

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA NO 68 OF 96 WITH MA 187 OF 96

Present : Hon'ble Mr. Justice A.K.Chatterjee. Vice-Chairman

Hon'ble Mr. M. S. Mukherjee, Member (A)

SWAPAN KUMAR GHOSE

VS

1. Union of India through General Manager,
North East Frontier Railway, Maligaon,
Guwahati-781011 (Assam)
2. Financial Adviser & Chief Accounts
Officer, North-East Frontier Railway,
Maligaon, Guwahati-781 011

For the petitioner : In person

For the respondents : Mrs. Uma Sanyal, Counsel

Heard on : 12.9.96 : Order on : 12.3.97

O R D E R

M.S.Mukherjee, A.M.:

This is an original application u/s 19 of the Administrative Tribunals Act, 1985 through which the petitioner has prayed for the following reliefs :

(i) The written test held on 23.9.95 at Maligaon for selection of Assistant Accounts Officer should be cancelled.

(ii) Railway Board should be ordered to frame standard guidelines for adoption by all Financial Adviser & Chief Accounts Officers for evaluating answer copies for selection of Assistant Accounts Officer.

(iii) Railway Board should be ordered to modify suitably the Rule 208.3-IREM, Vol. 1, 1989 so that all appeals are forwarded officially to the addressees.

(iv) General Manager should be ordered to reply to all appeals regarding written test before conducting viva-voce .

(v) Seniors be selected in selection against 70% vacancies for Group B posts.



2. The petitioner currently working as Senior Divisional Section Officer/Accounts, in the office of Chief Engineer, Metro Railway, Calcutta, came on deputation from North-East Frontier Railway, Maligaon (NF Rly for short). The Financial Adviser & Chief Accounts Officers, (FA&CAO), NF Rly, Maligaon, through his communication dt. 14.7.95 (Annexure-A1) notified inter alia that a selection would be held for forming a panel for filling up 17 posts of Assistant Accounts Officer (AAO)(Group B) against 70% of vacancies. The petitioner's contention is that he along with 45 others appeared in the written test for the purpose on 23.9.95 at Maligaon. The FA&CAO by his subsequent communication dt. 14.12.95 (Annexure-A2) notified a list of 35 candidates for the next test i.e. viva-voce test to be held on 4.1.96. This list of 35 candidates was purportedly drawn on the basis of result of aforesaid written test. The petitioner's name does not figure in this list of 35 persons. His grievance is that being an award winner from Railway Board, Railway Staff College, two former Railway Ministers and also being the author of articles and four Railway Rule books, he (the petitioner) has been declared as unsuccessful in the said written test, which according to him, is shocking. The petitioner then sent an appeal directly to the Railway Minister with copy to the General Manager and FA&CAO, NF Rly. with the request for re-examination of his answer scripts. He contended that if the answer scripts were evaluated according to norms adopted for Law Papers, he might get 102 marks out of 150 marks But he was not favoured with any reply. The petitioner adds that the said question papers for the written test were not set according to prescribed rules. In terms of rule 204.3 of IREM, Vol. 1, 1989 Edn., 10% of total marks allotted for testing professional ability should be set apart for question


of official language policy and official language rules. But in the aforesaid written examination no question was actually set on the above subject. The petitioner's further grievance is that without first replying to his representation, the authorities proceeded with the viva-voce test which the petitioner challenges as violative of natural justice.

3. Moreover, according to the petitioner, for Group B posts, selection against 70% vacancies should have been done on the principle of seniority-cum-merit and selection against 30% vacancies only on merit. Therefore, the petitioner has contended that a relatively senior candidate like him cannot be declared as unsuccessful in written test with books.

4. The petitioner has, therefore, prayed for the reliefs already mentioned in para 1 above.

5. The respondents have contested the case by filing a written reply. Their contention is that in setting the question papers, they have not violated any departmental rules or instructions. They further add that the answer scripts of the petitioner was checked and verified by the FA&CAO and he was of the opinion that the evaluation has been done fairly. The respondents have, therefore, urged for rejection of the petition.

6. When the OA was moved on 16.2.96, this Tribunal was pleased to issue an interim order restraining the respondents from publishing the result of the examination. During the pendency of the OA, the petitioner moved a Misc. petition being MA 187 of 96 in which the petitioner's grievance is that the respondents were meanwhile giving some ad hoc promotions to the post of AAU and that such ad hoc appointees were junior to the petitioner. Through the MA, the petitioner has prayed for a direction on the respondents to cancel all ad hoc promotions given during the pendency of the OA and that ad hoc



promotions, if any, should be given to the seniors and that he being senior, he should be given such ad hoc promotions w.e.f. 1.1.96 or from the date the vacancy arose whichever is later with consequential monetary and other benefits with the rider that during the pendency of the OA, he should not be transferred from out of Calcutta.

7. The respondents have also contested this MA by filing a separate reply. Their contention is that ad hoc promotions have been given in terms of Railway Board's circular dt. 28.5.90 (Annexure-R to the reply to M A) which deals with selection for promotion from Group C to Group B posts. Therefore, the respondents have asked for rejection of this MA as well.

