

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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original Application No. 183 of 2002.

this the 7th day of November 2003.

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER(A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

1. Bipin Kumar Sinha, S/o Sri Chandreshkhar prasad.
2. S.N. Yadav, S/o late Etbaru Yadav.
3. Ram Bahadur prasad, S/o Sri Nag Narain prasad.
4. Tribhuwan prasad, S/o Sri Ram Autar.
5. Sunil Kumar Singh, S/o Sri Bhuneshwar Singh.
6. J.P. Rai, S/o Sri Basudev pd. Rai.
7. Mithlesh Kumar, S/o Sri Yadunandan.
8. Raghunath prasad, S/o Sri Bhagwan prasad.
9. Deokinandan, S/o Jagnarain Ram.
10. D.N. Sharma, S/o late Anoop Sharma.
11. K.K. Singh, S/o late Amar Chandra Shah.
12. K.K. Ram, S/o late Kaulu Ram.
13. R.K. Paswan, S/o late Ram Swarup.
14. Mohan Paswan, S/o Sri Banarsi prasad.
15. R.K. Das, S/o late Devnath Das.
16. Ram Babu, S/o Sri Shyama Ram.
17. Asutosh Kumar Jha, S/o Sri Nand Kishore Jha.
18. K.N. Thakur, S/o late Jagannath Thakur.
19. A.K. Sharma, S/o Sri Shivnath Sharma.
20. B.K. Shah (I), S/o Sri Amir Chandra Shah.
21. Mohd. Tauhid Ansari, S/o Sri Noor Mohd.
22. K.K. Gupta, S/o Sri Jagdev prasad.

Applicants.

By Advocate : Sri Sudhir Agarwal.

versus.

1. Union of India Ministry of Railways through its Secretary, New Delhi.



2. Railway Board, Rail Bhawan, New Delhi through its Chairman.
3. General Manager, Eastern Railway, Kolkata.
4. D.R.M., Eastern Railway, Mughalsarai.
5. Sr. Divisional Electrical Engineer (Traffic), Eastern Railway, Mughalsarai.
6. Sr. Divisional Personnel Officer, Eastern Railway, Mughalsarai and forty others.

Respondents.

By Advocate : Sri K.P. Singh.

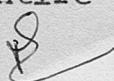
ORDER

BY MRS. MEERA CHHIBBER, MEMBER (J)

By this O.A., applicants who are all Electric Shunters/Assistant Drivers have sought quashing of office order dated 9.8.2001 (Annexure A-1) which is a panel of selected Goods Drivers (Elect.) in the scale of Rs.5000-8000/- (RSRP) subject to passing the promotional course training. They have further sought a direction to the respondents to hold fresh selection for promotion to the post of Goods Drivers (Elect.) in accordance with rules through validly constituted selection committee.

2. The grievance of the applicants in this case is that the feeder cadre for Goods Driver (Elect.) is that of Electric Shunter, but due to non-availability of eligible electric Shunters and considering large number of vacancies as Goods Drivers, the Asstt. Drivers were also included in the eligibility list as both were in the same pay-scale.

3. The Railway Board also issued mode of selection as well as procedure vide circular dated 24.7.2001 (Annexure A-5), according to which written test should have been held, but in the instant case no written test was held, which makes the entire selection bad in law as



it is contrary to the rules. The counsel for the applicants submitted that since the post of Goods Driver would involve the safety of public, respondents could not have adopted a short cut in the selection procedure.

4. He has submitted that a notice was issued on 14th November 2000 for 123 vacancies wherein it was stated that promotion to the post of Goods Driver will be considered only on the basis of oral test (Annexure A-7). List of eligible candidates was annexed alongwith it. This was, however, not acted upon. Thereafter, another notice was issued on 15.2.2001 for 159 vacancies, wherein it was mentioned that test would be held in the chamber of Divisional Electric Engineer (G), E.R., Mughalsarai, from 1.3.2001 to 15.3.2001 (Annexure A-8). Some of the persons gave representations on 28.2.2001 against oral test only which was followed by reminder dated 8.3.2001 (Annexure A-9A), but no reply was given by the respondents and interviews only were held between 1.3.2001 to 15.3.2001 by a selection committee in which no Junior Administrative Grade officer was included which too is contrary to the instructions, therefore after the interview, some applicants again gave representations against the illegal constitution of selection committee also (Annexure A-10).

5. The respondents totally ignored the representation of the applicants and declared the panel vide office order dated 9.8.2001. Since the selection was illegal, a representation was also given by Eastern Railway Men's Congress, Mughalsarai Branch II to respondent no.4 on 24.8.2001 (Annexure A-11). Once again ignoring the representation, the respondent no.5 issued order dated 29.8.2001 (Annexure A-12) directing to release 30

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candidates for promotional training course at ETC, Mughalsarai. Thereafter, the Eastern Railway Men's Congress was informed vide letter dated 10.9.2001, the selections were valid and as per rules (Annexure A-13). A detailed representation was again filed on 12.9.2001 detailing various irregularities and requesting the authorities to cancel the panel (Annexure A-14). Again ignoring the representation, respondent no.5 issued another order dated 27.9.2001 for release of another batch of 40 candidates for attending the training course (Annexure A-15) and simultaneously order were going to be issued for posting them as Goods Drivers, applicants had no other option, but to file the present O.A.

6. The counsel for the applicants submitted that perusal of the circular dated 27.12.88 (page 38) would show that mode of test of Drivers (Goods) for electrical wing was training followed by written oral test, but for Drivers of Steam/Diesal wing mode of test was to be as per circular of 83/83. Therefore, the selection made only by oral test is bad in law.

7. He further submitted that since this mode was decided by the Railway Board, it could not have been modified by the respondent no.5 and 6. In support of his contention, applicants' counsel relied on the following judgments :

- (i) 2002 (i) UPLBEC 148
- (ii) JT (1997) (2) SC 688.

8. The respondents, on the other hand, have submitted that this O.A. is liable to be dismissed as the applicants appeared in the selections knowing fully well that the mode of selection would be oral and when they were not successful, they are trying to challenge the procedure of selection which cannot be permitted. In support of their contentions, they have relied on the following

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judgments :

- (i) 1998 JT (1) 295
- (ii) 1994 SCC (L&S) 475.

9. The respondents have submitted that the selections are as per circular issued by the Railway Board, therefore, there is no illegality in the issuance of panel. They have explained that since incumbents in the lower grade as Sr. Electric Shunter (Sr. ET) in the pay-scale of Rs.5000-8000/- and Electrical Centre (ET) in the scale of Rs.4000-6000/- were not available even equal to the number of assessed vacancies of 123 as such Sr. Divisional Electric Engineer decided to call candidates from two posts in the pay-scale of Rs. 4000-6000 i.e. Sr. from Asst. Drivers (Electrical) to fill the vacancies in exigency of railway work and in the interest of administration in terms of CPO/CCC's serial number 36/96. All eligible candidates were given notice and pre-promotional coaching was given to SC/ST candidates.

10. In the meantime, 36 new posts were created on 24.1.2001. Accordingly, these posts were also added vide office letter dated 15.2.2001 after taking approval from ADRM.

11. Members of the committee were nominated by the competent authority i.e. ADRM as per rules in Sr. Scale in terms of CPO/CCC serial number 47/99 and selection was oral tested as per CPO/CCC sl. no. 84/83. (Annexure R-1 and R-2) ofcourse as per policy of Railway Board, the result was declared after conducting psycho test to all (Annexure R-3). Thereafter a panel of 141 (+ 1 (kept in abeyance) was declared on 9.8.2001 and those 73 staffs who had passed the promotional course training (written & viva voce) as per sl. no. 243/88 have been promoted upto 19.2.2002, whereas the Tribunal passed the order only on 26.2.2002.



12. They have further explained that CPO sl. no. 84/83 made it clear that mode of test was oral which was again clarified vide CPOS sl. no. 243/88 dated 27.12.88 whereby the post of driver was classified as a selection post and it was made clear that promotional course training will be followed by written test and oral in training centre at Mughalsarai. They have, thus, submitted that since passing of promotional course training is a pre-condition for empanelment and a part and parcel of selection, it cannot be said that the selection was illegal.

