

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

**Original Application No. 260/2009
With
Misc. Application No.151/2012**

Date of decision: 05.11.2012

Reserved on 09.08.2012

CORAM

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

Mahendra Singh Panwar S/o Shri Bhanwar Lal Panwar, aged about 38 years, R/o Bal Samand, Baba Ram Dev Mandirwali Gali, Mandore Road, Jodhpur, at present employed on the post of Senior Clerk in Personnel Branch, DRM Office, Jodhpur NWR.

**.....Applicant
Mr. J.K.Mishra, for Mr. A.K.Kaushik, counsel for applicant.**

Vs.

1. Union of India through General Manager, North Western Railway, Jaipur Zone, Jaipur.
2. Chief Personnel Officer, North Western Railway, Jaipur Zone, Jaipur.
3. Shri Satish Kumar Jain, Senior Clerk, Establishment Section, Personnel Brach, DRM Office, Jaipur Division, Jaipur, NWR.
4. Shri Prakash Chand Mali, Senior Clerk, Operating Branch, Hqrs. Office, Jaipur Zone Jaipur, NWR.

...Respondents

**Mr. Salil Trivedi, counsel for respondents No.1&2.
None present for respondents No.3&4.**



ORDER**Per : Hon'ble Mr. BK Sinha, Administrative Member**

This OA is directed against the Order No.875E/EIJ/OS Gr.II/LDCE/2008/132 dated 21.8.2008, No.742-E/R&T/OS-II/I9LDCE) dated 26.1.2008 and No. 742-E/R&T/OS-II/I(LDCE) vol.I dated 20.11.2009 of the Chief Personnel Officer, North Western Railway, Jaipur.

Relief(s) sought:

- (i) *That the impugned orders dated 21.8.2008[A1], 26.11.2008 [A2] and 20.11.2009 [A3] passed by th 2nd respondent may be declared illegal and the same may be quashed. Any adverse order, if passed, on the pending representation of the applicant my also be quashed. The respondents may be directed to conduct fresh selection, as per the existing rules/procedure, against 20% LDCE quota vacancies for the post of OS-II, as notified vide notification dated 20.4.2007.*
- (ii) *That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.*
- (iii) *That the costs of this application may be awarded.*

Case of the applicant in brief:

2. Applicant, a graduate, was initially appointed as Trains Clerk on 4.7.94 at Bikaner Division and at his request he was transferred to Jodhpur Division during 1997 where he was absorbed as Clerk in 1998. He was later promoted as Senior Clerk on 31.3.2000. The Railway Board issued Circular No.RBE 177/2003 vide which an element of direct recruitment was introduced at the level of Office Superintendent-II (OS-II) in the scale 5500-9000. As per this circular 20% of posts were to be filled by direct recruitment and 80% by promotion of staff from lower grade in the pay Rs. 5000-8000. This was followed by another circular issued by the Railway Board [A4] vide which the 20% direct recruitment was replaced by Limited Departmental Competitive Examination (LDCE) by the Railway Recruitment Board. However, by another order RBE No.147/2006



[A5] instead of Railway Recruitment Board, it was directed that the LDCE would be conducted by the respective Zonal Railways/Production Units. On the basis of this 2nd respondent issued notification dated 20.4.2007 [A6] inviting applications from eligible employees for filling up 34 posts under 20% LDCE quota. Applicant applied and his name was also included in the list of eligible candidates vide Annexure.A7. 2nd respondent issued another letter dated 28.7.2009 [A7] wherein it was directed that the ratio of descriptive and objective type of questions shall be 75:25 and there will be negative markings. This was objected by the Jodhpur Division vide letter dated 12.8.2009 as it was contrary to Railway Board RBE No.123/2006. Notwithstanding this objection the 2nd respondent fixed the date of LDCE as 31.8.2009 as published by Divisional Office letter dated 21.8.2008 [A1]. The applicant also appeared in the test on 31.8.2009, in which 26 candidates were qualified. However, the applicant's name does not find place in the list of passed candidates. The applicant contends that the procedure prescribed for conducting recruitment test by the RRBs had no application to the LDCE conducted by departmental authorities.

He submitted representation dated 15.9.2009 to 3rd respondent. [A13]. The 2nd respondent finalized the selection vide letter dated 20.11.2009 [A3] empanelling 24 persons for promotion as OS-II without having considered his objection. The applicant has challenged the procedure adopted in conducting the examination on the ground that in other Railway zones like South East Central Railway, Bilaspur, SWR, Central Railway Mumbai CST, Integral Coach Factory Chennai etc. written test paper consists of 50% objective and 50% subjective

and there is no negative marking for the post of OS-II against 20% LDCE quota. The applicant further states that there is no directive of the Railway Board that the LDCE shall be conducted according to the procedure adopted by the RRB to that of negative marking and ratio of 75:25 for descriptive and objective cannot be applied for LDCE. He has impleaded two of the selected persons in the panel as a representative capacity of other candidates who have been selected. The applicant submits that the respondent authorities cannot be permitted to adopt their own procedure or procedure adopted by RRB in LDCEs which is violative of Articles 14 and 16 of the Constitution of India, as the policy adopted by the other zonal railways constitute the established procedure. Since the LDCE for the post of OS-II has not been conducted as per established procedure, the impugned orders will not stand and have to be quashed.

Stand of official respondents:

3. Official respondents have filed their counter affidavit opposing the grant of reliefs prayed for. They have stated that the communication dated 12.8.2008 was rightly replied by them vide their reply dated 19.8.2008 [A11] after having examined the relevant instructions issued by the Railway Board. They have produced Annexure R1 to show the exact procedure to be followed in the selection of OS-II under LDCE 20% quota in which the methodology of negative marking is specifically recommended. The official respondents do not refute the contention of applicant that selection was conducted and 26 candidates were declared passed. The applicant was not placed in the list of successful candidates as he had failed to

qualify. The respondents claim to have replied to the representation of the applicant vide their letter dated 3.12.2009 [R2]. There is no procedural irregularity in the selection which has been conducted strictly in accordance with the instructions issued by the Railway Board vide Annexure R/1. Railway Board letter dated 17.6.2005 [R3] prescribes the procedure for selection to the post of OS-II of LDCE 20% quota through RRB in which Para 3(ii)(i) prescribes "**(i) The examination should be held combined for all departments for a Zonal Railway/PU by Railway Recruitment Boards catering to zonal Rlys/Pus as nominated for conducting GDCE vide this Ministry's letter No.E(RRB)2001/25/31 dated 8.8.2003 for this purpose the Zonal Railway/PU should club vacancies of all Deptt/Units against this quota and forward applications of eligible employees to RB concerned as per procedure already being followed by them for GDCE**". The only departure to be noted is that the responsibility of holding the selection was shifted from RRB to Zonal Railway headquarters and this was intimated to all the candidates vide Annexures.A1, A8 and A.11. Hence, the official respondents claim that there is no illegality in the selection conducted. The OA, the respondents argue is devoid of merit.

Reply of R3:

4. The Respondent No.3 has also opposed the prayer of the applicant in his Counter Affidavit. He appeared in the examination in question along with the applicant and qualified the same. Hence, his name has been rightly placed in the select list, which the applicant cannot be allowed to challenge. He has also stated that the official

[Signature]

respondents have followed the Railway Board instructions dated 25.8.2005 in which negative marking has been prescribed. He has followed the reply statement of the official respondents and submitted that the selection has been rightly held and that there is no scope for intervention by this Tribunal.

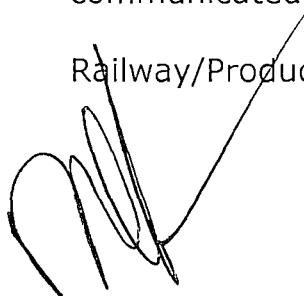
5. Applicant filed a rejoinder reiterating most of his contentions in the original application.

6. Learned counsels for the parties argued vehemently for their respective causes. The Learned Counsel for the applicant submitted that the post under consideration was to be filled up in the earlier 100% by promotion, and thereafter a quota of 20% was introduced for the Limited Departmental Competitive Examination (LDCE) under the restructuring programme to be conducted by Zonal Railway as proposed to the Railway Recruitment Board earlier as it would be evident from the communication dated 06.10.2006 of the Railway Board [A-5]. Earlier the ratio of the questions had been fixed for descriptive and objective is 75 : 25, but now it is 50:50. The Learned

Counsel for the applicant further submitted that it is selection post and to be filled up by LDCE with one mark is to be deducted for every 3 wrong answers. This was objected to by the Zonal Railway, Jodhpur vide their communication dated 12.08.2008 [A-9]. The Zonal Railway, Jodhpur has sought clear instructions that whether the ratio of descriptive and objective questions should be 50:50 per cent or 75:25 per cent and whether there will be a negative marking for the objective type of question. The Railway Board clarified amendment to

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clause (1) Sub para (c) of Para 219 of IREM Vol.I, 1989 specifying that objective type questions should set for about 50%. The Learned Counsel for the applicant further submitted that the Zonal Railway in response to a RTI query had provided that negative marking had not been resorted to anywhere else and that the ratio of descriptive to objective questions stood 75:25. The Learned counsel for the applicant has further referred to the communication of the Railway Board dated 07.08.2003 [A-15] and has submitted that the South Central Railway have followed the correct procedure. The applicant further alleges malafide on part of the respondents by adopting a method which is wrong and by deducting marks for the incorrect answers within the assumption that neither the candidates who had failed to qualify nor the successful candidates would question the same. The Learned Counsel for the applicant contends that the examinations should be guided for all the Zonal Railways by a set of uniform practices. The Learned Counsel for the respondents submitted that the applicant have acquiesced to the process by participating in the examination now cannot question it at a subsequent stage having failed to qualify. They also referred to the amendment to para 219 of the IREM stating that this examination is as good as a direct recruitment. Here marks are also being awarded for professional ability and that there is no question of the seniority marks being awarded. The circulars of 2005 and 2003 are no longer applicable to this case. A decision was communicated to hand over to the concerned Zonal Railway/Production units the process of Recruitment to the post of OS-



II in the grade of Rs.5500-9000 and Personal Inspector in the grade of Rs.6500-10500 [A-5].

Facts in issue:

7. After having gone through the documents produced and having heard the arguments of the learned counsel for all the parties, the following facts in issue arise for consideration:

- (i) **whether the examination for LDCE being conducted with ratio of 75 : 25 for descriptive and objective and negative marked is against the directions of the Railway Board and violative of Articles 14 and 16 of the Constitution of India?**
- (ii) **What relief, if any, can be granted to the applicant?**

Whether the examination for LDCE being conducted with ratio of 75 : 25 for descriptive and objective and negative marked is against the directions of the Railway Board and violative of Articles 14 and 16 of the Constitution of India?

8. The admitted position is that prior to the introduction of the LDCE quota the examination vis-a-vis conducted by the Railway Recruitment Board as per the Railway Rules the RRCB circular No.4/99 dated 07.06.1999 provided for negative marking for each wrong answer:

"314.4 Negative marking shall be mandatory for all objective type question papers in all RRB examinations.- 1/3 marks should be deducted for each wrong answer where there are 4 options in the answer (i.e. one mark to be deducted for every 3 wrong answers. In case the question paper provides more than 4 options for each answer, 1/4 marks should be deducted for every wrong answer. The Minimum pass marks for qualifying shall be 30% for general category and 20% for SC/ST/OBC candidates."

9. In the year 2003, the restructuring of the post of Office Superintendent (OS) Gr.II in the pay scale of Rs. 5500-9000, Personnel Inspector (PI) in the pay scale of Rs.6500-10500 and Depot

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Material Superintendent (DMS) in the pay scale of Rs.6500-10500, has been introduced to be filled through Railway Recruitment Boards. It was further provided vide the RBE No.102/2005 Circular No.E(NG) I - 2005/PM1/20 dated 17.06.05 [A-4] that the Ministry of Railways in order to motivate the serving graduates amongst ministerial staff at various levels in the Railways, decided to do away with direct recruitment as introduced in the categories of OS-II in the pay scale of Rs.5500-9000 and Personnel Inspectors (PI) in the pay scale of Rs.6500-10500 and in lieu introduced a Limited Departmental Competitive Examination (LDCE) quota to the extent of 20% of posts in these categories. However, direct recruitment of Graduates at the level of Sr. Clerk in grade of Rs.4500-7000 in Ministerial Cadre would continue. It is relevant to quote the Para 3 of the RBE No.102/2005, Government of India (Bharat Sarkar), Ministry of Railways/Rail Mantralaya (Railway Board) No.E(NG) I-2005/PM1/20 dated 17.06.2005 is as under:-

"3.The LDCE as introduced above in the categories of OS-II and PI will be governed by the following conditions:-

I. Eligibility Criteria.

(i) Office Supdt. Gr.II: - Serving ministerial staff of all departments (except Accounts and RRF) possessing the qualification of graduation and fulfilling the following conditions will be eligible to volunteer to appear in the LDCE:-

Seven years' regular service as Clerk in the pay scale of Rs.3050-45900 and Sr. Cloerk in the pay scale of Rs.4500-7000 put together

Or

Three years regular service as Sr. Clerk in the pay scale of Rs.4500-7000.

Or

Three years' regular service as Sr. Clerk in the pay scale of Rs.4500-7000 and Head Clerk in the pay scale of Rs.5000-8000 put together.

(ii) Personnel Inspectors (PI) the pay scale of Rs.6500-10500: Serving Graduate Personnel Inspectors with a minimum of three3 regular service in grades Rs.5000-8000 and Rs.5500-9000 put together will be eligible to appear in the LDCE.



II. The procedure for holding LDCE

(i) The examination should be held combined for all departments for a Zonal Railway/PU by Railway Recruitment Boards catering to Zonal Rlys./PUs as nominated for conducting GDCE vide this Ministry's letter No.E (RRB) 2001/25/31 dated 08.08.2003. For this purpose, the Zonal Railway/PU should club vacancies of all departments/units against this quota and forward applications of eligible employees to RRB concerned as per procedure already being followed by them for GDCE.

(ii) The selection shall consist of a written examination and assessment of service record. While 85% weightage will be given to the performance in the written examination, 15% weightage will be given to service records.

(iii) There will be one question paper each for OS-II examination and PI examination. It should be of a standard as for direct recruitment to equivalent level of posts. The syllabus for examination for these posts is also enclosed as Annexure-I (for OS II) an Annexure-II (for PI).

(iv) The selection shall be based entirely on merit with reference to marks obtained by the candidates in the written examination and service records. Subject to usual relaxation for SC/ST staff those securing less than 60% in the aggregate will not be considered eligible for inclusion in the panel. Further, the service records of only those candidates who secure a minimum of 60% marks in the written examination shall be assessed.

(v) Based on (iv) above the RRB will furnish the panel of successful candidates in order of merit, equal to the number of total vacancies intimated by the Zonal Railway/PU concerned. While it will be preferable to post the successful candidates in their respective Departments/ Units there is no bar to their being posted elsewhere if the number of successful candidates does not match the number of already assessed vacancies in the respective Deptt./Unit."

10. The syllabus for the post of Office Superintendent Gr.II has also been provided with a note that:

"i) Office Supdt.Gr.II: Serving ministerial staff of all departments (except Accounts & RRF) possessing the qualification of graduation and fulfilling the following conditions will be eligible to volunteer to appear in the LDCE:

Seven years' regular service as Clerk in the pay scale of Rs.3050-4590 and Sr. Clerk in the pay scale of Rs.4500-7000 put together.

Or

Three years' regular service as Sr. Clerk in the pay scale of Rs.4500-7000.

Or

Three years' regular service as Sr. Clerk in the pay scale of Rs.4500-7000 and Head Clerk in the pay scale of Rs.5000-8000 put together.

ii) Personnel Inspectors (PI) in the pay scale of Rs.6500-10500: Serving Graduate Personnel Inspector with a minimum of three years

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regular service in grades Rs.5000-8000 and Rs.5500-9000 put together will be eligible to appear in the LDCE."

11. In a clarification dated 06.07.2005, the Railway proposed to provide all the Chairperson of the RRB that the question referred to the answer query raised as descriptive and objective type in a ratio of 75: 25 percent. The Railway Recruitment Board Bhopal raised a series of queries including that what would be structure of the question position of subjective or objective type questions. The applicant had also filed the Circular dated 07.08.2003, procedure for holding selections for promotion to posts classified as 'Selection', which provides as under :

"1.1 In cases where written test is held as part of the selection for promotion to the highest grade selection post in a category, the same includes objective type question for about 50% (in the range of 45% to 55%) of the total marks for the written test. The objective type questions limited to about 25% (in the range of 20% to 30%) of the total marks for the written examination, if any, held as part of the selection for promotion to selection posts in the lower grades, have also been introduced vide ACS No.130 issued under this Ministry's letter of even number dated 08.03.2002 with the stipulation that in order to offset the impact of random answering, there will be negative marking for wrong answer to objective type question.

2. The staff side in the fora of Departmental Council under the JCM Scheme and the PNM have demanded that:

(i) in order to reduce subjectivity to the maximum extent possible in the departmental selections, viva voce should be eliminated on the analogy of viva voce having been eliminated in the recruitments from open market through Railway Recruitment Boards; and

(ii) the concept of negative marking should be done away with.

