

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, CALCUTTA

O.A. No. 211 of 1997

Date of order 27-7-2001

1. Uday Kumar Mondal
2. Arun Kumar Naskar

.. Applicants

-versus-

1. Union of India, through the Secretary, Ministry of Railway, Rail Bhawan, New Delhi.
2. The General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
3. The Chief Personnel Manager, South Eastern Railway, Garden Reach, Calcutta-43.
4. The Chief Commercial Manager, South Eastern Railway, 14, Strand Road, Calcutta-1.
5. The Divisional Railway Manager, South Eastern Railway, Kharagpur Division, Kharagpur.
6. The Senior Divisional Commercial Manager, South Eastern Railway, Kharagpur Division, Kharagpur.

.. Respondents

Counsel for the applicants : Mr. M.S. Banerjee  
Mr. T.K. Biswas

Counsel for the respondents : Mr. L.K. Chatterjee  
Mr. A.K. Dutta

P R E S E N T : Hon'ble Mr. D. Purkayastha, Member (J)  
Hon'ble Mr. L.R.K. Prasad, Member (A)

O R D E R

L.R.K. Prasad, Member (A) :

This application has been filed against declaration of result of written test examination for promotion to the post of Head TTE/Head TC by review after final declaration of qualified candidates according to seniority in written test examination for the said promotion. This is also against preparation of panel for the post of Head TTE/Head TC in the S.E. Railway, Kharagpur Division.

2. The applicants (two in number) have filed the instant application seeking following reliefs :

- (i) To direct the respondents to cancel and/or withdraw and/or revoke and/or quash the panel published on 21st July 1997 vide Memo No.ECA/12/97 containing the names of the candidates to be promoted to the post of Head TTE/Head TC.
- (ii) To direct the respondents to prepare a fresh selection panel as per prescribed rules by incorporating the names of the applicants, according to their seniority.
- (iii) To direct the respondents to consider the case of the applicants' promotion, according to their respective seniority, and for incorporation of their names in the panel published on 21st January 1997.

The applicants have prayed that they may be allowed to present the instant application jointly. This prayer is allowed.

2. The background of the case is that applicant nos.1 and 2 were initially appointed as Ticket Collector under Kharagpur Division of S.E. Railway in the year 1982 and 1984 respectively. They were subsequently promoted to the post of Senior T.T. in 1984 and 1985 respectively. Vide letter dated 22.5.1995 (Annexure-B), a notification was issued for selection for promotion to the post of Head TTE/Head TC in the scale of Rs.1400-2300(RPS). The panel was required to consist of 62 persons including 52 UR, 7 SC and 3 ST. As the applicants were eligible to be considered for the post, they were advised to get themselves ready to appear in the written test in a short notice.

A list of eligible candidates is attached with the letter dated 22.5.1995. While the applicant no.1 is at serial no.50, the applicant no.2 is at serial no. 58. On the basis of written examination, a list of qualified candidates was published vide letter dated 7.3.1996 (Annexure-C). The list consists 91 persons, including the applicants. They were asked to be in readiness to appear in a viva-voce test in a short notice. Even though <sup>some</sup> days were fixed for viva-voce test, they were postponed. It appears from the pleadings of the parties that due to representation from the Union, a review of the result of the written test was done by the competent authority, as a result of which, 11 more candidates were declared qualified in the written examination. The list of such candidates is given in a letter dated 21.6.1996 (Annexure-F). The respondents have clearly stated that out of 160 candidates (including R.Dutta) 92 candidates were declared qualified for viva-voce test. After publication of result of written examination, the General Secretary of recognised Union submitted a representation on 18.3.1996 requesting the DRM to consider the case in the interest of senior staff. Accordingly, the matter was reviewed and the competent authority granted grace marks to all candidates, including the applicants, who appeared in the written examination. There are evidences to show that uniform grace marks were granted to all, including the applicants. Nevertheless, the fact remains that the decision to grant grace marks was taken after publication of the result of written examination, which is 7.3.1996 (Annexure-C). This sort of practice is not healthy that such a decision is taken after publication of result of written examination. However, the perusal of selection file

