

10

20

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 519 OF 1992
Cuttack this the 5th day of April, 1999

K.C.Das & another

Applicants

-Versus-

Union of India & Others

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *No*

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN
5-4-99

5-4-99
 (G. NARASIMHAM)
 MEMBER (JUDICIAL)

4

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.519 OF 1992

Cuttack this the 5th day of April, 1999

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

...

1. Krushna Ch.Das aged about 37 years,
S/o. Late Surendra Das of Dutta Totta
At/Po/Dist: Puri
2. Parsuram Mohapatra aged about 52 years,
S/o. Late Manindra Kumar Mohapatra of/Po:
Talatelengabazar, P.S.Purighat, Dist:Cuttack

Both are working as 'B' Gr. Guards under
S.S., S.E.Rly., Cuttack

...

Applicants

By the Advocates : M/s.A.K.Mohapatra
K.N.Parida
M.Mishra

-Versus-

1. Union of India represented through
the Secretary, Ministry of Railways, Rail Bhawan,
Central Secretariat, New Delhi
2. General Manager, South Eastern Railway,
Garden Reach, Calcutta-43
3. Divisional Railway Manager,
South Eastern Railway, Khurda Road Division,
At: Jatni, Po: Jatni, Khurda Road,
Dist: Puri
4. Sr.Divisional Operating Superintendent,
South Eastern Railway, Jatni,
Khurda Road, Dist: Puri
5. Sr.Divisional Personal Officer,
South Eastern Railway,
Jatni, Khurda Road, Dist: Puri

←

12

- 6. Divisional Safety Officer,
South Eastern Railway,
Jatni, Khurda Road, Dist: Puri
- 7. T.S.N. Raju
- 8. Ch. Rama Joga Rao
- 9. M.Lokanatham
- 10. A.J. Rao
- 11. V. Narayan Rao
- 12. M.M.I. Baig
- 13. S.K.Mishra No. I
- 14. A.K.Prameh
- 15. K.N.Chottaray
- 16. N.C.Charjee
- 17. M.S.Narayan
- 18. M.S.Khan
- 19. O.S.R.Murty
- 20. R.R.Pillai
- 21. P.Rama Rao
- 22. N.L.S.Murty
- 23. R.N.Rath
- 24. P.S.Redy
- 25. K.Satyam
- 26. M.R.Parmeswaran
- 27. P.C.Rath
- 28. A.V.R.Murty

Sl. No. 7 to 27 are working as Guard under
Chief Controller, South Eastern Railway, Jatni,
Khurda Road, Dist: Puri

- 29. R.N.Das Adhikari
- 30. R.Hansada

Sl. No. 29 and 30 are working as Guard
under Station Master, Bhadrak, South Eastern
Railway, Bhadrak Railway Station, Bhadrak,
Dist: Balasore

✓

13

31. R.K. Roy

32. B.B. Kanungo

Sl. No.31 and 32 are working as Guard 'B' under Station Superintendent, South Eastern Railway, Cuttack Railway Station, Cuttack

33. G.Routrai, working under Station Master, Talcher, as Guard 'B' At: Talcher Railway Station, Talcher, Dist: Dkl.

... Opposite parties

By the Advocates : Mr. Ashok Mohanty
Res. 1 to 6

...

ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): In this Original Application filed on 15.10.1992, the two applicants challenged the selection process for promotion from Goods Guards to Passenger Guards conducted by the South Eastern Railway authorities at Khurda Road Division.

The two applicants and Res. 7 to 33 and some others numbering 54 on the basis of their seniority within the zone of consideration were noticed to appear in that selection test for filling up 18 vacancies, of which one is reserved for Scheduled Caste. The selection process consisted of written test and viva voce. Written tests were conducted in ~~written~~ i.e. on 19.4.1992 and 22.5.1992 and one supplementary test on 9.6.1992 for absentee candidates. The applicants did not come out successful in the written test. Under Annexures-2 dated 7.10.1992, 27 candidates including Res. 7 to 33 were called to appear the viva voce test on 15.10.1992, but the viva voce test ~~also~~ continued on 16.10.1992. It is at

→

It is at this stage, this application was filed with an interim prayer for stay of the viva voce test.

On 15.10.1992, the application was admitted and on that date itself the prayer for interim relief was considered and it was ordered that the result of the viva voce ^{be} published, and if any promotion given to any incumbent resulting from the test, such promotee should be specifically informed that his/her promotion would be subject to the result of this application. In other words, the viva voce test was not stayed.

In the Original Application it has been averred that as per the scheduled programme dated 7.5.1992, the written test was conducted on 19.5.1992 and 22.5.1992 with different set ^{up} of questions. Even a supplementary written test was conducted on 9.6.1992, but the result was not published within a month thereof. The answer papers of some candidates were revalued and excess marks were awarded in order to satisfy the vested interest. Though as per programme dated 7.5.1992 there was no scope for supplementary examination on 9.6.1992, ^{the} supplementary test ^{was} conducted on 9.6.1992. The supplementary test conducted on 9.6.1992, according to them is illegal. However, question papers being not same on the three dates of written test, the written test cannot be the basis to ~~compare~~ the merits of the candidates. Hence they pray answer papers of all the candidates appearing in the written test should be called for and examined by the Tribunal.

2. The private respondents though duly noticed had not entered appearance nor contested the case.

15

25

3. The departmental respondents in their counter stated that 60% marks was required to be secured in the written test to be eligible to be called for the viva voce test. The private respondents secured this qualifying percentage of marks and were accordingly called for the viva voce test. Applicants did not qualify in the written test. The viva voce test was conducted on two dates, i.e. on 15.10.1992 and 16.10.1992. Res. 31, Shri R.K.Roy ^{could not} ~~again~~ appeared in the viva voce test on these two dates due to no fault of his own. To meet the immediate requirement of services, a provisional panel incorporating names of 16 candidates coming out successful was published on 20.10.1992 under Annexure-R/2 On 23.10.1992, a supplementary viva voce test was held for Res.31 and thereafter a final panel was published on 27.10.1992 under Annexure-R/3. According to ^{the} department, on a single day neither the written test nor the viva voce test can be held when the number of candidates is huge, because the candidates who are Guards could not have been spared to appear on a single day, dislocating the services of running of trains. Though written tests were conducted on three different dates, standard of question papers ^{was} ~~were~~ equal as the same were set by a single person, viz. Respondent No.4 and Res.6 evaluated all the answer papers. Therefore, question of variance in evaluation does not arise. In fact a similar question arose for decision in Original Application Nos.224, 285, 226 and 382 of 1988 and 39/90 and this Bench through judgment dated 12.9.1999 disallowed such contention. The respondents also deny the allegation of applicants as to

16

the favouritism and so on.

2. Applicants in their rejoinder deny the case of the respondents that Res.31, R.K.Roy did not appear the viva voce test due to no fault of his own. In fact, according to them, this respondent did not appear the viva voce examination either on 15.10.1992 or 16.10.1992 as he ~~was~~ overstayed on leave up to 20.10.1992 though the leave period expired on 29.9.1992. They also deny the stand of the respondents that 54 Guards could not have been examined through written test on a single day. It has been further submitted in the rejoinder that as per Establishment Sl. No.56/89(Annexure-4) if selection is to be decided by them through written test and viva voce, the legality of calling for viva voce is to be decided not only on the basis of marks obtained in the written test, but also on the basis of marks in respect of seniority and that applicant No.2 is ^{the} senior most Goods Guard of the Division being at Sl. No.1 in the Gradation List. Further the evaluation of answer papers and viva voce test, according to applicants were made contrary to the rules under Estt.Sl. 208/89(Annexure-5) which lays down that evaluation must be within 55 days. Another plea taken in the rejoinder that in the year 1992, juniors to the applicant No.2 were promoted on adhoc basis and have been coninuing as such in the higher scale of pay contrary to Estt. Sl. 269/89 under Annexure-6.

3. After the completion of pleadings, at the instance of the applicants, by order dated 8.2.1995, answer papers of two applicants and Res.31 were directed to be produced for perusal of the Bench. Learned Special

17

- 7 -

27

Counsel for the Department produced these answer papers in a sealed cover and we have opened and perused the same after closure of the arguments.

5. Before going to the merits of the case, we may observe that in the rejoinder the applicants have introduced a new fact in regard to application of Estt. Sl. 56/89 and that applicant No.2 being the senior most Goods Guard of the Division. This being a new fact introduced in the rejoinder and not by way of clarification to averment pleaded in the counter, we ignore this part of the averment in the rejoinder. Similarly Annexure-6 concerning promotion of some juniors to applicant No.2 on adhoc basis in the year 1993, contrary to Est. Sl. No.269/89 cannot be dealt in this application which contains a cause of action that occurred in the year 1993 in regard to selection and promotion. Promotion of juniors on adhoc basis in the year 1993 being a separate cause of action, the applicants cannot attack the same in this application. Hence this part of rejoinder is also ignored from consideration.

6. We have heard the rival submissions of Shri A.K.Mohapatra, learned counsel for the applicants and Shri Ashok Mohanty, learned Special Counsel for the Railway Administration and also perused the records.

7. As already indicated the main contentions urged by the applicants to quash the entire selection process are as follows :-

- a) There was delay in evaluating the answer papers and publication of the result of the written test contrary to Railway Est.Sl.208/89 and so also similar delay occurred in publication of result of the viva voce test.

18

- b) Written test should not have been held on different dates, because the candidates had scope to answer three different set up question papers and thus there was no uniformity in questions and merits of he candidates cannot be decided through different question papers for the same selection.
- c) Answer papers have been revalued to favour some by giving ~~the~~ excess marks.
- e) Res. 31, having not appeared the viva voce test either on 15.10.1992 or 16.10.1992 because of his fault could not have been summoned for a special viva voce test on 23.10.1992 and this amounted to discrimination.

Q. The programme for written test was notified on 7.5.1992. The written tests were held on 19.5.1992, 22.5.1992 and 9.6.1992. The result of the written test was notified on 7.10.1992(Annexure-2). Viva voce tests were conducted on 15.10.1992, 16.10.1992 and 23.10.1992. We are aware ~~that~~ as per Estt. Sl.208/89(Annexure-5) publication of ~~the~~ results of the written test and issue of notification to the qualified candidates regarding the date for viva voce test has to be made within 57 days of the programme notified for the written test. There is undoubtedly delay in this regard. Similarly, viva voce tests have to be held within seven days after the publication of the result of the written test. In this regard, viewed from this angle, ~~there~~ is delay in conducting the viva voce test. Question for consideration is whether delay on account of this would be fatal. In other words, whether that circular is mandatory or directory. We had occasion to deal with this question in O.A. 15/96 disposed of on 25.6.1998. While considering the selection process on promotion to the post of Chief

↖

19

28

Inspector of Tickets from Travelling Ticket Inspectors of Railways, Relying on the Full Bench decision in **M.A.Khan vs. Union of India & Others reported in (1996) 34 A..C. 274**, we held that instructions contained in Estt.Sl. are only guidelines and are not mandatory in nature. Hence simply because there has been delay on this account, the selection process cannot be thrown aboard unless he applicans specifically plead prejudice because of this delay. So far as viva voce examinaions are concerned, the applicants having been not called for to those tests should not have any grievance for the delay in conducting the viva voce test. As to whether there was pleading of prejudice by the applicants in regard to delay in publication of results, the same will be dealt while considering point No.3 mentioned above.

In regard to point No.2 that different question papers were set, we do not see any illegality or irregularity on that account. A similar point has also been answered against the applicants by this Bench in common judgment dated 12.9.1990 passed in O.A. Nos.224/88, 225/88, 226/88, 382/88, 12/90 and 39/90, which applications were also concerned to the selection process on promotion from Goods Train Guard to Passenger Train Guards. We see no reason to differ from this view. Accordingly, we do not agree with the contentions of the applicants in this regard.

Though in the Original Application filed on 14.10.1992, an averment has been made that answer papers have been revalued and excess marks awarded, the same is vague being not specific; in the sense, ^{that} the averment is conspicuously silent as to whose answer papers have been

20

36

so revalued and excess marks were awarded. Even in the rejoinder, this has not been made clear. But as earlier stated at the instance of the applicants, answer papers of the two applicants and Re.31 were ordered to be produced. We have perused those answer papers. We have not come across any scorings or overwritings in the marks awarded. We cannot assume the role of higher authorities of the respondents-department to see whether answers were correctly written and if so marks were uniformly awarded. All that we are to see is whether marks have been awarded to ^{all the} answers without any scoring or overwriting and whether totaling of marks in each paper is correct. ~~Thus~~ We do not come across any such instance of scoring or over-writing of original marks awarded in the answer papers of the applicants as well as Res.31. Thus the general and vague averment as to the revaluation of answer papers by awarding excess marks is without any basis. This being so, the applicants are ^{in no way} ~~nowhere~~ prejudiced for late publication of the result of the written examination.

It is true that a special viva voce test was conducted on 23.10.1992 for Res.31. The stand taken in the counter is that either on 15.10.1992 or 16.10.1992, this respondent could ^{not} be available for the viva voce test for no fault of his. As against this, in the rejoinder, the applicants specifically asserts that Res.31 was on leave upto 29.9.1992 and he overstayed till 20.10.1992. This fact has not been denied by the respondent-department in ^{ways} ~~their~~ counter, ^{or} even during hearing of the Original Application. Question for

→

21

-11-

consideration is how the applicants, who were not qualified for the viva voce test were prejudiced on account of this extra viva voce test conducted for Res.31. It is not as though on 20.10.1992 through Annexure-R/2, final result of the selection was notified. In fact Annexure-R/2 is clear that this panel as a part-panel published provisionally. On 27.10.1992, through Annexure-R/3, final provisional panel has been published and in that panel name of Res.31 appears under Sl. No.10. Thus it is not a case where after publishing the final result of the selection, a special viva voce test was conducted for Res.31 through favouritism. We, therefore, do not see any force in the contentions of the applicants that the selection of Res.31 has to be quashed because of special viva voce test conducted only for his sake.

10. For the reasons discussed above, we do not see any merit in this application, which is accordingly dismissed, but without any order as to costs.

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN
S.H.99

B.K.SAHOO

S.H.99
 (G.NARASIMHAM)
 MEMBER (JUDICIAL)