

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No.177/2010

Jodhpur this the 7th January, 2013

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Mr. B.K. Sinha, Member (A)**

1. Vinay Kumar Jha S/o Shri Mahakant Jha
R/o Quarter No. 1021, Railway Colony
Bikaner
2. Jitendra Vyas S/o Shri Prem Shankar Vyas
R/o Dhobi Dhura, Soorsagar, Bikaner
3. Jitendra Kumar Vashist S/o Mahendra Datt Sharma
R/o behind KG Tiles Factory, Chopra Katla
Rani Bazar, Bikaner

.....Applicant

(Through Advocate Mr J.K. Mishra)

Versus

1. Union of India through General Manager
North-Western Railway, Jaipur Zone, Jaipur
2. The Divisional Railway Manager, NWR
Bikaner Division, Bikaner
3. The Divisional Personnel Officer, NWR
Bikaner Division, Bikaner
4. Shri Umesh Kumar, Senior Booking Clerk,
(U/T Commercial Apprentice),
Zonal Training Centre, Udaipur, NWR
5. Shri Rajat Kumar Jain, Senior Booking Clerk
(U/T Commercial Apprentice),
Zonal Training Centre, Udaipur, NWR
6. Ashwani Kumar, ECRC,
(U/T Commercial Apprentice),
Zonal Training Centre, Udaipur, NWR

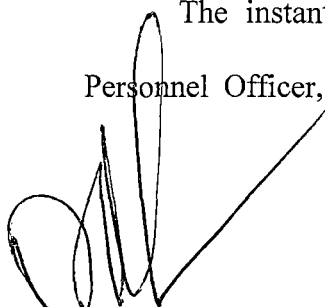
.....Respondents

(Through Advocate Mr. Vinay Jain R-1 to R-3)
(None for Respondent No. 4 to 6)

ORDER
(Oral)

Per: Hon'ble Mr. B K Sinha, Administrative Member

The instant OA is directed against order dated 8.02.2010 of the Divisional
Personnel Officer, NWR, Bikaner [A/1] declaring a provisional panel of commercial



Apprentices in grade Rs 5500-9000/- (RP)/9300-34800 + GP 4200/- against 10% NDCE quota in commercial department.

2. The applicants have, vide this OA sought the following relief (s) :

- (i) *That the applicants may be permitted to peruse this joint application on behalf of 3 applicants under rule 4 (5) of CAT Procedure Rule 1987.*
- (ii) *That impugned order dated 8.2.2010, passed by 3rd Respondent (Annexure A/1), and all subsequent proceedings thereof including any adverse order on their representation, may be declared illegal and the same may be quashed. The official respondents may be directed prepare fresh selection panel for the posts of Commercial Apprentice on the basis of records of service as on 31.3.2008 (i.e. without taking any subsequent records/events – ACR, penalty etc) as per rules in force and to allow all consequential benefits.*
- (iii) *That the official respondents may be directed to produce the selection proceeding for the post in question before this Hon'ble Tribunal at the time of hearing of this case so as to facilitate the proper justice.*
- (iv) *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.*
- (v) *That the costs of this application may be awarded.*

Case of the applicants

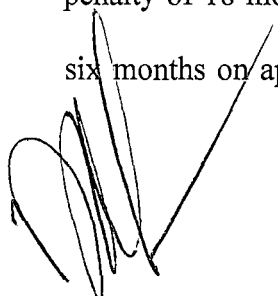
3 The instant OA has been jointly filed and pursued as they arise from a common cause of action. It is, hence, being decided by a single order. The applicant no. 1 was initially appointed to the post of Enquiry-cum-Reservation Clerk (ECRC) on 17.06.2004 in Bikaner Division. The applicant no. 2 was initially appointed to the post of Assistant Station Master on 26.04.1995 and was allowed a change of category from ASM to ECRC after having undergone the requisite training; he has been working on this post ever since. The applicant no. 3 was similarly appointed as Ticket Examiner (TE) on 27.9.2006 and was subsequently promoted to the post of STE which he continues to hold. The third respondent that being the Divisional Personnel Officer, NWR invited applications on 6.8.2008 for preparing a selection panel of 4 candidates for promotion to the post of Commercial Apprentices against 10% quota to be filled up on the basis of a Limited Departmental Competitive Examination (LDCE) by candidates below 40 years of age [A/2]. The test was scheduled to be held on 3.10.2008 [A/3] at 10 hours. The names of the applicants find mentioned at Sl. 9, 7 & 10 of this communication. The written test was subsequently postponed from 25.10.2008 to 7.11.2008. A total of 17 candidates including the applicants participated in this written test and qualified vide the result dated 12.12.2008, the applicants finding place at serials 7,5 and 10 respectively. On the same

date i.e. 7.12.2008 the applicant no. 1 was imposed a minor penalty of censure vide NIP dated 12.11.2008. This was followed up by another minor penalty withholding of increment for 3 years, subsequently reduced to 18 months in appeal w.e.f. 1.7.2009 vide the letter dated 12.12.2008 and 17.3.2009 [A/6 & A/8]. Applicant no. 2 was similarly imposed a minor penalty of withholding increments for 3 years vide the letter dated 17.3.2009 reduced to 1 year on appeal and in revision to 6 months [A/8 & A/9]. As per the rules in force 3 ACRs up to 31.3.2008 were to be taken into consideration. However, when the final selection panel was declared on 8.2.2010 the applicants did not find place therein. The applicants submitted a representation to the respondent no. 2 requesting that the panel prepared suffered with certain infirmities/incongruities which needed to be enquired into. The applicants further requested for staying the operation of the panel.

4. The applicants submit that they fulfil all condition of eligibility for post of Commercial Apprentices and have qualified the written test with 80% marks. Had the respondents followed the correct procedure and taken the service records as on 31.3.2008 they would have placed in the order of merit. As the notification had been made on 6.8.2008 the ACRs for a period of three years ending 31.3.2008 would have been relevant for promotion. The fact that subsequent ACRs were taken into consideration vitiates the entire proceedings ex-facie. The applicants have further alleged discrimination as no marks for minor penalty were ever deducted from respondent no. 4. The applicants also allege hostile discrimination in the sense that a criminal case filed against the respondent no.5 was suppressed deliberately while no marks were deducted from the score of the respondent no. 6 Ashwani Kumar.

Case of the respondents

5. The respondents vigorously opposed the OA through their written submissions and by means of oral arguments. The respondents admit that the applicants had been punished variously within the last three years. The applicant no. 2 was awarded minor penalty of 18 months vide NIP No. Vig/Comm.54 of 2007 dated 19.02.2008 reduced to six months on appeal and three years again reduced to six months vide the order dated



20.11.2009. Likewise, applicant no. 1 was censured vide the NIP dated 12.11.2008 and was imposed a penalty of 3 years reduced to 6 months vide order dated 17.3.2009. All these penalties would be relevant for the period 1.4.2006 to 31.3.2009. The respondents have submitted that as per the terms of chapter VII para 2 of ST/SC brochure 1976 on Railways the financial year would be construed as recruitment/selection year.[R/1]. Thus, the selection board has rightly considered the ACRs. Coming to the issue of respondent no. 6, the respondents submit that one mark has been deducted. He had otherwise secured 22 marks which were reduced to 21 marks. The respondents further submit that the private respondent no. 5 Rajat Kumar was not under suspension on 7.11.2008. The selection board had taken the precaution of taking vigilance clearance in respect of the persons selected. The learned counsel for the respondents asserted that the selection procedures had been correctly followed and there were no grounds for the Tribunal to interfere with the selection proceedings.

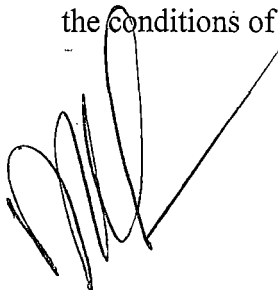
Facts-in-issue

6. We have carefully considered the pleadings of the rival parties, the documents submitted by them and the arguments put forth by their respective counsels and on the basis thereof we find that the following issues are germane to the case:-

- (i) *Whether the consideration of the ACRs would be from a cut off date before the notification or it would extend beyond the examination?*
- (ii) *Whether the punishments awarded after the examination had been conducted would reckon for selection?*
- (iii) *Whether the marks secured by the applicants have been correctly disclosed?*
- (iv) *What relief, if any, could be provided to the applicant?*

Whether the consideration of the ACRs would be from a cut off date before the notification or it would extend beyond the examination?

7. In respect to this issue it is first necessary to look at the required qualification for the post of Commercial Apprentices as provided in para 130 of IREM Vol-I prescribing the conditions of eligibility for the post:-



130. "(1) 25% of the posts in the categories of Commercial Inspectors, Claim Inspectors, Rates Inspectors, Chief Booking/Parcel/Goods Clerks in scale of Rs 16600-2660 will be filled by recruitment as Commercial Apprentices as under:-

(i) 15% plus shortfall, if any, against LDCE quota as at (ii) below, by direct recruitment through RRB; and (Authority Board's letter No. E(NG)I-99/PM1/29 dated 20.04.2000)

(ii) 10% by Limited Departmental Competitive Examination from amongst serving graduates in Commercial Department (other than Ministerial) upto 40 years of age

(2) Qualification etc. for direct recruitment are as under:

(i) Educational: A University Degree or its equivalent, Diploma in Transport and Management from the Institute of Rail Transport will be an additional desirable qualification.