8. The petitioner has argued his case in person all along. We have heard him and the learned counsel for the respondents in both the OA and the MA. In view of urgency of the matter, we propose to dispose of both the OA and M A at the stage of admission itself.


9. Regarding the basic issue about regular selection for the post of AAO(Group B), the petitioner's main grievance is that in the written test, he has been declared unsuccessful arbitrarily. He has specifically averred that he being a candidate of calibre, who has been an awarded winner from the Railway Board, Railway Staff College, two former Railway Ministers and he being the author of several articles and four Railway Rule Books, could not actually secure so low marks in the written test with books. On the face of it, this argument seems to be unreasonable. A candidate is evaluated in examination not with reference to his personal background, however, eminent that may be, but with reference to his actual performance in the examination. In the instant case, the respondents have averred that 46 candidates appeared in the

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written test and out of them, 35 candidates were declared successful and that the petitioner was not within these 35 candidates. It is not the case of the petitioner that the examiner had any mala fide intention or malice against him. So we find it hard to accept the objection of the petitioner on this score.

10. The petitioner's related grievance is that if the answer scripts had been evaluated according to the norms adopted for evaluating Law Papers, he might have got 102 marks out total 150 marks and thus would have passed in the written test. He made this point by making an appeal directly to the Railway Minister with copies simultaneously to the General Manager and FA&CAO, NF Rly. His basic grievance is that without making any communication to him about his representation, the respondents went ahead with the viva voce test and this is violative of the principles of natural justice.

11. We also fail to appreciate this contention of the petitioner. His arguments are specifically to the effect that if the answer scripts were evaluated accordingly the norms adopted in awarding marks in Law Papers, he might got 102 marks. But why Law Papers evaluation norms should be adopted for evaluation of other papers? The respondents have stated that there is no question of comparing evaluation on the basis of answer scripts of Law Examination for selection to the post of Asst. Accounts Officer (Group B). We cannot disagree with this. The respondents have further stated that after receipt of the petitioner's appeal, his answer scripts were gone through by the FA&CAO himself and he was satisfied that the evaluation was done very fairly. To our mind this is sufficient. The petitioner's contention that he might have secured 102 marks out of 150 marks is nothing but his own subjective evaluation based on conjecture with which the



department should not be concerned. Also because no specific reply has been given to his representation prior to holding of the viva-voce test, we cannot accept the petitioner's contention that principle of natural justice has been violated in his case. In a written examination any number of examinees might have any number of different notions about their performance but they cannot expect individual rejection of their representations with speaking order to be issued by the authorities as condition precedent for holding subsequent part of the same selection process i.e. viva-voce test in this case, unless, of course, strong prima facie case has first been made out by the petitioner regarding his evaluation. Otherwise, any selection process involving large number of candidates can be stalled for any indefinite period if failed candidates in their turn make ~~a~~ representation and demand prior rejection of their representations before completion of the selection process.

12. The petitioner's next grievance is that in setting question papers, the respondents have violated the norms inasmuch as the provisions of rule 204.3 of IREM, Vol. 1, 1989 Edn. were not complied with. Under this rule, 10% of the total marks allotted for testing the professional ability should be set apart for questions on official language policy and Official Language Rules. But in the written examination, no question was set on the above subject and hence this written test is not in order. The respondents have met this objection with the contention that setting questions on matters of official language policy or official language rules is not obligatory. The said rules provides that "while the employees should be encouraged to attempt the questions on official language policy and official language rules, the questions should not be compulsory." Therefore, if no question

was set on the above subject, it cannot be said that rules have been violated since setting of question on this subject is not mandatory. In case no question is set on this subject, no candidate is specially prejudiced. Moreover, the petitioner did not raise any such objection when he sat for the written test. It is only after he came to know that he did not succeed in the written test, he has quoted this rule by way of additional objection. This objection is, therefore, not held as tenable or reasonable.

13. The petitioner's other argument is that it is the general policy of the Railway is that only efficient and capable staff are sent on deputation to other railway/govt. organisation. His further contention is that an analysis of the result of the impugned written test points out that deputationists posted in other railways or organisation have not done fairly as compared to those who are posted in the NF railway. Moreover, the petitioner claims that he is the Joint General Secretary of Metro Railway Workers Congress. So, according to him, it is clear that efficient staff on deputation are forgotten in selection by the parent railway and hence there is discrimination against them vis-a-vis those posted in the parent railway.

14. This argument is too spacious to be taken seriously. Whether a candidate is an office bearer of any trade union or whether he is on deputation or not, is not relevant to the issue involved. The performance of a candidate in the selection test is only to be considered.

14. In the rejoinder to the reply of the respondents to MA, the petitioner has further added that the questions papers have been set by the officer and the officer who evaluated the answer scripts are different persons as according to the respondents' communication at RI to the reply to the OA, "FA



&CAO had set the question paper and FA& CAO/F&B had evaluated the answer script." To our mind this is too technical semantic squabbling. In both the cases, for setting question papers and for evaluating the answer scripts, FA&CAO has done the job and of course according to the reply, the FA&CAO/F&B has done the evaluation. But at least in the case of the petitioner, the FA&CAO has also done the evaluation because in the said letter of the respondents dt. 8.1.96 it is mentioned that "FA&CAO has gone through the Answer Scripts and was satisfied that the evaluation had been done very fairly.". This objection is, therefore, overruled.

