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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 152/90
T.A.NO.

DATE OF DECISION 17/04/1998

Mr. C.B. Saxena **Petitioner**

Mr. P.H. Pathak **Advocate for the Petitioner(s)**
Versus

Union of India & Others **Respondent**

Mr. R.M. Vin **Advocate for the Respondent(s)**

CORAM

The Hon'ble Mr. V. Radhakrishnan, Member (A)

The Hon'ble Mr. P.C. Kannan, Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

} NO

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Mr. C.B. Saxena,
60/B, Shantiniketan Soc.,
D.Kebin,
Ahmedabad - 19.

... Applicant

(Advocate: Mr. P.H. Pathak)

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VERSUS

1. Union of India through
General Manager,
Western Railway,
Churchgate,
Bombay.
2. Chief Works Manager,
Loco Works Shop,
Western Railway,
Ajmer.
3. Senior Chemist and Metallurgist,
Western Railway Carriage-
Work Shop,
Ajmer.

... Respondents

(Advocate: Mr. R.M. Vin)

JUDGMENT

O.A./152/90

Dated: 17/04/1998

Per: Hon'ble Mr. P.C. Kannan, Member (J)

The applicant has filed the above O.A. under Section 19 of the Administrative Tribunals Act, and prayed for the following reliefs:-

- (1) That the Hon'ble Tribunal be pleased to quash and set aside the suitability test held on 24-5-89, 29-8-89 and 18-9-89.
- (2) Direct the respondent authorities to confirm the applicant to the post of C.M.A. and further direct the respondent authority to include the name of the app-

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(2)

licant for eligibility for the post of Laboratory Superintendent and direct the respondent authority to promote the applicant to the post of Lab. Superintendent.

2. The applicant was appointed as apprentice/Junior Chemical and Matellurgical Assistant (Junior CMA) in the month of July, 1981 after passing the written test and selection test. He was subsequently promoted on ad-hoc basis to the post of Chemical and Matellurgical Assistant (C.M.A.) w.e.f. 11-12-1981. He was continued in the same post till the filing of this O.A.. The applicant states that a suitability test was held on 24-5-1989 for the purpose of appointment to the post of CMA. The applicant and 39 other persons appeared in the written test. The result of the test was declared on 3-10-89. The applicant further submits that two more suitability tests also were held between 24-5-89 and 3-10-89. Out of 40 candidates who appeared in the suitability test, 19 candidates were declared as successful. The applicant was unsuccessful. The applicant has now challenged holding of suitability test and the consequent selection/appointment made on various grounds. The main grounds are:-

- (i) The written suitability test was not conducted keeping in view the type of job. The paper was tough and the questions were not relevant to the job;
- (ii) 14 candidates who were allowed to appear had not completed two years of service as C.M.A. which was against the railway policy. Out of 14 candidates, 5 were declared as passed in the said examination;

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(iii) The question papers were not set by the experienced and qualified officers of C.M.T. Organisation;

(iv) The persons who have failed in the written test have been officiating in the said grade since 1981. In the past such persons have been regularised by taking a simple test;

(v) The selection was contrary to the instructions of the railway board dated 23-12-1976 and 6-1-1971 which reads as follows:-

"Panels should be formed for selection posts in time to avoid ad hoc promotions. Care should be taken to see, while forming panels that employees who have been working in the posts on ad hoc basis satisfactorily are not declared unsuitable in the interview. In particular any employee should be saved from harassment.

The Board desired that the above instructions should be strictly complied with, particularly in regard to S.C./S.T. employees."

"In the written tests, conducted to judge the suitability of staff, the questions should be so framed giving choice as also to cover the type of work the candidates are doing and what they are expected to do in the higher grades for which they are being considered taking into account the practical requirement of the job. In cases where railway employees do not have adequate experience of sections or types of work which they may be required to perform

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on promotion to higher grades, they may be rotated in such branches of work where they can gain adequate experience before they come up for consideration for promotion on the basis of seniority cum suitability. The railway Administration should also give training in the Zonal Training School or other appropriate training schools to enable them to acquire necessary knowledge to appear for the suitability test. Such training will be particularly useful in the case of S.C. and S.T. candidates."

(vi) The absentees were given second chance to appear which was contrary to the Railway Board's instructions:-

"Supplementary selection: Not more than one supplementary selection should be held. With the introduction of system of giving advance notice, the incidence of absenteeism and, therefore, the need for supplementary selection would come down. (R.B.'s No.E(N.G.) 1-76 PM 1/168 of 3-9-76) (N.R. S.NO.6618) The railway board have clarified that there should be no incidence of any eligible staff remaining absent even after the chance of one supplementary examination is given. If, however, any case comes to the railway's notice which has to be very rare, the C.P.O. should personally take a decision to hold the second supplementary examination on the merits of the case."

3. The respondents in their reply had stated that the suitability test was held for the post of C.M.A. as per the existing rules. The initial test was held on 24-5-1989

wherein 36 candidates were called to appear for the test, but only 30 candidates appeared. For the absentees (who were on authorised leave) a supplementary test was held. The respondents also contended that the test was conducted as per the prescribed syllabus which was notified to the candidates. The papers were of general application having ample choice which was expected from a science graduate and also as per the job requirements of the said post. The question papers were set by the competent authority. It was also stated that the candidates can be called for appearing in the suitability test even if he has not completed two years service in the lower grade because the same has to be taken into account at the time of promotion as per the existing rules. The respondents further stated that the Railway Board has not given any instructions or directions with regard to the holding of the written test. The Respondents further stated that the supplementary test is always based on need and number of candidates which the department's ~~want~~ ^{which} and for ~~it~~ the test was held. In this case, one supplementary test was held on 29.8.89 for six persons who were on authorised leave. Subsequently it was found that three candidates were not earlier informed about the test and one candidate was on sick-leave as certified by the Railway doctor. Since the required number of candidates did not qualify in the suitability test, such candidates were given chance to appear in a continuation test which was held on 18.9.89. The question papers were 50% objective and 50% narrative as per direction of the Board and therefore it cannot be stated that the question papers contained

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only 30% objective type questions. The respondents stated that 36 anticipated vacancies were assessed and since there was no direct recruitment under training at the time of assessment, the vacancies of D.R. was accounted for against the rankers as per Railway Board's letter dated 4-2-81. In the light of the above, the respondents contended that there was no irregularity in holding the suitability test or in the selection.

4. Heard Mr. Pathak for the applicant and Mr. Vin for the respondents. Shri Pathak, counsel for the applicant confined his arguments to the holding of written test and submitted that holding of such written test was contrary to the Board's instructions and the practice followed by the Department in the previous year. He also cited the following judgments in support of his contentions:-

(1) AIR 1968 SC 1113

The State of Mysore & anr. vs. Syed Mehmood & Others

In this case, the Supreme Court considered the promotion to the posts of Senior Statistical Assistants from the cadre of Junior Statistical Assistant according to the Recruitment Rules. As the petitioner who was senior to certain persons was not considered for promotion, the court directed the State Govt. to consider the case of the petitioner.

(2) AIR 1980 SC 444

Lila Kanta Barua & Others vs. Collector of Customs & Central Excise.

This is a case regarding fixation of seniority after absorption of staff from the then Princely State of Tripura.

(3) 1984 GIH (NOC) 30

M. Sanaullah vs. UOI & Others

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This is a case regarding promotion to the post of Driller by O.N.G.C. It was held inter alia that if the petitioner has a right to be considered for promotion in ONGC, the Respondents (ONGC) cannot deny that claim by merely relying upon the circulars of the Central Govt.

(4) 1992 (2) SLR 781

Bachan Kumar Sahoo & Others vs. The Orissa State Housing Board.

This case is regarding holding of suitability test of Casual Labour after 7 years for the purpose of regularisation keeping in view the particular facts of the case.

(5) AIR 1987 SC 2257

O.P. Gupta vs. UOI & Others

In this case the court considered the punishment order issued under CCS (CCA) Rules, 1965.

5. Shri Pathak, counsel for the applicant contented that in the light of Board's circulars and the judgments referred to, the respondents cannot hold a written suitability test. He argued that only oral test is required to be held in this case. He therefore held that the written suitability test held in this case is liable to be quashed and the applicant is entitled to be promoted. In this connection, he relied upon a letter dt. 20-30 September, 1975 from CME (E) to SM (W) (Annexure A-11).

6. Shri Vin submitted that the application is liable to be rejected summarily on the following two grounds:-

(i) The application has not impleaded the employees who

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qualified in the suitability test and subsequently appointed ^{as} CMA; (ii) The applicant having appeared in the suitability test and could not qualify in the said test, cannot challenge the same, subsequently.

7. We have carefully considered the submissions made by the counsel and perused the records of the case. The main issue is whether the holding of written test is permissible in this case. The Respondents vide Para 14 of their reply had clearly stated that the Department decided to fill up the vacancies arising out of both direct recruitment and the rankers quota through holding of the suitability test (selection). They also relied upon the rules. The Annexure A-11 relied upon by the applicant to show that no written test can be held is not a copy of the recruitment rules. The applicant did not produce a copy of the recruitment rules. On the other hand, the Respondents clearly indicated in the reply that in terms of the rules for the appointment to the post of CMA, selection is to be made out of eligible candidates. As there were about 40 candidates eligible to the selection as CMA, the Department had chosen to hold a written test in the relevant year. No specific instruction of the Railway Board or the provisions of the rules were brought to our notice to show that holding of such written test is prohibited or is against the rules/ directions of the Board. The mere fact that the applicant was holding the post on adhoc basis for a long time, cannot confer on him any right to demand regularisation through a simple oral test. The judgments referred to by the counsel for the applicant also did not support the contention of the

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applicant that holding of written test in the particular facts is liable to be quashed. Admittedly the applicant voluntarily appeared in the examination alongwith all other eligible candidates. While 19 candidates passed in the written test, the applicant failed in the said test. In the circumstances, the various contentions of the applicant regarding the holding of the written test ~~as~~ liable to be rejected as without any merits. We therefore hold that the written test conducted by the Respondents in this case cannot be regarded as contrary to the rules/instructions of the Railway Board.

8. In this case appointments were made after holding the written test and admittedly a number of candidates were appointed as CMA. However, the applicant has not chosen to implead the successful candidates who were subsequently appointed as CMA as party respondents. They are directly affected by the outcome of this application. The entire exercise is seriously distorted because of this omission. The Hon'ble Supreme Court recently in the case of Arun Tiwari & Others vs. Zila Mansavi Shikshak Sangh & Others (1998 Lab. I.C. 444) held that application challenging provisions of recruitment and appointment of certain persons as per that provision cannot be decided by the Tribunal unless the persons directly affected by the outcome of the Application are made as Respondents. The relevant observations of the ^(para 12 of the judgment) Supreme Court are as follows:-

"This Court observed that High Court ought not have decided a writ petition under Article 226 of the Constitu-

tution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them before it as respondents in a representative capacity. These observations apply with equal force here. The same view has been reiterated by this Court in *Ishwar Singh v. Kuldip Singh*, 1995 Supp (1) SCC 179, where the Court said that a writ petition challenging selection and appointments without impleading the selected candidates was not maintainable. (Vide also *J. Jose Dhanapaul v. S. Thomas*, (1996) 3 SCC 587, paragraph 4). On this ground alone the decision of the Tribunal is vitiated."

9. In the facts and circumstances, we hold that the application is devoid of any merit and is accordingly dismissed.

No costs.

(P.C. Kannan)
Member (J)

(V. Radhakrishnan)
Member (A)

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