

35

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.185 of 2012

Cuttack this the 6th day of November, 2017.


Sk.Abdul Halim...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? ✓


(DR.MRUTYUNJAY SARANGI)
MEMBER(A)


(S.K.PATTNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM:

HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Sk.Abdul Halim, aged about 63 years, S/o. late Sk.Abdul Jalil, a permanent resident of Vill-Tangi (Kairapari), PO-Kotsahi, Dist-Cuttack - retired as First Class Coach Attendant CTI Office, Khurda Road, Jatni, Dist-Khurda

...Applicant

By the Advocate(s)-M/s.D.Ku.Panda
G.Sinha
A.Mishra

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India, Ministry of Railways, Rail Bhawan, New Delhi
2. General manager, East Coast Railways, Rail Kunj, Chandrasekharpur, Bhubaneswar, Dist-Khurda
3. Divisional Railway Manager, East Coast Railways, Khurda Road Division, At/PO-Jatni, Dist-Khurda
4. Chief Commercial Manager, East Coast Railways, Rail Kunj, Chandrasekharpur Bhubaneswar, Dist-Khurda
5. Senior Divisional Personnel officer, East Coast Railways, Khurda Road Division, At/PO-Jatni, Dist-Khurda

...Respondents

By the Advocate(s)-Mr.T.Rath

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

Applicant retired as 1st Class Coach Attendant from the East Coast Railway. He had applied for his selection to the post of Ticket Collector by way of promotion from Group-D to Group

37

- C in the year 1996. He is aggrieved by his non-selection and has filed this O.A. praying for the following reliefs:

"In view of the facts stated in para-4 of the application the applicant prays that this Hon'ble Tribunal may graciously be pleased direct the respondents to promote the applicant to the grade of ticket Collector w.e.f. 11.11.09(Annexure-A/3), i.e., the date when the others were promoted and further be pleased to direct the respondents to pay all other service and financial benefits retrospectively".

2. Although the applicant has raised the issue of the selection of a few ineligible candidates who are alleged to have adopted unfair means in the written examination, the ground on which he has based his prayer is Para-189 of the Indian Railways Establishment Manual (IREM) as per which the maximum marks for consideration of the merits of the candidates should be 85 marks in the written test and 15 for the records of service out of 100 marks. He has annexed the details of the marks secured by various candidates through a statement of Selection of Class-IV Staff to Class-III category for the post of Ticket Collector held on 7.4.1997 (A/4). As per this, he has secured 52 marks out of 100 in the written examination which has been re-calculated as 31.2 out of 60. He has been awarded 5 marks out of 25 in the viva voce and 10 out of 15 under the records of service. The total marks obtained by him are 46.2 and he has been marked as failed in the test conducted for selection to the post of Ticket Collector. The applicant

38

submits that as per Para-189 of Indian Railway Establishment Manual, the criteria adopted for rejecting him is illegal and he deserves to be selected. The applicant has also taken the plea that some other candidates, viz., Baikuntha Mohapatra, M.Purnachandra, D.D.Behera, I.P.Raju and Satyabadi Madhi had been considered for selection illegally. In the prayer clause he has not challenged their selection, he has only prayed for a direction to the respondents to promote him to the cadre of Ticket Collector with effect from 11.11.2009.

3. The Respondents on the other hand have justified the rejection of his candidature on the ground that the selection process was initiated on 11.11.1996. Due to certain complaints about the selection of ineligible persons, the matter was taken to the CAT, Cuttack Bench in O.A.No.575 of 1997, which passed the following order on 25.9.2007:

"5. From the above it is evident that some unsuccessful candidates had represented to the higher level as to the alleged malpractice. But there is no CBI report, though CBI did seize the documents, including answer sheets etc. There is no positive confirmation that persons complained of having no knowledge of English were such, though in general, the Sr.DCM had commented that one of the candidates miserably failed. These cannot be stated to be that serious to cancel the entire selection. The Apex Court in the case of Union of India vs. Rajesh P.U. (2004) 7 SCC 285 held as under:

39

"...in absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, of illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for anyone or the other reasons. Applying the unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that expect 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principles of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation and found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational".

6. In all expectation, promotion of such candidates have to be followed by either some initial training or may have to undergo probation or other departmental examination. If so, even if certain minor discrepancies had occurred, these could be rectified by a strict filtration at that time. The inefficient or insouciant could well be weeded out at that time. Cancellation of the

40

exam lock stock and barrel would result in the really deserving candidates who had qualified in the test being made casualty on account of one or two misfits having been brought in.

7. As such, we are of the considered view that the respondents should follow the result as already finalized and afford the passed candidates promotion as T.C. Those of the applicants who have passed and those who are non-applicants but who have passed should be given the due promotion, with notional pay in the higher pay scale. Their seniority shall be accordingly fixed just above the next batch of selection. Due notice may be given to those whose seniority would be affected. Ordered accordingly".

4. This order of the C.A.T. was challenged in the Hon'ble High Court in WP (C) No.5594/2008 which disposed of the writ petition with the following directions.

"In view of the above submission made by Mr.Das, we dispose of the writ petition with the observation that the Union of India - appellant shall be at liberty to hold fresh selection test in respect of four persons mentioned above and then proceed in accordance with law after assessing their merit. So far as other private opposite parties are concerned, this petition stands dismissed as not pressed".

5. The result of the selection of Ticket Collector by way of written test held on 12.2.1997 and 11.3.1997 and the viva voce on 28.4.1997 was published vide Office Order No.63/09 dated 11.11.2009 (A/3) subject to fulfillment of certain terms and

41

conditions. As per the final results, the applicant had secured only 5 marks in the viva voce and total 46.2 marks out of 100 in both written and viva voce taken together. For selection, he needed to secure 50% marks in viva voce and 50 marks in aggregate and that is why he was declared as failed.

6. Records show that on 22.6.2015, the learned counsel for the respondents had also filed a Memo of Instructions enclosing an unamended Rule 189 of IREM Vol.I laying down the procedure for promotion on the basis of selection along with Estt. SRL No.95/88 dated 20.4.1988. It is the contention of the respondents that the selection process in which the applicant's candidature has been rejected is as per the Estt. S.I.No.95/88.

7. We have heard the learned counsels on both the sides and perused the documents submitted by them. The limited question involved in the O.A. is whether the rejection for the applicant's candidature satisfies the prevalent rules and is legally sustainable.

8. The Respondents have published the results as per the direction of this Tribunal given on 25.9.2007 and the order of the Hon'ble High Court dated 6.3.2009 in WP (C) No.5594/2008. The applicant had filed C.P. No.91/09 before this Tribunal. Subsequently, the Tribunal took note of the submission of the applicant and dropped the C.P. The Respondents have pleaded that it is no more open on the part of

42

the applicant to agitate the same grievance by filing the present O.A. which is barred by *res judicata*. We have considered the above contentions of the Respondents. However, in view of the point raised on the correctness of the selection process under the provisions of IREM and the executive instructions, we proceed to consider the merit of the prayer made by the applicant.

9. As mentioned in para-5 of the O.A., the applicant has mainly relied on Para-189 of IREM which reads as follows:

"189. Promotion to higher grades in Group 'C'- Railway servants in Group D categories for whom no regular avenue of promotion exists 33 1/3% of the posts in the lowest grade of Commercial Clerks, Ticket Collectors, Trains Clerks, Office Clerks, Store Clerks etc. should be earmarked for promotion. The quota for promotion of Group D staff in the accounts Deptts. To Group C post of Accounts Clerks will be 25%. Promotion to Group C will be subject to the following conditions:

- i) All promotions should be made on the basis of selection. There should be written tests to assess the educational attainments of candidates. Group C categories referred to above should be suitably linked with specified categories in the lower grades on broad affinity of work to form groups for promotion but it should be ensured that the prospects are made equal in different groups. The test should be correlated to the standards of proficiency that can reasonably expected from railway servants who are generally non-matriculates. The

aim of the examiners should be to assess the general suitability of the Group D railway servants offering themselves for promotion to Group C posts from the point of view of their knowledge of English and their general standard of intelligence. The factors of selection and their relative weight will be as indicated below:

	Factors/headings	Maximum Marks
(a)	Written Test	85
(b)	Record of Service	15
	Total	100

Note: 1. Written test should consist of one paper of 3 hours duration divided into two parts – Part 'A' to test the working knowledge of the Railway servant of the English language and Part 'B' his general standard of intelligence and proficiency through questions in Arithmetic, General Knowledge mainly pertaining to Railway matters and matters immediately pertaining to the work he has been acquainted with during his Railway service. In drawing up the questions it must be ensured that they are not set as such a standard as to make it impracticable for a Group D railway servant of average intelligence and normal standards of efficiency to qualify in the test.

2. Assessment under the heading Record of Service will be based on entries in the Service Book/personal file regarding academic/technical qualifications, awards/punishments etc.
3. Selections should not be restricted to three times the number of posts to be filled but kept open to all eligible candidates who would like to be considered for such selections.
4. All those who qualify on the basis of written test and Record of Service, the qualifying

44
percentage of marks being prescribed by the General manager, should be included in the panel in the order of their seniority for promotion against the yearly vacancies available for them in Group C categories.

ii) Group D railway servants to be eligible for promotion to Group C posts should have put in a minimum 3 years of continuous service. This does not apply to Scheduled Castes and Scheduled Tribes candidates.

iii) For promotions to Group C posts in the Ministerial cadre, Group D staff will be required to possess a typing speed of 30 w.p.m. in English or 25 w.p.m. in Hindi. Promotions may, however, be allowed on provisional basis and the concerned staff given two years' time from the date of promotion, to qualify the prescribed typewriting test; and if they fail to qualify the typewriting test within the said period, they will be liable to be reverted.

iv) Training:

(a) The standard of training imparted to the Group D railway servants selected for Group C posts should be the same as for direct recruits for the same Group C categories and in the case of failures in the first attempt such employees may be given second - chance to qualify.

(b) Group D railway servants when promoted to Group C posts in the Accounts Deptt. Shall go through the same training and test and shall be subject to the same conditions of service as are in force for the new recruits. During the period of their training they would get as stipend the pay that they would have normally drawn on promotion to Group C. All

allowances like Dearness, Compensatory and House Rent Allowance will be allowed to them at the scales applicable, had the stipend been treated as pay.

Note: Employees in lower Group C scale of Rs.825-1200(RPS)/2750-4400 (RSRP) and Rs.950-1400(RPS)/3050-4590 (RSRP) for whom no regular avenue of promotion exists will also be eligible to appear in the selection held for promotion of Group D employees to Group C against the prescribed quota.

Authority: Railway Board's letter No.E(NG)I/2003/CFP/2 dated 22.09.2003)

10. The Respondents claim that this provision was introduced in IREM in the year 2003. The selection process was initiated in the year 1996. The written test was held in the year 1997 and the viva voce was also held in the same year. The Respondents claim that in the year 1996-97, the instructions issued in Estt. Sl.No.95/98 dated 20.4.1988 was prevailing. The said instruction reads as follows

"Selection Procedure-Group D (Class-IV) to Group C (Class-III) against Departmental Quota:

On different occasions detailed instructions on the procedure to be followed for the selection for promotion from Group D (Class-IV) to Group C (Class-III) against departmental quota have been issued as under:

- (1) Estt. Srl.No.207/59 (Rly Board's letter)
- (2) Estt.Srl.No.130/60
- (3) Estt.Srl.No.132/60
- (4) Estt.Srl.No.62/61

- (5) Estt.Srl.No.1909/61
 (6) Estt.Srl.No.48/63(Rly.Board's letter)
 (7) Estt. Srl.No.158/64

While 50% has been prescribed to the minimum qualifying marks, there has been no definite apportionment of the total mark between written and oral test. It has also been clarified vide foot note (v) of Estt.Srl.No.130/60 that the competent authority ordering the selection can adjudge the suitability of the staff either by way of written test or written and viva voce (both).

However, there appears to be no uniformity on the application of qualifying marks in the selection conducted from Group D to Group C against Departmental Quota. In order to remove doubts and to have a uniform policy the following instructions are issued with the approval of the General Manager.

1. Wherever the suitability of candidate is adjudged solely on the written test the staff should obtain minimum 50% marks for being placed in the panel.
2. Wherever the suitability of a staff is decided basing on both written test and viva voce the apportionment of marks will be as follows:

(a)	Written Test	...60
(b)	Viva Voce	...25
©	Record of Service	...15
	Total	100

The staff should obtain 50% marks in the written test for being eligible to be called for viva voce test. For being placed on the panel, the staff should necessarily secure 50% marks also in viva voce test as qualifying marks and also 50% marks on the aggregate".

47

11. From a perusal of the above two rules/provisions governing the conduct of written test and the selection process, it is quite obvious that at the time of the selection and the conduct of the written test and viva voce, the instructions dated 20.4.1988 were prevailing. The Marks allotted were - for written test- 60, for viva voce - 25 and for record of service - 15. It also clearly states that the staff should obtain minimum 50% marks in the written test for being eligible to be called for viva voce test. For being placed on the panel, a candidate should necessarily secure 50% marks also in viva voce test as qualifying marks and also 50% marks on the aggregate. The statement annexed by the applicant in A/4 clearly shows that he had scored 5 out of 25 in the viva voce and his aggregate marks were 46.2. So on both the counts he has failed to qualify for the selection. Hence the applicant has no claim for being selected for the post of Ticket Collector. It is quite pertinent and relevant that the results published in the year 2009 arising out of the order of this Tribunal in O.A No.575 dated 25.09.2007 and the order of the Hon'ble High Court in W.P. (C) No. 5594 of 2008 dated 06.03.2009 are for the selection process which was initiated in 1996 and the written test and viva voce were held in the year 1997. Therefore, it has been conclusively established by the respondents that the applicant has failed to qualify for the selection process as per the rules applicable at the time and he has no valid ground to challenge his non-

selection. There is no illegality in the rejection of the applicant's candidature.

11. In view of the above, the O.A. filed by the applicant is dismissed as devoid of merit. No order as to costs.

(DR. MRUTYUNJAY SARANGI)
MEMBER (A)

(S.K. PATTNAIK)
MEMBER (J)

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