13. As far as PS no. 11862/99 dated 21.10.99 is concerned, they explained since it was issued by GM (P), N.E. Railway, it is not binding on Eastern Railway. They constituted the selection committee in terms of CPO sl. no. 217/99. They have further submitted that notice/or selection was issued on 14.11.2001 to all concerned and all the applicants appeared in the test which is evident from their attendance sheet annexed as Annexure -6. No objection was filed by any applicants. It is only an after thought after they came to know they were not successful, only a representation dated 27.8.2001 was received which has been duly replied to vide letter dated 10.9.2001 (Annexure-8). They have further stated that in exigency of railway work, considering the safety category it was necessary to impart the promotional training course to empanelled candidates to fill-up existing vacancies at the earliest.

14. The counsel for the respondents relied on AIR 1994 SC 678 to ~~intervene~~ his argument that under post certificate is unbelievable as it was held in the abovesaid judgment that a certificate of posting is easy to procure and does not inspire confidence. Counsel for the respondents, thus, submitted that there is no merit in the O.A. ~~They~~ ^{it} may be dismissed.



15. We have heard both the counsel and perused the pleadings as well.

16. It is seen that when circular dated 14.11.2000 was issued for the post of Goods Driver in the grade of Rs.5000-8000/-, it was made abundantly clear that it will be based on oral test only. It was also clarified that selected candidates will be promoted after passing the promotional course training and psycho test. SC/ST candidates were directed to be imparted pre-promotional coaching for 3/4 weeks and candidates were to be informed. This was, however, not acted upon and subsequently another notice was issued on 15.2.2001 wherein the vacancies were raised to 159, but it was still made clear that mode of selection will be oral test only. All the applicants were therefore, fully aware that it is going to be oral test to be held on 1.3.2001 to 15.3.2001. Yet all the applicants appeared in the oral test which is evident from the attendance sheet annexed by the respondents without any protest or without challenging the mode. Though the applicants have submitted that they had given representation, but none of the representation except the one given by union bears any acknowledgement and in that representation also the grievance raised was with regard to those candidates who were declared unsuccessful. This letter was obviously given after the results were declared. The law by now is well settled that if the mode of selection is known to the candidates, they appear and are declared unsuccessful, they cannot be allowed to turn around and challenge the selection procedure. It would be relevant to quote the judgment given by Hon'ble Supreme Court on this point. In 1998 (1) JT 295 in re. Union of India & ors. vs. N. Chandra Shekhran & ors., it was held that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental promotion Committee. Therefore, they cannot

turn around and contend later when they found they were not selected by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report. Similarly in 1997 (4) SCC 348 it was held that having participated in the recruitment process, unsuccessful candidates are stopped to challenge the procedure. In 1997 (1) SCC 119 and 1999 (2) SCC 193 it was further held that one having appeared before the selection committee, they cannot turn around and challenge the procedure. Thus, the law is well settled by now that the procedure adopted in selection cannot be challenged by those who knew the procedure and appeared, but were declared unsuccessful.

17. The counsel for the applicants had relied upon the aforesaid judgments, but that judgment would not apply in the case in hand because there the notice was issued calling upon the candidates to appear on a short date, failing which their right to appear was to be forefeited. It was in those circumstances that the Hon'ble Supreme Court held that since applicants had no choice, therefore, estoppel would not apply. More-over, the officers' association had already raised an objection to the manner of promotion policy, whereas in the instant case, as discussed above, no applicant had raised any objection even though they had sufficient time as initially the notice was issued on 14.11.2000 and oral test was ultimately held only on 1.3.2001 to 15.3.2001. If they wanted, they could have challenged the notice itself, but none of the representations bear acknowledgement, therefore, no reliance can be placed on such representations as the respondents have denied categorically having received these representations. The respondents have also produced

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register wherein the documents are received to show that from 21.8.2001 to 28.8.2001 no representation was received. The union representation is dated 24.8.2001, whereas the results were declared on 9.8.2001, so this representation was also given after the process was over.

18. The counsel for the applicants also relied on J.T. 1997 (2) SCC 688, but according to us even that judgment would not apply in this case. This case was decided in the facts and circumstances given therein as the Government had committed glaring irregularities, whereas in the case in hand it cannot be said that the respondents committed glaring irregularities. We have already referred to the notice above wherein it was made clear that the selection will be on oral test basis of-course the candidates had to pass the promotional training course and psycho test. It is also seen that number of vacancies were much more than the number of persons available in the feeder cadre that is the reason why eligibility was extended to two posts below in identical scale of Rs. 4000-6000/- i.e. from Sr. Asstt. Drivers. This was done in exigency of Railways requirement. Admittedly, applicant nos. 1 to 17 were Electric Shunters and sl nos. 18 to 22 were Asstt. Electric Drivers, while put respondents were Sr. Electric Shunters, Electric Shunters Sr. Electric Drivers and Asstt. Electrical Drivers. All the selected candidates were to be promoted only if they pass the promotional training course, wherein written and oral both tests were to be held and infact 73 persons were already promoted before the O.A. was filed.

19. Even otherwise, it is seen that the selection committee was constituted as per Railway Board's circular no. 217/99 dated 15.12.99 for selection to the post in the pay-scale of Rs.5500-9000/- and above the selection Board should consist of officers in junior Administrative Grade

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but for other selections, the Selection Board Members can be in the senior scale. However, cases of selections other than those pertaining to personnel Department, the personnel officers in the Committee can be one grade lower i.e. in a Committee of JAG officers, the personnel officer can be senior scale and in a committee of Senior Scale Officer, the personnel Officers can be in Junior Scale/Group-B. It is also seen that vide circular sl. no. 84/2000, the ADRM and Chief Workshop Manager who are in Senior Administrative Grade are authorised to constitute the Selection Board. Therefore, it cannot be said that the selection committee was wrongly constituted.

20. The main point stressed by the applicant's counsel was that the respondents could not have held oral test. In this connection, it would be relevant to refer to CPO/CCC's sl. no. 84/83, wherein the mode of test was mentioned as oral specifically for the post of drivers. Thereafter, the post of Driver was classified vide letter dated 6.11.1987 and it was further decided that apart from the oral test, training should be imparted followed by written and oral test vide circular dated 27.12.88, a copy of which has been filed as Annexure-5 to the Counter affidavit. Thereafter, another circular was issued on 13.7.99 for holding psycho test also in the departmental examination (Annexure-3 to the Counter affidavit.) Therefore, we find that the respondents have acted as per circulars issued by the authorities from time to time and it cannot be said that they have committed any irregularity in holding the selection for the post of Drivers.

21. In the latest judgment given by Hon'ble Supreme Court in the case where selection of Civil Judges was challenged on the ground that procedure adopted was unfair, it has been held by the Hon'ble Supreme Court that it should



be left to the agencies conducting the examination to devise the method for scrutiny of candidates based on a rational formula. After all, ultimately it is the agency conducting the examination which has to consider which method should be preferred and adopted having regard to the myriad situation that may arise before them.

22. In the light of this judgment, if we see the facts in hand, it would reveal that there were large number of vacancies in the department of Electric Drivers, while the feeder category was very small, so the respondents decided to consider even those candidates who were otherwise not in the feeder line, but were in the same pay-scale. Similarly, since they were required to pass the pre-training course by appearing in written as well as oral and psycho test also, naturally they would be tested in writing as well as passing the pre-training course was mandatory. Therefore, in this situation in order to overcome the shortage of Drivers, if respondents decided to hold the oral test only, it cannot be said to be either arbitrary or unreasonable.

23. In view of the above discussions, we find that there is no irregularity in the orders passed by the respondents and in any case in view of the fact that the applicants opted to appear in the test knowing fully well that it will be only a oral test that too without lodging any protest. Therefore, they cannot be allowed to turn around and challenge the selection after they were declared un-successful. The O.A., therefore, fails and is accordingly dismissed with no order as to costs.


MEMBER (J)


MEMBER (A)

GIRISH/-