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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1777 of 2004

New Delhi, this the 11th day of July, 2005

**HON'BLE SHRI M.P. SINGH, VICE CHAIRMAN (A)
HON'BLE Mrs. MEERA CHHIBBER, MEMBER (J)**

S.C. Makhija
S/o Lt. Shri R.K. Makhija,
Working as Commercial Controller,
D.R.M. Office, New Delhi
R/o 24/13, Ashok Nagar,
New Delhi-110018.

.....Applicant.

(None present even on second call)

VERSUS

1. Union of India through the General Manager
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, DRM Office,
Near New Delhi Railway Station,
New Delhi.
3. Shri Narender Kumar,
working as CBS, in Delhi Division
Through the Divisional Railway Manager,
Northern Railway, DRM Office,
Near New Delhi Railway Station,
New Delhi.


....Respondents.

(By Advocate : Shri Rajinder Khatter for official respondents no.1 and 2
Shri M.L. Sharma for private respondents no.3)

ORDER (ORAL)

BY MR. M.P. SINGH, VICE CHAIRMAN (A)

By filing this Original Application, the applicant is seeking the following relief:-

- “(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 21.7.2004 (Annex. A/1) and impugned panel dated 8.7.2004
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(Annex.A/2) declaring to the effect that the same are illegal, arbitrary and against the Guidelines.

- (ii) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the whole selection or pass an order directing the respondents to declare new panel as per rules and guidelines by way of selecting suitable candidates.
- (iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants."

2. Brief facts of the case are that the applicant was initially appointed as a Goods Clerk in Railways on 6.5.1973 and was promoted to the higher posts from time to time. At present, he is working on the post of Commercial Controller in the pay scale of Rs.6500-10500/- in D.R.M. Office, Delhi Division, New Delhi. Respondent No.2, i.e., DRM Office, New Delhi vide advertisement/notice dated 25.8.2003, invited applications from eligible staff to fill up one post of Chief Commercial Controller (in short 'CCC') in the pay scale of Rs.7450-11500/- of Commercial Control Head Quarter Office, New Delhi.

3. Five candidates, including applicant and private respondent No.3, had applied and appeared in the written test, which was conducted on 1.11.2003. According to the applicant, the official respondents had wrongly allowed private respondent No.3 to appear in the examination, as he was not eligible as per conditions laid down in the advertisement. Further, the respondents have not conducted the viva voce test^{and} without holding viva voce, they have finalized the selection and appointed private respondent no.3 to the post of CCC vide order dated 21.7.2004. It is alleged by the applicant that order dated 21.7.2004 passed by the respondents appointing private respondent no.3 is illegal, unjust and arbitrary and against the rules. Hence, this Original Application.

4. None was present for the applicant even on the second call. None was present for the applicant even on earlier date i.e. 18.5.2005. We, therefore,

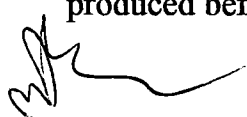


proceed to dispose of this OA by invoking the provisions of Rule 15 of CAT (Procedure) Rules, 1987. Heard the learned counsel for private respondent no.3 and official respondents no.1 and 2.

5. Learned counsel for private respondent no.3 has submitted that the private respondent no.3 was eligible as per the circular dated 21.08.2003 issued by the Headquarters' office. However, the circular issued by the DRM Office, New Delhi dated 25.8.2003, inadvertently did not mention the category of CBS as eligible for the post due to typographical error.

6. The learned counsel has also submitted that the applicant has appeared in the selection and has not raised any objection and it is only after he has failed in the selection that he has rushed to this Tribunal even without exhausting departmental remedies available to him, as he did not file any representation against his non-selection. As regards, the contention of the applicant that no viva voce has been held before finalizing the result, he has drawn our attention to the Circular issued by the Railway Board dated 7.8.2003 (Annexure R-2 of Reply filed by private respondent no.3) wherein it is provided that no viva voce will be held in the departmental selection for the post of CCC. With regard to the contention of the applicant that he has secured the highest marks, learned counsel for the private respondent No.3 stated that it is wrong and in fact, the applicant has failed in the selection.

7. Learned counsel for official respondents has also argued more or less on the same lines and has concluded his arguments by saying that the private respondent no.3 was eligible as per the circular issued by the Headquarters and has been duly selected as per the procedure laid down under the Rules. He has also submitted that the original records pertaining to the selection will be produced before the Court for their perusal.



8. We have considered the rival contentions of the parties and perused the material available on record.

9. We find that one vacancy of CCC in the grade of Rs.7450-11500 was notified vide letter dated 21.8.2003 by Zonal Office, Northern Railway, Baroda House, New Delhi and the following category of persons were eligible to be considered for the above said post:-

- “(i) Eligible Categories/staff.
Staff working on regular basis in grade Rs.7450-11500 and 6500-10500 as Inspector in Rates, CMI/G, CMI/MKT & CBS, CMI/Claim, CGS, CPS & CE&RS.”

However, the Office of Divisional Railway Manager, New Delhi while circulating the vacancy of CCC inadvertently omitted the category of CBS to be eligible for the said post. The official respondents in their reply have also stated that in the notification issued on 21.8.2003, it was mentioned that the selection will be conducted by holding written test followed by viva voce test. But in the meanwhile instructions were issued by the Railway Board vide their letter dated 7.8.2003 that there will be no viva voce test in such selection. In fact, these instructions were issued before the selection process for filling up the post of CCC was initiated. We find that the instructions contained in Railway Board's letter dated 7.8.2003 provide that there will be no viva voce test in the departmental selection except in the case of Law Assistants, Physiotherapists, Telephone Operators and Teachers. Since the post of CCC does not fall in the categories mentioned in the aforesaid letter, no viva voce was required to be held by the respondents and thus we do not find any illegality in not conducting the viva voce test before finalizing the selection.

10. We have gone through the original record produced by the respondents relating to the selection to the post of CCC and find that the private respondent

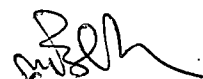


no.3 has been working as CBS in the grade of Rs.6500-11500 w.e.f. 23.6.2001 whereas the applicant has been working in the same scale as CGS w.e.f. 1.2.2002. Although the applicant has secured the highest marks in the written test but private respondent no.3 has secured more marks in the personality test, leadership and records of service. Total marks obtained by both the applicant as well as private respondents no.3 are equal i.e. 75.5. Private respondent no.3, being senior and there being only one vacancy of CCC, has been selected and appointed to the post of CCC. We also find that the selection has been made by the respondents in accordance with the rules and laid down procedure. Apart from these facts, the applicant had appeared in the selection without making any protest and it is only after the applicant did not succeed in selection has approached this Tribunal. The law laid down by the Hon'ble Supreme Court in the cases of **Madan Lal & Ors. vs. State of J & K & Ors.**, 1995 SCC (L&S) 712 and **Om Prakash Shukla vs. Akhilesh Kumar Shukla & Ors.**, 1986 SCC (L&S) 644, is that the person who has participated in the selection cannot be allowed to challenge the same. On this count also, the present Original Application is bereft of merit.

11. In the result, for the foregoing reasons, the present Original Application deserves to be dismissed and is accordingly dismissed. No costs.



(Mrs. MEERA CHHIBBER)
MEMBER (J)



(M.P. SINGH)
VICE CHAIRMAN (A)

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