15. Finally, through the MA, the petitioner has contended that the respondents have given ad hoc promotion to the post of AAO to others during the pendency of the O A and that such ad hoc promotees are junior to the petitioner. The respondents has explained that when the O A was filed before this Tribunal an interim order was passed on 16.2.96 to the effect that result of the selection test shall not be published. Therefore, during the intervening period because of exigency of work, certain promotions had to be given and these promotions have been given by the respondents purely on ad hoc basis. Their contention is that in giving these ad hoc promotions, they have scrupulously followed the Railway Board's circular dt. 22.5.90 (vide Annexure-R to the reply to the MA) which inter alia prescribes that

" In the event of ad hoc arrangements still becoming necessary due to unavoidable contingencies like injunctions from Courts of Law, such appointments should be made on the basis of seniority -cum- suitability from amongst all eligible candidates who appeared in the earlier selection test irrespective of whether they passed the written examination or not in

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earlier selections and they became eligible for empanelment or not. At the same time, it should be ensured that those ad hoc promotees whose working as judged from their record of performance, is not satisfactory are reverted as early as possible."

16. The petitioner has challenged the aforesaid contention of the respondents regarding ad hoc promotion on various grounds. His first objection is that the respondents' action in giving ad hoc promotion is violative of provision of 216(i) of IREM, Vol. I, 1989 Edition which reads as follows :

" Ad hoc promotions should be avoided as far as possible both in selection and non-selection posts, and where they are found inescapable and have to be made in exigency of service, they should be resorted to only sparingly and only for a short duration of 3 to 4 months. They ad hoc promotion should be ordered only from amongst seniormost suitable staff. As a rule a junior should not be promoted ignoring his senior."

17. The respondents have refuted this contention by stating that the aforesaid provision of Rule 216(i) ibid is supplemented by the subsequent instruction of the Railway Board dt. 22.5.90 the relevant extract from which has already been quoted above. Under this Railway Board's circular dt. 22.5.90, although on sparing occasions, ad hoc promotion may be made from the feeder grade on the basis of seniority-cumsuitability, but persons in the zone of consideration should be those, who appeared in the earlier selection irrespective of whether they passed in the written test or not in the earlier selection. The respondents argue that since it is not the case of the petitioner that he had

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appeared in the earlier selection, he does not come within the zone of consideration for the impugned ad hoc promotions.

18. The petitioner has opposed this stand of the respondents on different grounds which are discussed as follows:

i) By earlier selection as mentioned in the Railway Board's circular, the respondents have considered the selection of 1993, the panel of which had expired after 2 years. Therefore, if the earlier selection is to be considered, it should be the current selection.

ii) The Railway Board's circular dt. 22.5.90 which are in the nature of executive instructions cannot override the statutory provisions of rule 216(i) of IREM. The petitioner has also quoted a number of rulings in support of this contention.

19. Well, there should not be any controversy about the well known dictum that executive instructions cannot override the statutory provisions but only can supplement it. It has already been held through a number of judicial pronouncements that Railway Board's instruction like the provisions of IREM are ~~of~~ statutory in nature as these are framed under the delegated powers of the President under the provisions of Indian Railway Establishment Code. (vide Full Bench judgement of the Tribunal in Wazir Chand's case (Bahari Brother's CAT Full Bench Judgements, Vol. II pages 295-97) as well as the ruling of Assam & Nagaland High Court in the case of Nirod Ch. Chowdhury -vs- GM, NF Rly, AIR 1967 (Assam & Nagaland) 44, and also of Calcutta High Court in the case of UOI -vs- Santi Kr. Banerjee & Ors, AIR 1967, Cal, 129. It will further be seen from a reading of rule 216.A(i) that this is also Railway Board's instructions dt. 1.4.81 or 23.2.74, 26.4.79 or 17.10.77 etc. So, it cannot be said that the Railway Board's

instructions as contained in rule 216(i) cannot subsequently be supplemented or modified by the Railway Board itself through its subsequent instruction dt. 22.5.90.

20. We need not, however, go further into this issue as ad hoc promotion as a matter of rule should not continue for an indefinite period and it should be cancelled as early as possible. The aforesaid ad hoc promotions had to be given because of the Interim order issued by this Tribunal. Now that the OA is being decided finally, and we are of the opinion that the selection process adopted by the respondents is without any defect, there ^{& exists} ~~is~~ no otherwise ^{not} need to continue with the ad hoc promotions.

21. Under the circumstances, we reject the petition in the OA as well as in the MA and we dispose of both the OA and MA with the direction that the Interim order passed earlier is hereby vacated. The respondents shall immediately publish the result of the selection test and cancel the ad hoc promotions to the post of AAO. There will be no order as to costs.


12/3/97
(M.S. MUKHERJEE)

MEMBER(A)


12.3.97
(A.K. CHATTERJEE)

VICE CHAIRMAN