

(1.) It is submitted by the applicant's counsel that vide letter dated 7.8.2003 issued by the Railway Board it was made clear that there will be no viva voce for the selection except for promotion to the post of Teachers, Lab Assistants, Physiotherapists and Telephone Operators (page 125) Therefore, respondents could not have taken any interview and applicant's result should have been declared on the basis of his written examination alone. Counsel for applicant strenuously argued that it was the duty of the respondents to bring this letter of Railway Board to the notice of this Tribunal and purposely suppressed the letter because they were prejudiced against the applicant.

(2) He further submitted that the Board was not properly constituted. Again referring to Railway Board's letter dated 21.10.1999, counsel for applicant submitted that it is clearly mentioned in the letter that none of the Members shall be directly subordinate to another i.e. working under another member. But yet in the Selection Board Shri R.K.Kanojia, Asstt. P.O. was subordinate to DPO Shri Suraj Bhan as Shri R.K.Kanojia was the only Assistant Personnel Officer working under the DPO. Therefore, the

S

constitution of Board itself is contrary to Railway Board's letter which vitiates the entire selection of applicant.

(3) He further submitted that out of four members, three members were from the reserved community even though they were not required as it was an unreserved post and applicant was a general candidate.

(4) He further submitted that as per 219 (g) IREM Vol-1 1989 marks ought to have been allotted as mentioned therein which are as follows:

Allotment of marks – For Selection of posts other than general posts in terms of para 219 (g) IREM Vol.I 1989.

I. Professional ability	(a) Written Test	35	
	(b) Viva voce	15	50 marks
II. Personality, Address and Leadership			
Academic and Tech.Qualifications		20	
III. Record of Service		15	
IV. Seniority		15	
		<hr/> 100	

But since he was not in service, it is not understood how marks for his seniority and records of his service were added. Therefore, this also vitiates the selection.

6. Respondents, on the other hand, submitted that it was applicant's own prayer in the earlier OA that interview should be held and it was only as per



the directions given by the Tribunal that the interview was held only for applicant. Therefore, he cannot now agitate this matter all over again. In any case, he invited our attention to the Railway Board's letter dated 7.8.2003 to show that though it was decided that there will be no viva voce in the selection except for certain posts which we are not concerned here. But in Para 4 of the same letter it was categorically mentioned that the revised procedure will be applicable to selections notified on or after the date of issue of this letter. In this case since process had already been started much earlier in as much as written test itself was held on 3.8.2002 which is shown from the earlier judgment, naturally the selection was started prior to 7.8.2003. Therefore, the Railway Board's letter would not be applicable in the case of applicant. He further submitted that as far as the constitution of Member is concerned that was done in accordance with rules. He invited our attention to Para 218 of IREM Vol. I page 60 to show that it is only when a Selection Board consists of only three officers, none of the members be directly subordinate to any other whereas in the present case there were four members and in case of applicant para 218 sub para (c) is relevant wherein it is clearly mentioned that for all other selections, the Selection Board will consist of officers not lower in rank than senior scale. In either case the Selection Board may include a Personal Officer in the next lower rank, shall

8

nevertheless, be a equal member of the Selection Board. In Sub Para (d) it is further made clear that every effort should be made to include a SC/ST Officers on the Selection Board whether of the same Department, if available or the other Department/Railway/Production Units or a non-Railway Department. He further referred to Railway Board's letter dated 21.10.1999 at pages 76 to 78 to show that applicant has not read with the entire paragraph wherein Board may include Personnel Officer in the next lower rank but yet he be an equivalent member of selection Board. He has thus submitted that there was no irregularities in Constitution of the Board. Respondents have explained in their counter that the cadre of Typist merged with clerical cadre. So it was decided to consider the case of applicant for appointment as Clerk-cum-Typist in the grade of Rs. 3050-4590 but there was no channel to recruit the Clerk cum Typist directly by the department. The direct recruitment of Clerk cum Typist is done through Railway Recruitment Board in which there is no interference by the department. Therefore, it was decided to consider the applicant's case for selection along with serving Group 'D' employees against 33-1/3 % promotee quota Selection. Applicant was thus informed vide letter dated 7.1.2000 to submit his application for selection for the post of Clerk cum typist but viva vice was not done due to some confusion. Applicant himself sought a direction



from the Tribunal to hold his interview for the post of Clerk cum Typist. Accordingly the direction was complied with but he could not qualify in the selection which was duly intimated to him. They have also produced the selection proceedings for the perusal of the Court. Counsel for the respondents relied on judgments reported in JT SC 1995 (2) 654 – Major General I.P.S Dewan Vs. UOI & Ors and 1996 (1) JT SC 699- Smt. Nutan Anand Vs. UOI & Ors to state that Court cannot sit in appeal over the findings recorded by the Selection Board. Counsel for the respondents prayed that the OA may be dismissed.