3. Pursuant to deliberations with the staff side, Ministry of Railways have considered the matter carefully and have decided as under:-

(i) There will be no viva voce in the departmental selections except in the case of selection, if any, for promotion to the posts in the categories of Law Assistants, Physiotherapists, Telephone Operators and Teachers. For these categories, viva voce is in vogue in the recruitment through Railway Recruitment Boards (RRBs);

(ii) While the objective type questions in the written test held as part of selection for promotion to all selection posts will be retained, the concept of negative marking for wrong answers to

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the objective type question as introduced vide ACS No.130 ibid stands withdrawn.

3.1 As a corollary to elimination of viva voce in the departmental selections, the following decision have also been taken:

(i) Written test will invariably form part of all selections held for promotion to posts classified as 'selection' including the posts for which presently only viva voce forms part of the selection.

(ii) 15 marks hitherto allotted to viva voce in the selection, which consisted of both written test and viva voce test, will now be added to written test. Accordingly, the total marks allotted to written test for assessing professional ability of the candidates shall be 50 (both in cases where presently written and viva voce or only viva voce form part of the selection) except in the case of selection to posts in the categories of Teachers, Law Assistants, Physiotherapists and Telephone Operators for which the existing distribution of marks, namely, 35 for written test and 15 for viva voce will continue to be in force.

4. It has also been decided that the procedure as revised above will be applicable to selections notified on or after the date of issue of this letter.

4.1 All the remaining procedure prescribed for holding selection including constitution of Selection Boards will remain unaltered. "

12. From the above para, it appears that there was a demand from the staff side in the department to go away with the concept of the negative marks, however, the circular nowhere says that this demand has been conceded. The further amendment of IREM provides that :-

"iii) For the existing Note 9iii) below sub-para 90 as modified vide ACS No.66 issued under the Ministry's letter No.E(NG)I-98/PM1/11 dated 16.11.1998, substitute the following:-

"Candidates must obtain a minimum of 60% marks in professional ability and 60% marks of the aggregate for being placed on the panel. In a few cases where both written and oral tests are held for adjudging the professional ability, the written test should not be of less than 35 marks and the candidates must secure 60% marks in written test for the purpose of being called in viva-voce test. Provided that 60% of the total of the marks prescribed for written examination and for seniority will also be the basis for calling candidates for viva-voce test instead of 60% of the marks for the written examination only: marks for seniority being awarded on notional basis. However, it should be specifically made clear to them that they are being called for interview based on the marks for seniority awarded on notional basis and that empanelment will be subject to their securing 60% marks in the professional ability (written test and viva voce test) and 60% in the aggregate."

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13. From the above, it very clearly emerges that negative marking had been a part of the examination system being conducted by the RRB. Initially when the LDCE were being introduced the examinations were conducted by the RRB under the existing system that subsequently would include the system of negative marking. Subsequently, this responsibility of conducting the LDCE examination was entrusted to the Zonal Railways/ Production Unit using the same system as the RRB had used. The papers adduced, provide no evidence of the system of negative marking having been done away with i.e. one mark deducted from every three wrong answers; on the other hand there is clarity that the descriptive and the objective be the ratio of 75:25. The applicants have sought to challenge the examination system without having been able to produce any evidence on the issue of negative marking and ratio of objective to the subjective type of questions.

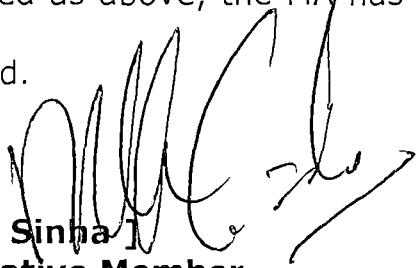
14. Moreover the last much pretend to the arguments of the learned counsel for the respondents that advertisement was issued vide the notification dated 19.08.2008 in which the issue regarding negative marking and descriptive and objective question position were clearly spell out. That was the proper stage to have challenged the examination system. Having participated in the examination acquired the force of acquiescence by conduct and the applicant is precluded from challenging it after having failed in the same. If at all a challenge was to have mounted it should have been before the examinations were conducted.



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What relief, if any, can be granted to the applicant?

15. In view of the discussions above, we finds that there is no merit in the OA and same is disallowed without costs. In view of the final order passed as above, the MA has become infructuous and the same is dismissed.



[BK Sinha]
Administrative Member



29/12/12
[G. Shanthappa]
Judicial Member