

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 21st day of December 2006

Original Application No. 638 of 2003

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

1. Jagdish Narain Dwivedi, S/o Sri J.N. Dwivedi, Trained Graduate Teacher, Diesel Locomotive Works (DLW) Inter College, Varanasi. R/o 415 B, D.L.W. Colony, Varanasi.
2. Smt. Ashesh Singh, TGT, W/o Sri Gopal Singh, DLW Inter College Varanasi. R/o 303-B, DLW Colony, Varanasi.

. . . Applicants

By Adv: Sri S. Ram

V E R S U S

1. The Union of India General Manager, D.L.W. Varanasi.
2. Chief Personnel Officer, D.L.W. Varanasi.
3. Dy. C.P.O. (Hd. Qr.), D.L.W. Varanasi, Ex. Officio Chairman, Selection Committee.
4. Senior Personnel Officer (Hd. Qr.) D.L.W. Varanasi.
5. Mrs. Chhabi Yadav, W/o Shri S.R. Yadav, T.G.T. DLW Inter College Varanasi.
5. Mrs. Reena Ghatak, W/o D.B. Ghatak, TGT, DLW Inter College Varanasi.

. . . Respondents

By Adv: Sri Anil Kumar

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member (A)

The applicants are presently working as TGT in DLW Varanasi. Respondents No. 4 issued a

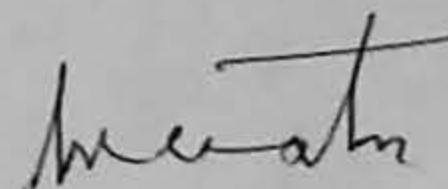
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notification dated 14.03.2003 to hold selection for the post of PGT with the following vacancies:

- a. PGT (Biology) one post
- b. PGT (Economic) One post
- c. PGT (English) One post

2. It is stated by the applicants that both were the senior most eligible person for the post of PGT English and Biology. The applicants have further stated that the process of recruitment is made under the guidelines contained in paragraph 178 (4) of IREM Vol. I, and according to the guidelines both the applicants fulfils the requisite qualification and experience.

3. Further para 112 (i) of the IREM Vol. I provides that a committee should be constituted for conducting an interview of candidates for recruitment to Group 'C' post by the zonal railways as in the case of skilled artisans and teachers. The committee should consist of at least three members one of whom should belong to SC/ST community. No member should be directly subordinate to any other member of the committee. It was also provided that an educationist from outside should also be associated in the recruitment of teachers. For this a panel of educationist should also be formed in each railway administration. The applicants have stated that firstly the respondents did not disclose the constitution of the committee.



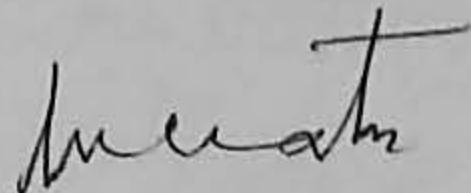
Moreover, no outsider educationist nor any member from the minority committee was there in the selection committee. Instead the professional ability of the candidates was adjudged by an oral test of the following railway officer of JAG Grade:

- a. Deputy Chief Personnel Officer Headquarters.
- b. Deputy Chief Personnel Officer (Gazetted)
- c. Deputy FA & CAO
- d. Deputy Chief Engineer

4. According to the applicants the selection committee made the first mistake by not splitting the 50 marks earmarked for professional ability into marks for teaching ability and for viva-voce. This was a violation of the relevant provisions. The respondents assessed the performance of the candidates under the following headings as per notification dated 14.03.2003:

- a. Professional ability 50 marks
- b. Personality, Leadership and Academic/Technical qualification 20 marks
- c. Record of service 15 marks
- d. Seniority 15 marks

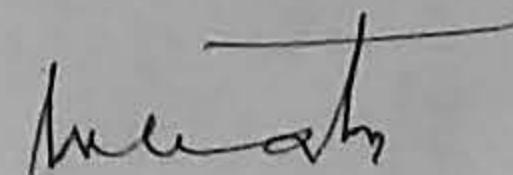
5. As stated by the applicants the teaching ability was to be assessed by none other than a properly constituted committee in which an outsider educationist should be present. The applicants have further stated that the selection committee violated



Railway Board's instructions dated 04.03.1998 in making the assessment for promotion to selection post based on the assessment already available in the CRs of the concerned employees and awarding the marks arbitrarily. As per provisions in the circular of the Railway Board where only viva-voce is held there should be 50% marks for record of service and remaining 50% marks for viva-voce as per the law laid down by the Apex Court, but the respondents held the selection contrary to the statutory provisions.