(ii) Age: Between 20-28 years.

(iii) Training & Stipend: Commercial Apprentices will be on training for a period of two years on a stipend of Rs 1400 (first year) and Rs 1440 (second year)

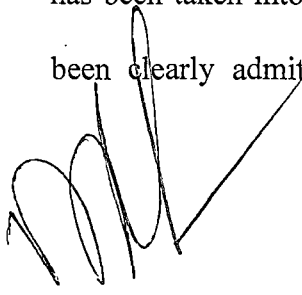
(3) Channel of Promotion/Higher grades : xxx."

8. The notification in question was admittedly issued on 6.8.2008. The date of examination has been fixed on 25.10.2008. It is, thus, clear that all the conditionalities like age, qualification etc. would take effect from the date of notification. This is the current practice which is uniformly followed in all organizations in the country. It is further clarified that the ACRs which become available during the year immediately preceding the vacancy/panel years have to be taken into account. Thus, we find substance in the contention of the applicants that the cut off period for the selection would be 6.8.2008 while the ACRs to be reckoned for selection would be for the period ending 31.3.2008. This becomes necessary lest the recording of the ACRs become motivated keeping the impending selection in mind. In this regard, GI, Department of Per & Trg. OM No. 22011/9/98-Estt. (D) provides as hereunder:

"2. In regard to operation of the Model Calendar for DPCs, a doubt has been raised by certain quarters as to the question of the relevant year up to which ACRs are required to be considered by the DPCs. In this connection, it is once again clarified that only such ACRs should be considered which became available during the year immediately preceding the vacancy/panel years even if DPCs are held later than the schedule prescribed in the Model Calendar. In other words, for the vacancy/panel year 2000-2001, ACRs up to the year 1998-99 are required to be considered irrespective of the date of convening DPC.

3. Ministries/Departments are requested to give wide circulation to these clarifications for general guidance in the matter and also to ensure strict adherence to the time-schedule prescribed as per the Model Calendar for DPCs."

9. The proceedings of the board of selection clearly indicate that the cut off date that has been taken into account relates to the period from 1.4.2006 to 31.3.2009. This has been clearly admitted in the reply to the OA [para 7: page 45]. This is further



corroborated by the findings of the proceedings at A/14. This runs contrary to the afore cited provisions. The general practice is that either the cut off date is prescribed in absence of which the date of advertisement alternatively the last date for submission of applications act as the cut off date, In the instant case we find that no other date has been prescribed and yet a date beyond the last date has been adopted as the cut off date which clearly runs contrary to the practice. If at all the respondent authorities had so willed this should have been spelt out in the notice inviting the applications.

Whether the punishments awarded after the examination had been conducted would reckon for selection?

10. This issue is to be decided in light of the previous issue. Where a cut off date has been prescribed all information necessary for making the recruitment would be with reference to this cut off date. We have noted that where no cut off date has been prescribed the date of notification or the last date of submission of the application would act as the cut off date. Where any punishment has been awarded prior to the cut off date the selection board would be fully within its competence to consider the same while deciding the suitability of the candidates. Where no punishment has been imposed but is under contemplation due to proceedings the promotion cannot be held up on this ground. This position has been upheld in a series of decisions by different Hon'ble Courts. In the case of *Rama Shankar Tiwary vs Bhojpur Rohtas Gramin Bank & Ors* decided on 4.10.2012 in Civil Writ Jurisdiction Case No.10933 of 1997 the Hon'ble Patna High Court has held :

"19. The respondents-authorities of the Bank had admitted on affidavit that the charge sheet was issued against the petitioner on 27.01.1986, whereafter proceeding was initiated and some punishment was imposed on 22.05.1986. All these dates are much after the cut off date, i.e. 31.12.1985, whereas the interview was held on 04/05.02.1986 which was also before the petitioner was awarded any punishment. Hence on the cut off date petitioner was fully entitled for consideration of promotion.

