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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

O. A. No. 214/Jodhpur/2009

Date of decision: 09.08.2012

CORAM :

HON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER  
HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER.

Jitendra Kumar Sharma S/o Shri Virendra Kumar aged 43 years, Technician-II, in the Office of Diesel-shed, North Western Railway, Abu Road, District Sirohi resident of 333 B, Railway Colony, Abu Road, District Sirohi.

: Applicant

[None present]

**Versus**

1-Union of India through the General Manager, North Western Railway, Jaipur.

2-Divisional Railway Manager, North Western Railway, Ajmer.

: Respondents

[By Mr. Aditya Singhi for Mr. Manoj Bhandari, Advocate]

**O R D E R**

**PER HON'BLE MR. G. SHANTHAPPA :**

The above application is filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the relief to quash the order Annexure A/1 No. 875/E/1/1/Diesel Vidhyut dated 13<sup>th</sup> March, 2009 and further relief of direction to the respondents to declare that the applicant passed in the written examination and a further direction to the respondents to promote the applicant to the post of L.D.C. from the date of passing the order at Annex.A/1 with all consequential benefits.

2. We have heard the learned counsel for the respondents. Since neither the applicant nor the counsel for applicant is present, we invoke Rule 15 of the C.A.T.(Procedure) Rules and



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perused the averments made in the O.A. and the documents annexed thereto.

3. The brief facts of the case according to the applicant are the applicant appeared for the examination for granting promotion from Technician-II to the post of LDC which was held on 29th January, 2009. Vide order dated 13<sup>th</sup> March, 2009, the respondents declared all the candidates including the applicant who failed in the written examination. The applicant approached the 2<sup>nd</sup> respondent under the R.T.I. Act and demanded a copy of the answer-book. The Sr. D.P.O., working under the 2<sup>nd</sup> respondent, informed the applicant, vide his letter dated 5<sup>th</sup> June, 2009 that copy of the answer-book of the applicant cannot be given. The applicant thereafter preferred an appeal under the Right to Information Act to the 2<sup>nd</sup> respondent, the applicant was informed that he can inspect his answer book at any time during office hours. Accordingly, the applicant perused his answer book. On inspection of the answer-book, the applicant found that he was awarded 33½ marks on 10.02.2009 that was rounded off to 34 marks. The said marks were struck-down, there were neither any initials nor any date of cutting was mentioned. The applicant was awarded 29½ marks which was rounded off as 30, on 4<sup>th</sup> March, 2009. However, 30 marks have been cut-down by over-writing but, no initials and date have been mentioned. The respondents have not given reasons for changing the marks from 34 to 30. The applicant answered question Nos. 4 and question No. 6. The applicant has been given only 5 marks out of 10 in respect of question No. 4 and 8 marks were awarded to the answer given to question No. 6. The respondents have acted arbitrarily in changing marks

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unauthorisedly due to which the applicant has been deprived of from promotion. The respondents have violated the principles of natural justice and Articles 14 and 16 of the Constitution of India. Hence, the applicant is entitled for reliefs prayed in the O.A.

4. The respondents have filed reply statement and vehemently opposed the O.A. and denied the allegations made therein. It is their contention that the applicant has been declared as failed in the written examination and, therefore, he cannot be permitted to assail the basis on his failure to invoke the jurisdiction of this Tribunal. It is a settled law that a person who has already taken-up the written examination, the selection conducted by the respondents, cannot be permitted to assail the validity of the same. The applicant cannot be permitted to approbate and reprobate assailing the validity of the selection and the assignment of the marks to the applicant. He cannot be permitted to assail the validity of the selection on the ground of acquisition. The applicant has efficacious remedy under the statutory rules. He fails to exhaust the remedy with the department. The applicant declared failed in the examination vide order dated 13<sup>th</sup> March, 2009 because he did not get the qualifying marks i.e. 60%. As per question paper, any five questions were to be attempted but, applicant has attempted all the six questions which was stated as over-attended questions. The applicant approached the respondents under the R.T.I. Act, there is no provision to give a copy of the answer-book hence, he was permitted to inspect his answer book during office hours. Accordingly, he inspected the answer book. The applicant has wrongly counted as 33 and 1/2 marks by evaluator after deducting