6. It has also been alleged by the applicant that the respondents did not conduct the pre-selection coaching to the reserved community candidates as per policy of the Railway Board. For this reason also the impugned order/panel dated 16.05.2003 is liable to be set aside.

7. The applicants represented on 19.05.2003 and 20.05.2003 against the alleged arbitrary decisions of the selection committee as the junior selected candidates had poor academic records and educational qualification compared to the applicants. Moreover, at the time of interview different standards were adopted and written test was taken. But on their representation no favorable decision was taken by the respondents. So the applicants have requested the Tribunal to issue order quashing the panel dated 16.05.2003 as well as the notification dated 14.03.2003 and direct the



respondents to a the fresh selection for the post of PGT. On the basis of the following grounds:

- a. The respondents violated the provisions of para 112 (i) read with para 178 of IREM Vol. I regarding constitution of the selection board.
- b. Because the selection was not made by a duly constituted committee with the representation of an educationist to adjudge the teaching ability of the candidates.
- c. The Selection Committee also violated the provisions regarding awarding of marks.
- d. The pre-selection coaching which was mandatory for SC/ST candidates were not given.
- e. This was the first time that seniority was ignored in preparing the panel for PGT. In previous years it was prepared on the basis of seniority.
- f. The learned counsel for the applicants cited from the several judgments of different Courts in support of the claim of the applicants out of which he emphasized especially on the following:
 - i. 1991 (1) ATJ 115 (CAT/Bombay)-Miss Arifa Bagum Karim Shaikh & Ors Vs. U.O.I. & Ors: Held: IREM Rules 102 and 172- Railway Teacher-Contention that Railway teacher must be governed by Statutory rules applicable to

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State Govt. School- Contention rejected as Rules 102 and 178 of IREM Vol. I have been especially made for Railway Teachers and have Statutory Force.

ii. 1997 (II) SCC (L&S) 1029: **Raj Kumar & Ors Vs. Shakti Raj & Ors:** Held : Selection- Locus Standi to impugn the legality of the constitution of Selection Board or Method of selection - Glairing illegalities in procedure of Selection - The candidate appearing for selection and remaining unsuccessful, held, not barred from questioning the selection - Aquiescence/estoppel not applicable in lsuch a case

iii. 2003 (2) ATJ 58- (CAT/Allahabad): **Gulam Mustafa & Ors Vs. UOI & Ors:** Held: Selection-as per rules, selection to be made by the committee constituting Members of Seniority Scale Officers- Held-Constitution of Selection Committee was not in accordance with the Rules- Hence entire selection vitiated in Law.

8. The respondents in denying the allegations of the applicant made the following points in particular:

i. The respondents questioned the very right of the applicants in filing the OA because they are barred by estoppels as they appeared in the selection, without challenging the

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by the respondents under each category. But after knowing the result they filed this OA which are not tenable as per judgment of the Apex Court in 1998 (3) SCC 694 U.I.O.I. Vs N. Chandrashekharan which held "it is not in dispute that the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the DPC. Therefore, they cannot turn around and contend later when they found they were not selected by challenging that procedure.

The applicants however, contradicted in by citing the judgment s at 7 (f) (ii) above. We however, felt insistent of giving more emphasis on this technical aspect, we would consider the OA more on the merit aspect.

- ii. The constitution of the committee was as per rules. As laid down in para 218 Chapter II Section 'B' of IREM Vol. I 1989 the selection has to be made by three JAG Officers.
- iii. Provision of para 112 (1) of IREM -I is applicable to direct recruits to the post of PGT. It does not relate to promotion which is the case of the applicants.
- iv. The applicant argued in para 4 (7) of OA that the Railway Board's instructions dated 04.02.1998 was applicable in their case. The respondents have argued that it was not so.
- v. Regarding the contention of the applicants that pre-selection

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coaching for minority candidates was necessary as per Board's letter dated 28.08.1971, the respondents stated that it related to only safety category post. Obviously, PGT would not fall into this category.

vi. In selection seniority alone is not the criterion. Only some marks were reserved for seniority as the rules prescribed. The candidates have to secure the qualifying marks which the applicants have not secured.

vii. Regarding the allegation that the applicants' representation was not decided by the respondents, it has been replied that the applicants rushed to the Tribunal without giving time to decide their representation.

viii. The main arguments of the respondents were based upon the judgment of this Tribunal in OA 635/03 in the case of Leela Emleen Srivastava Vs. U.O.I. & Ors. Relying on the judgment dated 14.10.2004 by this Tribunal the respondents claimed that the two cases are identical and, therefore, the ratio of the judgment of the Leela's case should apply to this case as well. In OA 635/03 also one ST post was kept for Economics not because of any roster position, but because the only ST candidate who was available belonged to Economics discipline. In all other aspects the two cases are similar. It would be pertinent to extract from the

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relevant portion of the judgment which we think is important in the decision of the case.

"...

13. There is a lot of force in the contention of the respondents that the selection for the post of PGT was conducted as per the procedure and rules. Neither any illegality nor irregularity in conducting the selection could be observed as the claim is perfectly valid and does not suffer from any legal infirmity. They have further stated that the applicant could not even secure 20% marks in each head of selection, as such she could not be promoted on ad-hoc basis.

14. As regards non inclusion of educationist Member in the selection Board, a perusal of rule 112 (i) of IREM makes it amply clear that the inclusion of an out sider educationist is relevant At the time of initial recruitment to Group 'C' posts. We are therefore, inclined to accept the contention of the respondents that this rule is not applicable to the case of selection by promotion.

15. We have perused the filed relating to award of marks by the selection committee to the applicant for the selections held on 6.9.2002 and 13.5.2003 for the post of PGT (Economics). Further, the selection committee on both the occasion reached the decision by consensus.

16. It is further observed that the applicant having submitted to the jurisdiction of the committee could not be permitted to turn around and denounce the constitution of the Committee (Dr. G. Sarana (supra). Hon'ble Supreme Court held in Sunita Agarwal's case (supra) that the appellant did not challenged the order of Vice Chancellor declining to accord approval to her selection and on the contrary, she applied afresh for the said post in response to re-advertisement of the post without any kind of protest. Not only, did she apply for the post but she also appeared before the Selection Committee constituted consequent upon readvertisement of the post and that too, without any kind of protest. The Apex Court further held that the appellant having appeared before the Selection Committee without any protest and having taken a chance, the Court held that the appellant is estopped by her conduct from challenging the earlier order of the Vice-Chancellor.

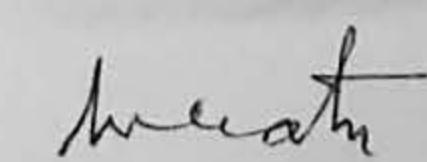
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17. Thus, it is amply clear that the base of the applicant is bereft of merit and is, therefore, liable to be dismissed.

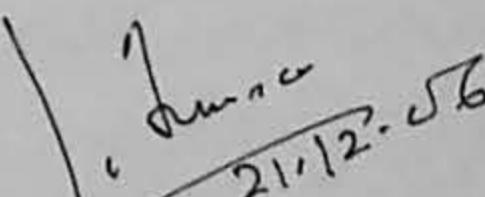
18. For the aforesaid reasons and the case law cited above, the O.A. is dismissed. We make no order as to costs."

9. We have carefully gone through the pleadings and the arguments during the hearing. We have also seen the decision of this Tribunal in OA 635/03. We are convinced by the respondents that the two cases are identical. In Leela's case also the applicants referred to para 112 (1) of IREM - I and it was agreed by the Tribunal that it pertains only to direct recruit teachers and not selectees.

10. In the matter of pre-selection coaching also the same arguments as in this OA was put forth in OA 635/03. The Tribunal after going though the relevant provisions had opined that pre-selection coaching was recommended for safety category post. We are also convinced that the respondents have succeeded in countering the arguments of the applicants point by point. Keeping this in view and also the fact that this OA and OA 635/03 are similar and, therefore, the ratio of the judgment dated 14.10.2004 should apply to this case, we are unable to find merit in this OA, which we dismiss. No cost.



Member (A)



21/12/06

Vice-Chairman