

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 187 of 2011

MONDAY, this the 01st day of April, 2013

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

N. Zulfikhar Ahmed, aged 45 years,
S/o. N. Mohammed Abdurahman,
Technician Gr.I/Train Lighting,
Office of the Senior Section Engineer/Electrical/Power,
Southern Railway/Palghat Division, Residing at :
Quarter No. 138-A, Hemambika Nagar, Railway Colony,
Kallekulangara Post, Olavakkot, Palghat District.

Applicant

(By Advocate – Mr. T.C.G. Swamy)

V e r s u s

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of Railways, Rail Bhavan, New Delhi -110 001.
2. The General Manager, Southern Railway,
Headquarters Office, Park Town PO, Chennai-3.
3. The Chief Personnel Officer, Southern Railway,
Headquarters Office, Park Town PO, Chennai-3.
4. The Sr. Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat – 678 002.
5. Shri C. Saravana Kumar, Technician Gr.II/
Power/Southern Railway/Erode-through the 4th respondent.
6. Shri P.A. Naushad, Technician Grade.II/Power Southern Railway/
Palghat – through the 4th respondent.
7. The Divisional Railway Manager, Southern Railway,
Palghat Division, Palghat – 678 002.
8. Shri T.C. Johnson, Sr. Divisional Electrical Engineer,
Southern Railway, Trivandrum Division,

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Thiruvananthapuram – 695 014.

..... Respondents

[By Advocates – Mrs. Sumathi Dandapani, Senior &
Mr. Thomas Mathew Nellimoottil (R1-4 & 7) &
Party in person (R-6)]

This application having been heard on 05.03.2013, the Tribunal on 01.04.2013 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member-

The applicant did not secure 60% marks in the written examination to get qualified for selection to the post of Junior Engineer Grade-II in Electrical/General Service against 25% rankers quota in the year 2007. Against two vacancies the employees who qualified in the selection with 60% marks were empanelled. The applicant who was in third position with 55% marks filed OA No. 275/2008 alleging wrong valuation of his answer sheets. The OA was disposed of as under:-

“9. It is well settled law that the evaluation made by expert committee should not be intervened with by courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose. But, in the facts and circumstances of the case, having noticed some discrepancies in the valuation pointed out above, we are of the view that the valuation was not properly done. However, we find that the two persons who qualified in the examination were already appointed. Though notices were served on them through the 4th respondent, they have not contested the O.A. In this view of the matter, we are of the view that this O.A. can be disposed of with a direction to the respondents to conduct checking of the question paper and valuation of answer sheets by a senior officer to ascertain whether there is any question having more than one answer possible, whether any correct answer was rejected, any answer has been left without valuing or whether there is any mistake in totalling, etc. This exercise shall be done within two months from the date of receipt of a copy of this order. If the applicant gets more marks than respondent Nos. 5 & 6, he shall be considered for promotion in accordance with his rank. The O.A. is disposed of with the above direction. No costs.”

2. In Contempt Petition No. 17 of 2010 in OA No. 275 of 2008 and MA



No. 538 of 2010 in OA No. 275 of 2008 this Tribunal held on 26.10.2010 as under:-

“As per the order given by this Tribunal in OA No. 275 of 2008 the respondents have to re-check the answer sheets of the applicant and find out whether any correct answer was rejected or any answer has been left out without valuing or whether there was any mistake in totalling etc.

2. In compliance to the order passed by this Tribunal the respondents have now filed an affidavit stating that the answer sheets of the applicant has already been re-checked and it is found that the answers given by the applicant are not correct answers to the questions contained in Annexure A-14. Hence, the rejection of the case of the applicant based on the result of the examination is correct. We have gone through the affidavit and it is stated in paragraph 7 of the affidavit that after following the various methods which the Department adopted for re-checking the answer sheets, his case was rejected. We are satisfied with the action of the respondents and are of the view that the direction given by this Tribunal has been complied with.

3. Recording the above position, we close this Contempt Petition as well as the Miscellaneous Application.”

3. Vide Annexure A21 letter dated 5.5.2010 the applicant was conveyed as under:-

“Southern Railway

No. J/P OA 275/08

Divisional Office,
Personnel Branch,
Palghat, Dt. 05.5.2010.

Shri. Zulfikhar Ahamed,
Tech. Gr.I/Train Lighting,
SSE/Ele/Power/O/PGT.

Thro': SSE/Power/Ele/PGT

Sub: Contempt Petition (Civil) No. 17/2010 in OA No. 275/08 filed by Shri Zulfikar Ahamed, Tech. Gr.I/Ele/PGT before the Hon'ble Central Administrative Tribunal, Ernakulam.

Ref: This office letter of even No. dated 10.3.2010.

Further to this office letter cited above, revaluation of answer paper and rechecking of question paper as directed by the Hon'ble



Tribunal has been examined by Senior Divisional Electrical Engineer/General/Salem who after carefully gone through the case has offered the following remarks.

- (i) There is no question having more than one answer.
- (ii) No correct answer was rejected.
- (iii) No answer has been left without valuating and there is no mistake in totalling.

Please note and acknowledge receipt.

(G. Janarthanam),
APO/II,
/Sr. DPO/PGT.

Copy to DEE/Genl/PGT for information please."

4. Aggrieved the applicant has filed this Original Application for the following reliefs:-

"(i) Call for the records leading to the issue of Annexure A1 and A21 and quash the same;

(ii) Call for the records leading to the issue of Annexure A5 and quash the same to the extent it awards only 55 marks to the applicant;

(iii) Declare that the non-feasance on the part of the respondents to re-check the question paper and re-value the answer sheets etc. as directed by this Hon'ble Tribunal in A18, is arbitrary, discriminatory and unconstitutional;

(iv) Direct the respondents to make a proper re-valuation of the answer sheets, duly taking into consideration even questions that are out of syllabus, having more than one answer, lacking in clarity etc. and direct further to include the applicant at the appropriate place in A1 and A5 and to grant the applicant all the consequential benefits of promotion as Junior Engineer with effect from the date of promotion of respondent 5 and 6 herein;

(v) Award costs of and incidental to this application;

(vi) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case."

5. The applicant contended that Annexure A21 order is totally without



application of mind in violation of Annexure A18 order of this Tribunal. The authority who approved the earlier selection panel was Divisional Railway Manager himself and therefore, the so called verification done by the Senior Divisional Electrical Engineer a lower authority cannot be said to be in due compliance of the directions of this Tribunal. The Senior Divisional Electrical Engineer has only gone through the case. He did not evaluate the answer papers as directed by this Tribunal and find that any question has more than one answer. He did not have the key to answer before going through the case. The said authority had not considered all the issues raised in OA 275 of 2008 or subsequently highlighted in Annexure A19 representation. A number of applicant's correct answers are shown to be wrong answers and no marks have been awarded to him. Annexure A5 is therefore, to the extent it awarded applicant 55 marks as against more than 60 is arbitrary, discriminatory and unconstitutional.

6. The respondents in their reply statement submitted that the OA is hit by the principles of constructive res-judicata. The applicant had filed OA No. 275 of 2008 praying to call for the records leading to the issue of Annexure A1 and Annexure A5 letters and quash the same and for a direction for re-valuation of the answer sheets etc. In compliance with the orders of this Tribunal, Senior Divisional Electrical Engineer (General), Southern Railway was nominated to check the answer paper. After going through the answer sheets he had advised that there is no question having more than one answer, no correct answer was rejected and no answer has been left without valuing and there is no mistake in totalling. This Tribunal after considering the entire



records of the selection proceedings closed the Contempt Petition and Miscellaneous Application on 26.10.2010 observing that "we are satisfied with the action of the respondents and are of the view that the direction given by this Tribunal has been complied with". Therefore, the OA is not maintainable on the principles of constructive res-judicata. The applicant ought to have approached the Hon'ble High Court by filing an appeal. The applicant who has effectively participated in the selection and remained unsuccessful in the selection has made vague allegations against the selection proceedings which is not maintainable under law. The applicant had been given full marks for the correct answers. Though the applicant had annexed the very same answer sheet in OA No. 275 of 2008 as Annexure A13, he did not raise any allegations now made, in the earlier OA.

7. The 6th respondent in his reply statement submitted that he had been selected and placed in the panel on the basis of his performance in the written examination and satisfaction of all terms and conditions applicable for promotion to the post. Unless there is any violation of rules/procedures or involvement of malafides in a selection there is no scope of any judicial review on the finding of the duly constituted selection committee. He has already completed four years as Junior Engineer JE/E/II. The applicant can not seek a direction to unsettle the settled matter which is against established law.

8. In the rejoinder filed by the applicant it was submitted that the OA is maintainable both in law and facts. In Part B Question No. 1 the only mistake on the part of the applicant was that instead of mentioning 50 to 55 degree 'F'



it was mentioned as 50 to 55 degree 'C'. Answer key to the narrative type of questions was not provided to the evaluator or senior evaluator who reevaluated the answer sheet of the applicant.

9. In the additional reply statement respondents submitted that key to the well known questions are not required and hence it was not given to the evaluator. In respect of descriptive questions non-supply of key did not result any discrimination in evaluation process.

10. We have heard the learned counsel for the parties and perused the records.

11. The applicant had challenged the valuation of his answer sheets in OA No. 275 of 2008. In the present OA the applicant challenges the checking of the question paper and valuation of answer sheets by a senior officer as directed by this Tribunal. This Tribunal was satisfied with the action of the respondents and was of the view that the direction given by this Tribunal in OA No. 275 of 2008 had been complied with. The answer sheets in OA No. 275 of 2008 have been annexed as Annexure A13 in the present OA. The very same selection proceedings are challenged in both the OAs. The allegations which were not raised in respect of answer sheets are raised in the present OA.


12. In the light of the above situation we find some merit in the contention of the respondents that the present OA is hit by the principles of constructive res-judicata. If applicant was aggrieved with the orders of this Tribunal he should have approached the Hon'ble High Court by filing an appeal. The



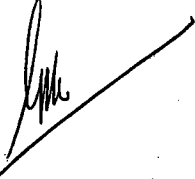
reliefs he seek is substantially the same, as the present OA has been filed for the very same reliefs he sought in the earlier OA.

13. The direction given by this Tribunal in OA No. 275 of 2008 was that the question paper and valuation of the answer sheet should be checked by a senior officer. It was not directed that the checking should be done by an officer not below a particular rank. Therefore, we do not find that the verification done by Senior Divisional Electrical Engineer who may be a lower authority to the Divisional Railway Manager is not in due compliance with the direction of this Tribunal. There was no direction for revaluation of the answer sheets by this Tribunal. What was directed was only checking the question paper and valuation of the answer sheets. Therefore, there is no merit in the contention that a Senior Divisional Electrical Engineer had not attempted to reevaluate the answer sheets. If he was not given the key to the answers it has not resulted in any discrimination as key was not given to the evaluator in the first instance also and it is not contemplated that for descriptive answers key should be provided. As held in number of cases by the Hon'ble Supreme Court, Court cannot take upon itself task of examiner or Selection Board and examine discrepancies and inconsistencies in question papers and evaluation thereof. The applicant has not substantiated any violation of rules or procedures or malafides or discrimination or arbitrariness in the selection process in question calling for interference.

14. This Tribunal has already held that it is satisfied with the action taken by the respondents in compliance with the direction given in OA No. 275 of 2008. The applicant has failed to show any material necessitating the review



of the finding already made. Lacking merit the Original Application is dismissed with no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

"SA"