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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

**Original Application No.461/2012
and
Original Application No.17/2013**

Jodhpur, this the 01st May, 2013

CORAM

**HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)**

(1) OA No.461/2012

Swarropdan S/o Durgadan Charan, age 54 years, R/o Plot No.204, Gandhipura, Chain Singh Marg, BJS Jodhpur, Rajasthan, presently working as Cabinmen at NWR Raika Bag, Jodhpur.

(2) OA No.17/2013

Chandra Singh S/o Shri Vijay Singh, aged 50 years, R/o ahead of Chopasani School, Near Prem Vihar, Tilwariya Bera, Jodhpur.

.....**Applicants**

Mr. Pravej Moyal, counsel for applicants.

Vs.

1. The Union of India through the General Manager, North Western Railway, Headquarters, Jaipur.
2. The Divisional Railway Manager, North Western Railways, Jodhpur.
3. The Senior Divisional Personnel Officer, North Western Railways, Jodhpur.

...**Respondents**

Dr. Vinay Chhipa, counsel for respondents.

ORDER (ORAL)

Per Justice K.C. Joshi, Member (J)

This order will govern the disposal of two OAs bearing No.461/2012 and 17/2013. We are proposing to dispose of these OAs by a single order for the reason that the relief(s) sought for in

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both the OAs are similar and the facts of these cases are also similar.

2. The short controversy involved in these OAs is that whether the question paper set for the examination of Goods Train Guard for 60% promotion quota is beyond the syllabus prescribed by the respondent department in the advertisement dated 25.04.2012, Annexure-A/1 and syllabus at Annexure-A/2 and thereby whether the applicants are entitled to get the bonus marks for the said questions or not, and whether the respondents can be directed to revise the merit list accordingly and further if the applicants stand in the merit list after giving bonus marks then they be given appointment on the post of Goods Train Guard.

3. The pleadings as averred in the applications are that the respondent department advertised a vacancy of Goods Train Guard vide Annexure-A/1 and further the syllabus was fixed vide Annexure-A/2, but the respondent department set the question paper while including question No.2 relating to the English translation of Hindi sentences and question No.6 relating to mathematics, though these were not prescribed subject in Annexure-A/2, and therefore, both the applicants challenged the legality of the marks obtained by them and further prayed for bonus marks in the circumstances of the case. It has been further averred at Annexure-A/4 of the OAs that the question No.3 was wrongly assessed by the respondent department, whereas as per their information this answer is the correct answer.



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4. In the counter, the respondent department raised a preliminary objection regarding non-adding of the successful candidates as a party, and further averred that the question No.2 and question No.6 were of general nature and they cannot be said to be out of course or beyond the syllabus because these question were included so as to test the basic knowledge of the applicants and they cannot be termed as an advance subject questions in English or Mathematics. It was further contended that for the post of Goods Train Guard, the educational qualification is not the issue in these OAs, but as per the averment made in the reply, the person appearing in the examination of the Goods Train Guard, must have the basic knowledge. Further the respondents while relying upon Annexure-R/1 averred that the maximum permissible speed of the Goods Train from Jodhpur to Merta Section is 100 Kmph, and from the Merta to Phulera also 100 Kmph, and that as per Annexure-R/1, answer of the question No.3 at Annexure-A/4 has been rightly assessed by the examiners.

5. Heard both the counsels. Counsel for the applicant contended that when the question papers are set out of and beyond syllabus then it would be appropriate to direct the respondents to get the answer books of the candidates reassessed to the extent of taking into consideration the marks secured by the candidates in the two questions of English and Mathematics and then increase them proportionately with reference to the maximum marks. Counsel for the applicant in support of his arguments, relied upon the judgment of the Hon'ble Rajasthan High Court passed in S.B. Civil Writ Petition No.3898/1991, **Prabhu Dayal Sesma vs.**

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Rajasthan Public Service Commission, Ajmer, reported in Western Law Cases (Raj.), 1991 (2) page No.648.

6. Counsel for the respondents contended that once the applicants have taken the part in the examination process, they cannot now challenge the question papers on the ground of two questions being out of course. In support of his arguments, the learned counsel for the respondents relied upon the judgment of the Hon'ble Apex Court in **Manish Kumar Shahi vs. State of Bihar & Ors.** and **Om Prakash Shukla vs. Akhilesh Kumar Shukla & Ors.** reported in (2010) 12 SCC 576 and AIR 1986 SCC 1043 respectively. He further emphasized that the questions regarding English and Maths are very basic and in accordance with the knowledge required for the Goods Train Guards.

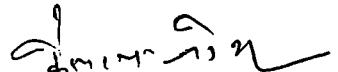
7. We have considered the rival contentions of both the parties and perused the relevant record annexed with the applications as well as the counter. Counsel for the applicants vehemently pressed that the scope of question No.2 & 6 of the examination are from English and Mathematics subject which are out of syllabus as laid down in Annexure-A/2 by the respondent department itself. Counsel for the respondents vehemently contended that these questions are included in the question paper so as to test the basic knowledge of the applicants, and the similar situated candidates have also answered both the questions. He further contended that the applicants have not challenged those questions, which they have answered in right way at Annexure-A/4 and only challenged those questions whose answers were given incorrectly by them at

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Annexure-A/4. Thus, the applicants have no right to challenge the questions on the basis of question paper being set out of course.

8. In our considered view, the questions No.2 & 6 of the said examination cannot be said to be out of course because these are the questions which have been included in the examination paper so as to test the basic knowledge of the applicants, and therefore they cannot be termed as any questions relating to any specialized subject as held in the judgment of the Hon'ble Rajasthan High Court in Prabhu Dayal Sesma (supra) because in that case 17 questions were found to be out of course because they belonged only to Arithmetic, whereas in the present case, the questions No.2 & 6 of the examination are elementary and very basic. Therefore, in our considered view, the Annexure-A/3 and Annexure-A/4 cannot be said to be out of course or wrongly assessed by the respondent department. Accordingly, the OAs lack in merit and the same are dismissed with no order as to costs.


[Meenakshi Hooja]
Administrative Member


[Justice K.C. Joshi]
Judicial Member