7. We have heard both the counsel and perused the pleadings as well as the original proceedings which are produced by the respondents for our perusal. Counsel for applicant ^{now B} vehemently argued that viva voce could not have been held but it is seen that ^{when B} ~~once~~ he filed OA 2471/2003 it was ~~in~~ his own prayer to direct the respondents to hold interview and this Tribunal in its judgment dated 22.4.2004 had ^{indeed B} directed the respondents to hold applicant's interview for the post of Clerk cum Typist against 33-1/3% promotee quota for which selection had been initiated but cancelled on 13.2.2004. It is thus on the directions given by this very Tribunal that respondents held interview for the applicant alone. At this stage, in the circumstances, it would not be open to applicant to state otherwise as he is



also equally bound by the direction of this Tribunal. It would also not be open to applicant to submit that respondents have not brought the facts of Railway Board's letter dated 7.8.2003 to the notice of the Tribunal wherein it was decided not to hold viva voce in the departmental selection as it was categorically stated in para 4 of the said letter as follows:

“ It has also been decided that the procedure as revised above will be applicable to notified on or after the date of issue of this letter”.

meaning thereby that cut off date for not holding viva voce was 7.8.2003 only for those selections which was to be notified on or after 7.8.2003 whereas in the instant case it is seen that the selection process had already been started prior to 7.8.2003 as records show that written test for the post of Clerk cum Typist was held on 3.8.2002 i.e. before the cut off date 7.8.2003. Moreover this Tribunal in its judgment dated 22.4.2003 directed the respondents to revive the process of selection which was stated to have been cancelled by the respondents on 13.12.2004, The word revival would mean selection process would relate back to the same date when process was initiated and date of judgment dated 22.4.2004 cannot be taken as a new cut off date as was being suggested by the applicant's counsel. Since selection process had already been initiated before the date of 7.8.2003, therefore, we hold Railway Board's letter dated 7.8.2003 would not come to the rescue of applicable in the present case. The contention of the applicant's counsel



22

therefore, that no viva voce should have been held in his case has to be rejected.

8. Coming to the question of constitution of the Selection Board, apart from para 218 of IREM Vol. I it would be better to refer to the Railway Board's letter dated 21.10.1999 as relied upon by applicant's counsel (page 78) even as per this letter it is clear that the composition of the selection Board for filling up non gazetted posts will be as under:

- | | |
|---------------------------------------|--|
| (a) Departmental Other than personnel | Out of 3 officers nominated one officer should be from the from the department other than that department for which the selection is held one should be from the department and one should be a Personnel Officer. However, in case an officer from other department is not available, the presence of a Personnel Officer along with two officers of the concerned department for which the selection is held would meet the requirement. |
| (b) Personnel Department | Two officers of the personnel department and one officer from another department. |

None of the Members shall be directly subordinate to another i.e. working under another member.

For selection of non gazetted posts in grade Rs. 5000-8000 (RSRP) and above, the Selection Board, will consist of officers of Junior Administrative grade. For all other selection posts, the Selection Board shall consist of officers not lower in rank than Senior Scale. In case except the selection for personnel department, the selection Board may include a Personnel Officer in the next lower rank who shall nevertheless be an equal member of selection Board.

98

9. Applicant's counsel only read first sentence wherein it is stated that none of the members shall be directly subordinate to another i.e. working under another member. But he conveniently forgot to read the subsequent sentences wherein it is clearly mentioned that except the selection for personnel department the selection Board may include a Personnel Officer in the next lower rank who shall nevertheless be an equal member of selection Board. Since in this letter and also in Para 218 of the IREM Vol 1 the same position exists, it cannot be said that selection board was constituted contrary to the Railway Board's letter or the provisions of IREM. Thus this contention has also to be rejected.

10. We have seen the proceedings of selection and find that the selection Board has recorded reasons after considering all the aspects as to why applicant was not found fit for the post of Clerk cum Typist. It is specifically written in the note that applicant did not produce graduate certificate nor intermediate certificate but he produced only the mark sheet. Even though he was required to produce all the educational certificates, he could not even satisfy why he had not produced certificates relating to his educational qualifications. Moreover, one of the marksheets was only the revised mark sheet and ^{even on that B} ~~there~~ cuttings were there. It is also written in the note that he had no knowledge of key Board of typewriter and he himself admitted that his




M

speed in English is 20-25 w.p.m whereas the speed in English in typewriting should be minimum 30-40 w.p.m. Moreover, applicant was not able to give replies to the questions put to him. The above note clearly shows that applicant was duly considered by the Selection Committee and not found fit for the reasons as mentioned in the note prepared by the Members of the Selection Committee.

11. It is not the case of applicant that any members of Selection Committee was prejudiced against him as he has not alleged malafide against any member of the selection Board even though he was fully aware of it nor has he impleaded any person by name for alleging malafide. Simply making bald statement against the officers of Department is not sufficient for the purpose of malafide. The law on question of malafide is well settled that the allegations should be specifically made against the officer and the person against whom allegation of malafides are made should be impleaded as a party by name so that he may get chance to rebut the allegation. In the absence of above, the contention of malafide has to be rejected.

12. It is further seen that in the judgment dated 22.4.2004 passed in OA 2471/2003, this Tribunal had directed the respondents only to consider the applicant for interview and it was made clear that it is only in the event of applicant found suitable in the interview so conducted he shall be appointed



forthwith. Now that the selection Board has not found him fit or suitable for the post of Typist cum Clerk, we cannot find any illegality in the order passed by the respondents. The OA is accordingly devoid of any merit. The same is accordingly dismissed. No order as to costs.

S
18/7/05
(Mrs. Meera Chhibber)
Member (J)

mpsh
(M. P. Singh)
Vice Chairman (A)

sk