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marks of question No. 1 as over attempted questions which could not have been increased the marks to 34 as per the instructions laid down by the Railway Board's Circular 272/1999 dated 20<sup>th</sup> October, 1999. When the Evaluator realised that deducting marks of question No. 1 as over-attempted question instead of question No. 6 as over attempted question and the rounded off marks has wrongly been made by him, he corrected the same by deducting marks awarded to the answer to question No. 6 as over attempted question and on 4<sup>th</sup> March, 2009, the applicant has contended 29½ marks which was rounded off incorrectly and illegally by the Evaluator as 30 marks. There is no change in the marks obtained by the applicant. The applicant has been granted marks on which he had attended the questions and written answers. The fact, illegality committed by the Evaluator has been corrected after deducting the marks as over-attempted question. The applicant got 30 marks out of 50 and 34 out of 100, he has not got 60% marks and the applicant has correctly been declared failed in the written examination.

5. The applicant has not filed rejoinder to the reply statement which shows that he has no clarification and not refuting statement made in the reply statement.

6. On perusal of the pleadings and on the submission of the learned counsel for the respondents and based on the records available, it is evident that the applicant has to attempt only 5 questions in the examination which was held on 29<sup>th</sup> January, 2009 as per question paper (Annex.A/2), which was for 50 marks. It is also an admitted fact that the applicant attempted


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six questions. It is the contention of the applicant that the respondents without following the principles of natural justice have struck down 30 marks. If the applicant got 34 marks, he would have been declared passed. There was no initial and date while correcting the marks. The applicant came to know of these corrections after he inspected the answer-book. It is not the case of the applicant that he had attempted one extra question though he was supposed to attend only 5 questions. While evaluation, the evaluator has awarded the marks to all the 6 answers but, the applicant has to attend only 5 questions. He cannot assail now that the marks awarded to the 6<sup>th</sup> answer can not be struck down without his notice. If the marks awarded to 5 answers (5 questions) those are counted and the applicant was awarded only 30 marks. While corrections in the answer-book, the respondents have followed the Railway Board's Instructions on the subject. The Railway Board has issued the Guidelines on the subject. It is relevant to extract the Railway Board's order No. 272/2009 dated 20<sup>th</sup> October, 2009 below :

**" NOTE (3) Decimal marks whenever given should be corrected to the first decimal and the same should not be rounded off. The aggregate also should be left as such without any rounding off.**

**NOTE (4) If any candidate has answered question in excess of the required number, the evaluating officer should ignore the same. However, if such questions stand evaluated only the marks awarded against the requisite number of answers attempted first should be included in the tabulation on the top sheets, of the answer book and the rest ignored."**

7. On perusal of the rule position and the marks awarded to the applicant, the applicant is entitled for the marks only for the answers given to 5 questions. The applicant had attempted one question extra, the marks awarded to the 6<sup>th</sup> question,

 cannot be counted. Accordingly, the respondents evaluated the

answer-book and counted the marks awarded to the answers to 5 questions. The respondents have followed the Railway Boards Instructions, since the applicant has not challenged the Railway Board Instructions, at this stage, he cannot contend that the principles of natural justice has been violated, and he is entitled for award of marks to all the answers.

8. The applicant cannot be allowed approbate and reprobate at a later stage. We apply the decision of the Hon'ble Supreme Court in the case of **Agri. Gold Exims Ltd. Vs. Sri Lakshmi Knits & Wovens & Ors.** reported in (2007) 3 SCC 686.

9. For the foregoing reasons, we are of the considered view that the applicant has failed to establish that he is entitled for the marks to all the questions i.e. 6 answers and to declare that he passed in the examination as prayed for. According to the scheme of the examination as per Annex.A/2, the applicant has to attempt only 5 questions. The respondents have counted the total number of marks awarded to 5 answers. The total marks to the five answers are only 30, the respondents are justified while awarding the marks and make necessary corrections in the answer book. There is no illegality or irregularity committed by the respondents. Accordingly, the O.A. is liable to be dismissed.

10. The O.A. is dismissed. No order as to costs.

  
(B.K.Sinha)  
Administrative Member

  
(G.Shanthappa)  
Judicial Member

W. H. H.

R/C  
CS  
11/18/12 (supervisor's sign)