20. In the said circumstances, the authorities concerned while rejecting the petitioner's candidature from consideration of promotion committed illegality by ignoring cut off date admittedly fixed by the higher authorities for the said purpose, although they should have only seen as to whether before the said cut off date any charge sheet was issued, whether proceeding was initiated or whether any punishment was awarded 13 Patna High Court CWJC No.10933 of 1997 dt.04-10-2012 13 / 13 against the petitioner and for that purpose there was no occasion for considering what had happened after the said cut off date.



21. In the aforesaid facts and circumstances, this writ petition is disposed of and the respondents-authorities are directed to grant promotion to the petitioner to the post of Area Manager or Senior Manager with effect from 15.02.1986 from which date other persons including two employees juniors to him, had been granted promotion and to pay all the consequential monetary and incremental benefits to the petitioners treating him to have been promoted with effect from that date. The said payment must be made to the petitioner within six months from the date of receipt/production of a copy of this order. (S.N. Hussain, J)"

11. In case of *B.C. Chaturvedi vs UOI & Ors* in Civil Appeal No. 9830 of 1995, the Supreme Court held :

"8. It is true that pending disciplinary proceeding, the appellant was promoted as Asstt. Commissioner of Income-tax. Two courses in this behalf are open to competent authority, viz., sealed cover procedure which is usually followed, or promotion, subject to the result of pending disciplinary action. Obviously, the appropriate authority adopted the latter course and gave the benefit of promotion to the appellant. Such an action would not stand as an impediment to take pending disciplinary action to its logical conclusion. The advantage of promotion gained by the delinquent officer would be no impediment to take appropriate decision and to pass an order consistent with the finding of proved misconduct."

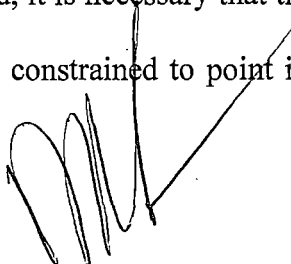
♦ Whether the marks secured by the applicants have been correctly disclosed?

12. There appears to be some lack of clarity regarding the marks secured by the applicant. In a communication dated 23.2.2010 in response to a query under RTI the Sr. Divisional Personnel Manager, NWR has disclosed: [A/11]

- "1. If candidate/ applicant want to peruse the proceeding file, he may be called on any working day in the office of Divil. Personnel Officer within 15 days from issue of this letter.
2. Marks of other candidates can not be given due to interest of third party. However marks obtained by the candidate in written examination for the post of Coml. Apprentice are 58 out of 80.
3. Separate marks for objectives and descriptive part are not available on record/file."

In another communication in respect to applicant no. 2, the information disclosed includes on the other hand the respondents have submitted in their counter reply that **"It has wrongly been stated by the applicant that he was awarded 40+18 marks. In fact, the applicant has been awarded 37+21 marks."**

13. We find from the order sheet that the original records were to be produced before us. However, no records have been produced as a consequence of which this Tribunal is not in a position to conclude that whether the marks obtained by the applicants were as have been claimed by them or by the respondents in face of the contradictory claims and counter claims. As marks happen to be the basis on which the candidature has to be decided, it is necessary that the correct marks obtained should be ascertained. Here again we are constrained to point it out that this lack of clarity and the reluctance to divulge



things even to the court despite its directions must weigh heavily against the respondents. They have to suffer the consequences of the failure on their part to disclose the true state of affairs which leads to doubts.

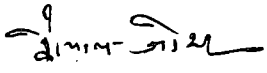
What relief, if any, could be provided to the applicant?

14. Having considered the afore issues in some detail the discussions leave us in no doubt that there have been patent errors in fixation of the cut off date and in assessing the candidates as per the requirements of recruitment rules. There is also a lack of clarity regarding the marks obtained by the candidates. We further find that respondent no. 5 viz. Rajat Kumar is having a criminal case against him which the respondents have sought to gloss over by holding that it is personal matter. In absence of rebuttal the contentions of the applicants has to be accepted that the respondent no. 5 had also been under detention relating to the charges against him. It appears that there has been an attempt to soft pedal this issue.

15. The above discussions lead us to conclude that the panel prepared declared vide A/1 is bad under law and cannot be sustained. The OA is allowed with the directives that:

- (i) *The panel under A/1 is quashed as being bad under law;*
- (ii) *A fresh DPC should be constituted treating the date of notification i.e. 6.8.2008 as the cut off date. The punishments awarded after this date shall not be reckoned for selection;*
- (iii) *The DPC should also assess from the original records the marks obtained by the candidates;*
- (iv) *The above exercise should be completed within a period of three months;*
- (v) *The parties are left free to bear their own costs.*


(B K SINHA)
ADMINISTRATIVE MEMBER


(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER