

Reserved on
07.07.2014

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD**

(ALLAHABAD THIS THE 14th DAY OF July 2014)

PRESENT:

HON'BLE MR. JUSTICE S.S TIWARI, MEMBER -J
HON'BLE MR. U.K. BANSAL, MEMBER - A

ORIGINAL APPLICATION NO. 1513 OF 2003
(U/s, 19 Administrative Tribunal Act.1985)

Lajja Ram Yadav S/o Shri Jagannath Singh, R/o Village Kandhemay Milkiya, P.O. Nababganj, District Farukhabad, presently posted as Loco Diesel Shunter, Q No. T/11-C Malgodam Colony, Mohalla Jai Jai Ram, P.O. Kasganj, District Etha

.....Applicant

By Advocate: Shri T.S. Pandey

Versus

1. Union of India, through its Chairman, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur.
3. Divisional Rail Manager (Karmik) Izzatnagar, Bareilly, U.P.
4. Chief Mechanical Engineer Diesel Shade, Izzatnagar, Bareilly.
5. Divisional Mechanical Engineer (Power) Izzatnagar, Bareilly.

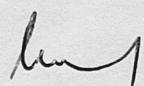
..... Respondents

By Advocate : Shri K.P. Singh

ORDER

BY HON'BLE MR. U.K. BANSAL, MEMBER - A

This O.A. No. 1513 was filed in 2003 under section 19 of the Administrative Tribunals Act, 1985 by Shri Lajja Ram Yadav with the Railway Department of the North Eastern Railway as respondents. The applicant seeks the following relief (s):-



- “(a) *To issue a writ, order or direction in the nature of certiorari quashing the impugned selection list dated 17/11/2003 Annexure No.3 to this Original Application.*
- (b) *To issue a writ order or direction in the nature of mandamus commanding the respondents to provide promotion to the applicant on the post of Driver by initiating a fresh selection proceeding.*
- (c) *To issue any other and suitable order or direction as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case to meet the end of justice.*
- (b) *To award the costs of the Original Application in favour of the applicant”.*

2. It is observed from the perusal of the file that the applicant sought to amend the relief clauses in the O.A by filing a Misc. Application which was opposed by the respondents and ultimately the amendments which were sought to be introduced were disallowed.

3. It has been stated that the applicant who was earlier working as Diesel Assistant became Loco Diesel Shunter in the year 2002. He appeared in the departmental examination for the post of Driver in Good Trains in 2001 and passed the departmental examination but was declared failed in the interview by the respondents. On 01.08.2003, a seniority list of 172 candidates was prepared for the departmental examination to fill up 66 vacancies of Drivers in Goods Trains in the pay scale of Rs.5000-8000 and the applicant was placed at serial No. 13 in this list. The applicant appeared in the departmental examination on 20.10.2003 and was declared successful in the written examination. After qualifying in the written



examination, the applicant appeared in an Interview on 06.11.2003 whereupon he was declared unsuccessful. It is the contention of the counsel for the applicant that holding of the interview was in violation of Circular dated 8.9.2003 and that the viva voce test should not have been conducted at all.

4. It has been argued by the learned counsel for the applicant that the Railway Board letter No. E (NG) 1/2000/PM 1/41 dated 7.8.2003 lays down the procedure for holding selection for promotion to posts classified as "Selection" in which it has been clearly stated that there will be no viva - voce in the departmental selection. Despite this order of the Railway Board, the respondents adopted the procedure of interview, which was neither just nor proper.

5. The learned counsel for the applicant had requested for summoning of the tabulation chart of marks awarded to the candidates during this selection process and the same was also referred to during the course of arguments. The marks obtained by the applicant were highlighted by the learned counsel for the applicant who questioned the modalities adopted in awarding these marks. The broad sheet of marks was examined in respect of the applicant and he has been awarded marks as follows:-

(a) Service Record	-	7 out of 15
(b) Seniority	-	14 out of 15



(c) Professional ability	-	(i) Written 16 $\frac{1}{4}$ out of 35
		(ii) Viva voce 3 out of 15
(d) Personality	-	7 out of 20
		Total 47 $\frac{1}{4}$

Notably the minimum qualifying marks are 60%.

6. The learned counsel for the applicant, while not disputing that this is a selection post, argued that viva voce was not required and that individuals who were junior to the applicant were selected in an arbitrary manner. He maintained that seniority should have been the sole criteria and the method of awarding marks during the departmental examination was questionable.

7. The learned counsel for the respondents stated that the notification for the said selection was issued on 01.08.2003. The letter of the Railway Board dated 7.8.2003 referred to by the applicant, and which exempts promotions to posts classified as selection from viva voce, in certain categories, itself states at para 1 (v) that these directions shall be applicable to selections notified on or after the date of issue of Board's letter i.e. 07.08.2003. Hence, the directions in this letter of the Railway Board would not be applicable to the instant selection process and which is being questioned here as it was notified on 01.08.2003 i.e. prior to the issue of the Board's letter.



8. As regards the modalities adopted in the departmental examination, the learned counsel for the respondents drew our attention to the order of this Hon'ble Tribunal in **O.A. No. 1467 of 2004 issued on 12.12.2013 in A.K. Singh and others Vs. Union of India and others** where it has been held that once the candidate has participated in an examination which at any stage was perceived to be adverse to his interest, then relief in the form of cancellation of examination cannot be available. While issuing this order, the Hon'ble C.A.T., Allahabad has relied upon the judgments of Hon'ble Supreme Court in the case of **Om Prakash Shukla Vs. Akhilesh Kumar Shukla & Ors; AIR 1986 SC 1043** where it has been held : (Para 23)

“23. Moreover, this is a case where the petitioner in the writ petition should not have been granted relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realized that he would not succeed in the examination”.

The Hon'ble C.A.T, Allahabad has also relied upon the judgment in **Chandra Prakash Tiwari and Ors. Vs. Shakuntala Shukla and Ors. reported in AIR 2002 SC page 2322** where it has been held (Para 33):-

“33. It is now well settled that if a candidate takes 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”.

9. The learned counsel for the respondents further pointed out that candidates, who were not successful in the said departmental examination, were not impleaded in the



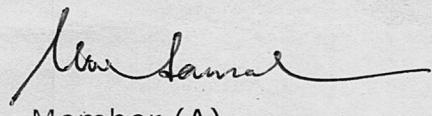
O.A. and hence, the O.A. is not maintainable on this ground itself.

10. From the above mentioned arguments and pleadings, it is amply clear that the applicant had subjected himself to the departmental examination process including the viva voce/interview of his own volition, without protest and hence at the stage when he was declared unsuccessful, he cannot question the validity of this selection process. Further the argument of the applicant's counsel that a viva voce test should not have been held at all in the light of an order of the Railway Board, is not acceptable since the very same order clarifies the date from which it will be applicable and in this case since the notification of the departmental examination was issued prior to this date, the method adopted by the respondents for selection cannot be faulted. There is nothing on record presented by the learned counsel for the applicant that seniority is the sole criteria for such promotions. Hence there is also no reason for interfering with the impugned selection list dated 17.11.2003 and the consequences of the same.

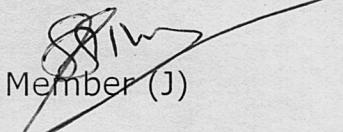
11. It is also noted that the punishment imposed on the applicant earlier as mentioned in the pleadings have no relevance to this petition as he has sought relief regarding his non selection to the post of Goods Driver in the departmental examination conducted in 2003.



12. In the light of the aforementioned analysis, the O.A. fails and hence it is dismissed with no order on costs.



Member (A)



Member (J)

Manish/-