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indicates that the grace marks were granted on a uniform basis to all, including the applicants. So, there was no discrimination in this regard. All, including 11 persons, as mentioned in letter dated 21.6.1996, were allowed to appear in the viva-voce test. On 21.1.1997 (Annexure-H), a provisional part panel for the post of Head TTE/Head TC was given approval by the competent authority. It includes names of 61 persons. As the names of the applicants did not find a place in the said provisional part panel, the applicant felt aggrieved and filed the instant O.A. In the said part panel, it was indicated that the panel is provisional, subject to final judgment of Hon'ble Supreme Court in O.A.2617/78 and CMP No.3490/84 in the case of J.C. Mallick vs. Union of India & others. During the course of hearing, the learned counsel for the respondents stated that appointments/posting orders have already been issued in respect of finally successful candidates for the post of Head TTE/Head TC and there is no vacancy at the moment.

4. From the pleadings of the parties, it is significant to note that after issuance of letter dated 7.3.1996(Annexure-C), 11 more persons were declared successful in the result of written examination for promotion to the post of Head TTE/Head TC, after necessary grace marks were awarded. It is further significant to note that all were given equal opportunity to appear in the viva-voce test. However, the applicants have alleged that names of 11 persons were later on inducted for the purpose of viva-voce test with an intention to grant them favour because they had not

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qualified in the written test, the result of which was published on 7.3.1996 (Annexure-C). The grace marks were awarded by the competent authority under pressure from the Union in order to help those persons. Even though the said allegations have been made by the applicants, but they have failed to substantiate the same. The competent authority is empowered under law to grant grace mark, if, in his opinion, the same is considered necessary. In the instant case, the matter had been taken up by the recognised Union and the competent authority decided to grant grace marks in a uniform manner to all candidates, as a result of which 11 more persons were declared successful in the written test. In this regard, the competent authority has exercised his discretion in the matter and we do not find that the same was done with any mala fide intention. Moreover, the applicants also appeared in the ~~viva~~ ~~test~~ ~~test~~ but could not finally get into the panel. Thereafter, they have raised the issue of induction of 11 more candidates for the purpose of interview vide respondent's letter dated 21.6.1996 (Annexure-F). If they were aggrieved of letter dated 21.6.1996 (Annexure-F), they should have raised their objection without any delay instead of waiting for the final empanelment. We were informed that out of 11 candidates mentioned in the letter dated 21.6.1996, only two could finally be selected, namely, Shri Ajay Dey and Shri A. Chowdhury.

5. As the selection involves as many as 62 persons, who have not been made parties in the case, it

would not be proper to quash the entire selection, as prayed for by the applicants.

6. Normally, there should be least interference with the selection process, unless it can be well established that the selection was done against statutory provisions of law or the same was done with mala fide intention. Even though such kind of allegations have been made by the applicants against the respondents, they have failed to substantiate the same. Therefore, we do not find that any illegality has been committed in the selection process. Moreover, in its wisdom, the competent authority decided to grant grace marks which was uniformly given to all candidates, as is evident from the selection file. <sup>some sort of general</sup> There is ~~an~~ allegation against the Selection Board, which interviewed the candidates, who were given equal opportunity to appear for viva-voce test. After appearing in the said test and failing to get into the final panel, the applicants cannot raise the objection that 11 more persons were declared qualified in the written test with the intention to grant them favour. Such sort of objections, after finalisation of the panel, are not sustainable. If they were aggrieved of letter dated 21.6.1996 (Annexure-f), they should have raised the issue before the competent authority before viva-voce test, which apparently has not been done by the applicants.

7. It appears that in terms of Rule 219 of IREM Vol.I 1989, a candidate is required to obtain 60% marks in the professional ability both written test and viva-voce test as well as aggregate to place his name in the panel against UR posts and 60% excluding seniority (relaxation) marks is to be obtained to place in the panel against SC and ST quota.

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It is pointed out that persons mentioned in item nos.53 to 59 had qualified by general standard obtaining 60% marks, whose names had been included in the panel, even though they were junior to the applicants. It is pointed out by the respondents that even though the applicants passed in the written test, they passed on relaxed standard basis, as they belong to reserved community.

In fact they had not secured required percentage of marks in the written test for general standard. Their names appeared in the said list according to seniority, along with other candidates, passed in general standard and relaxed standard, as there is a provision. We agree with the submission made by the respondents that after appearing in the test/examination and having failed in the same, the applicants cannot challenge the validity of such test/examination. The respondents have also given adequate reasons for postponement of the viva-voce test from one day to another, as contained in paras 9 and 15 of their reply,

8. With reference to para 4(xi) of the O.A., it is submitted by the respondents that the applicants could not get 60% marks in professional ability as well as aggregate. So, they qualified on the basis of relaxed standard, but their names could not be empanelled as SC candidates junior to them acquired 60% marks in professional ability as well as aggregate, <sup>as such</sup> their names were included in the panel in terms of Estt.Srl.No.76/89(Annexure-R-II).

9. From the records, it appears that grace marks were awarded to all candidates and they were given equal opportunity to appear before the Interview Board. In spite of grant of grace marks, the applicants could not secure required qualifying marks to be placed as general standard. Only when they came to know that their names had not been included in the final panel for selection to

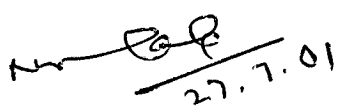
the post in question, they have filed the instant O.A. without submitting any representation before the competent authority. It is further significant to note that the applicants have not filed any rejoinder to the written statement refuting the legal and factual clarifications given by the respondents.

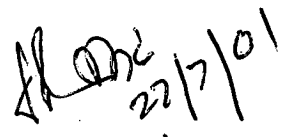
10. We have perused the selection files and other materials on record. We find that 166 persons were called for written test, out of which 160 candidates actually appeared in the written test. The result of written test, which was published on 7.3.1996 (Annexure-C), shows that 91 candidates qualified for the written test. However, on a representation from the recognised Union, the matter was reviewed by the competent authority, who decided to grant grace marks to all candidates, as a result of which, 11 more persons, as mentioned in the letter dated 21.6.1996 (Annexure-F) <sup>were declared qualified,</sup> ~~which total up to~~ 102 candidates, who were invited for viva-voce which was held on 4.7.1996, 6.7.1996 and 30.7.1996. On the basis of recommendation of the Selection Board, names of 62 candidates were recommended in the panel for promotion to the post of Head TTE/Head TC in the scale of Rs.1400-2300 (RPS) in Commercial Department of KGP Division. The said list was approved by the competent authority. It may be pointed out that there was no illegality in granting grace marks which were also given to the applicants. Therefore, there was no discrimination so far as the grant of grace marks is concerned. It appears from the record that the applicants raised objections regarding induction of 11 more persons for the purpose of interview only after they failed to get into

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the panel for promotion to the post of Head TTE/Head TC. If they were aggrieved of the letter dated 21.6.1996 (Annexure-F), which contains the names of 11 more candidates for the purpose of interview, they should have immediately taken up the matter with the concerned authority, but they did not do so. Only when they came to know that their names have not been included in the final panel, they have filed the instant O.A. It is admitted fact that the applicants participated in the entire selection process and only when they failed to get into the panel, they have filed the instant O.A. raising certain grievances which are not sustainable. We find that the whole selection process has been conducted in accordance with law and the same has ~~not~~ been done with any mala fide intention.

11. In view of facts and circumstances of the case, as stated above, we find that this O.A. is devoid of merit. The same is, accordingly, dismissed with no order as to the costs.

  
(L.R.K. Prasad)  
Member (A)

  
(D. Purkayastha)  
Member (J)