

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.601/95

Thursday, this the 27th day of February, 1997.

C O R A M

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

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1. S Ismail, Khalasi Helper,
Office of the Chief Signal Inspector,
Southern Railway, Salem.
2. P Mariappan, Khalasi Helper,
Office of the Chief Signal Inspector,
Southern Railway, Salem.

....Applicants

By Advocate Shri TC Govinda Swamy.

vs

1. Union of India through the Secretary,
Ministry of Railways,
Rail Bhavan, New Delhi.
2. The Chairman, Railway Board,
Rail Bhavan, New Delhi.
3. The Chief Personnel Officer,
Southern Railway,
Madras--3.
4. The Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
5. The Senior Divisional Signal &
Telecommunication Engineer,
Southern Railway, Palghat Division,
Palghat.
6. The Assistant Signal &
Telecommunication Engineer II,
Southern Railway, Palghat Division,
Palghat.
7. R Ramachandran, Khalasi Helper/Works,
Office of the Senior Divisional
Signal & Telecommunication Engineer/Works,
Southern Railway, Podanur.
8. C Venkateswaralu, Khalasi Helper/Works,
Office of the Senior Divisional
Signal & Telecommunication Engineer/Works,
Southern Railway, Podanur.

contd.

9. G Perumal, Khalasi Helper,
c/o Telecommunication Inspector,
Southern Railway, Podanur.

....Respondents

R.1-6 by Advocate Smt Sumati Dandapani.

The application having been heard on 24th February, 1997, the Tribunal delivered the following on 27th Feb., 1997:

O R D E R

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants are Khalasi Helpers in the Signalling side of the Signal and Telecommunication Department, Southern Railway. The post of Khalasi Helper is a common feeder category for promotion to skilled category of Telecommunication Maintainer Grade III. The Khalasi Helper category for both Signalling and Telecommunication wings form a single unit. Applicants appeared for a trade test and by A3 order dated 10.11.94, they were declared failed. Applicants contend that there were fourteen candidates who appeared for the test, that the applicants have performed well and that surprisingly all the candidates from the Signalling Wing had failed. It clearly indicates bias on the part of the examiners, according to applicants. They challenged the results of the trade test in OA 1618/94, which was disposed of by the Tribunal stating that applicants must take their grievances to an authority above the respondent Divisional Personnel Officer. Applicants submitted representation A5 and by A6 order dated 1.2.95, their representation was rejected. Applicants challenge the selection A3 and the order A6 on the ground that the post of Telecommunication Maintainer Grade III to the extent of 50 per cent of the vacancies is a non-selection post, where the criteria is seniority-cum-suitability, and that suitability is to be adjudged in terms of paragraphs 214 and 319 of the Indian Railway

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Establishment Manual (IREM), according to which the suitability is to be adjudged by the authority competent to fill the post, who in this case is the Senior Divisional Signal and Telecommunication Engineer. Applicants further contend that the trade test was not held in accordance with the instructions in A7 and that the authority competent to fill up the post must conduct the actual trade test, which is the position obtained by interpreting A7 administrative instruction in accordance with the rules contained in paras 214 and 319 of IREM. Any other interpretation, according to applicants, would mean that A7 would supersede or negate paras 214 and 319 of IREM, and would, therefore, be illegal, arbitrary and discriminatory. Applicants submit that it was only after a long struggle that Khalasi Helpers like applicants belonging to the Signalling side were considered eligible for promotion to the post of Telecommunication Maintainer and that by declaring all Khalasi Helpers from the Signalling side as failed, the respondents Railway have managed to nullify their right for consideration for promotion, which they had obtained with great difficulty. Applicants, therefore, pray that A3 and A6 be quashed and for a direction to respondents Railway to conduct a fresh suitability test till which time promotion should not be effected in terms of A3.

2. Respondents Railway have in their reply stated that the instructions A7 have been faithfully followed while conducting trade test, that the fact that applicants failed in the trade test does not mean that the trade test was not conducted properly, and that the contention of applicants that all Khalasi Helpers from the Signalling wing have been failed is not correct. Respondents Railway state that of the three, who passed the trade test, two were from the Signalling side and only one was

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from the Telecommunication Wing. Respondents also state that there is no distinction as Signalling side and Telecommunication side in the matter of promotion to skilled grades, that the seniority for both these wings is common and that they all belong to the same Department.

3. A7 instructions clearly state that the trade test should comprise both oral and practical and may also include written test wherever considered necessary. In this case, the trade test consisted only of oral and practical. According to A7, the actual trade test has to be arranged by an assistant officer who will assess the results of the trade test. The trade test must be supervised by a supervisor not below the rank of an Assistant Foreman or of equivalent status. Results of the trade test must be approved in the Divisions by the respective administrative grade officers of the Departments concerned. In the present case, the trade test was conducted by the Assistant Signal and Telecommunication Engineer and Senior Supervisors conducted the trade test, the results of which were assessed and approved by the Senior Divisional Signal and Telecommunication Engineer, who is a Junior Administrative Grade Officer. Since A3 selection is issued by the Divisional Personnel Officer based on the Senior Divisional Signal and Telecommunication Engineer's letter dated 31.10.94, the requirements of Rule 319 are satisfied. We do not see any reason to hold that the trade test conducted was contrary to Rules 214 and 319 of IREM or the administrative instructions A7.

4. The contention raised by applicants that since all the Khalasi Helpers from the Signalling side have failed and, therefore, the trade test was biased cannot be accepted. In any case, in the light of the statement of the respondents

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Railway that of the three who passed the trade test, two are from the Signalling side and only one from the Telecommunication wing, the contention is also not factually correct.

5. Learned counsel for respondents Railway cited some decisions to support the contention that applicants, who had participated in the trade test, but who had failed in the test should not, thereafter, challenge the test on the ground that it was not properly conducted. In Madan Lal and Others vs State of Jammu and Kashmir and others, AIR 1995 SC 1088, the Supreme Court stated:

"9. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to re-assess the relative merit of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better... Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee."

In Om Prakash Shukla vs Akhilesh Kumar Shukla and others, AIR 1986 SC 1043, the Supreme Court stated:

"23. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the

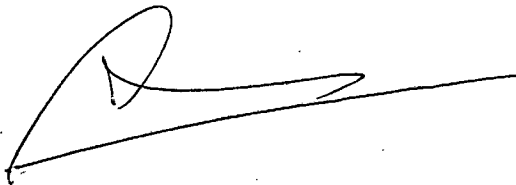
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petition only after he had perhaps realised that he would not succeed in the examination."

It is clear that the applicants knew that the trade test was arranged by the Assistant Signal and Telecommunication Engineer and was not being conducted personally by the Senior Divisional Signal and Telecommunication Engineer. But they, nevertheless, participated in the trade test without any protest. Only having come to know that they had failed in the trade test, applicants sought to challenge the trade test on the ground that it was not conducted by the persons who had jurisdiction to do so under the rules. Such a challenge cannot be allowed.

6. In the light of the discussion above, we do not consider this a fit case for the Tribunal to interfere. The application is without merit and is, therefore, dismissed. No costs.

Dated the 27th February, 1997.



AM SIVADAS
JUDICIAL MEMBER



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER