

(04)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 415/88 & 764/87

Transfer Application No:

DATE OF DECISION: 28.7.1994

Sh.S.P.Jain & Ors. Petitioner

Shri G.S.Walia Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri A.L.Kasturey Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri V.Ramakrishnan, Member (A)

1. To be referred to the Reporter or not ? NO
2. Whether it needs to be circulated to other Benches of the Tribunal ? NO



(V.RAMAKRISHNAN)
MEMBER (A)



(M.S.DESHPANDE)
VICE CHAIRMAN

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 415/88 & OA.NO. 764/87

1. Shri Som Prakash Jain & Anr.

Applicants

2. Shri Mohammed Ali Shaikh

V/S.

Union of India & Ors.

Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri V.Ramakrishnan

Appearance

Shri G.S.Walia

Advocate

for the Applicants

Shri A.L.Kasturey

Advocate

for the Respondents

Shri M.Masand

Advocate

for Respondent NO. 5

ORAL JUDGEMENT

Dated: 28.7.1994

(PER: M.S.Deshpande, Vice Chairman)

Since the relief claimed in both these applications is identical and is based on same state of facts, it would be expedient to narrate the facts on the basis of the averments made in OA.No. 415/88. The two applicants in OA. 415/88 and the applicant in OA. 764/87 were working as Claim Tracers from 1976 onwards. A selection process was initiated for filling up the posts of Commercial Inspector and that test comprised of a written test and a Viva Voce examination.

The Zone of Consideration was 1 : 3 . The present applicants were at Sr. No. 47, 52 and 57 of the Seniority List at Exhibit-'I'. They fell within the zone of consideration and had appeared in the written test but could not qualify at the written test and were not called for the Viva Voce examination and so the names were not included in the panel of 95 candidates which was prepared on 5.9.1984. Certain representations were made and on the basis of these representations the Railway Board by its order dated 20.3.1985 directed a fresh selection by stating:

" After careful consideration of the peculiar circumstances obtaining in this case, as brought out in your letters No. EC 839/2/7/3/ date 31.10.1984 and 6.2.1985, the Ministry of Railway have decided that all the candidates who failed in the selection held for the post of commercial inspectors Scale Rs.455-700 may be given a second opportunity to appear in the selection subjecting them to an objective type test. The candidates who qualify in this selection may be placed at the end of the panel already finalised on 5.9.1984."

The applicants appeared in the second test and came to be selected. They got a placement at the end of the panel dated 5.9.1984. A representation was made by them on 3.8.1987 urging that when the second opportunity was given in the selection of Commercial Inspectors Scale Rs.455-700 subjective to objective type test which they have passed, they were entitled to their original seniority and should not have been kept below which was declared on 5.9.1984. The applicants contended that the second selection was supplementary to the first one because no fresh candidates were called for the selection as per rules. It is contended that since the second objective test to which the applicants were subjected was part of initial selection and they were given placement at the end of the panel dated 5.9.1984, they should have been given their seniority in terms of Rule 314 & 216 of the Indian Railway Establishment Manual. Rule 216 (h) reads as follows :

"(h) The names of selected candidates should be arranged in order of seniority but those securing a total of more than 80% marks will be classed as "outstanding" and will be placed at the top of the list, in the order of their seniority."

It was urged that no candidates had secured more than 80% marks and therefore the entire panel had to be prepared on the basis of seniority notwithstanding the second opportunity granted to the applicants.

2. The respondents controverted this position by urging that the first selection and the second selection process were different. The second was objective test at which the applicants had passed. We may point out ~~as~~ mentioned by the applicants ⁱⁿ Para 2 of their application that a Narrative type test was conducted on 19.8.1984 and again another opportunity was offered ~~at that~~ ~~selection~~ for Objective type ~~or~~ test ~~but~~ second opportunity was given to only failed employees in the peculiar circumstances which arose ~~out~~ of frequent change of channel of promotion. In the second opportunity/test 11 employees out of failed were declared as passed and qualified for selection and promotion, but were placed at the end of 95 employees who passed in first attempt. The second test in which 11 employees including the applicants qualified was of Objective type test and was conducted under the same order without inviting fresh applications and restricting the test only to the failures at the first test.

3. ~~There~~ were two batches as mentioned in the letter dated 25.7.1984 (Ex. '5' to the application) and the written test was given by the second batch on 19.8.1984. The applicants had appeared ~~in~~ the first batch on 30.10.1983 and they were given narrative type test. The applicants' relied on the letter dated 17.4.1984 issued by the Govt. of India, Ministry of Railways (Railway Board) under which the matter was considered by the Ministry of Railways who found that it would not be feasible to relax the rules in regard to written examinations (wherever prescribed) for promotion to selection posts. However, they directed that wherever a written test is held for promotion to the highest grade selection post in a category, objective type questions may be set for about 50% of the total marks for the written test. The remaining questions were continued to be of the narrative type. It was, however, made

clear that the figure of 50% for objective type of questions and was intended to be for guidance only, it should not be taken as constituting an inflexible percentage. Though, it is apparent that the letter dated 17.4.1984 was issued prior to second batch taking written test on 19.8.1984, it cannot be said that the second batch should have been tested on the basis of the objective type questions in pursuance of the letter dated 17.4.1984 because both the batches were to take written test and as the first batch had been completed prior to the issuance of the letter dated 17.4.1984 on narrative type questions, the letter dated 17.4.1984 cannot be held to have been intended to operate retrospectively. It could apply only to an examination held after the issue of that letter. The respondents could not be expected to judge the two batches by two different standards or by different methods and we are satisfied that it cannot be said that the second batch should have been examined by objective type test.

4. The next submission was that the objective test which was prescribed by the Railway Board's letter dated 20.3.1985 was a part and parcel of the same selection process as earlier. It is, difficult to accept this submission in view of the clear wording of the letter dated 20.3.1985 (Ex. VI) which is extracted above. Holding of the second objective type test had been in pursuance of the letter dated 17.4.1984 test issued by the Railway Board. The subsequent test which was prescribed viz. the objective type test would be different from the narrative type test which was held earlier, at which the applicants had appeared and failed. It is difficult therefore for us to hold that the second test which was held on an entirely different basis could be regarded as a part and parcel of the initial test in which the written test was based on narrative type questions.

5. Shri Walia, the learned counsel for the applicant submitted that there was no propriety in directing the candidates selected at the objective type test to be placed at the end of panel already finalised on 5.9.1984 and such a panel could not have been prepared as it would have been contrary to rules. No rule was pointed out to us which would have a bearing on a restricted examination for the failures alone by extending a concession to them in the matter of the test they were to answer. The learned counsel tried to draw support from Rule 314 of the Indian Railway Establishment Manual under which the seniority of two or more officiating railway servants selected at different selections for a particular selection post should be fixed with reference to the date of selection, that is to say, railway servants borne on an earlier panel shall be senior to those selected later even though the latter may be continuously officiating in the selection posts as a local arrangement from a date prior to the date of promotion of the former or the latter may be substantively senior to the former. As we have pointed out that the applicants and others were selected at different selections, though may be in pursuance of the same Notification but the two tests differed in substance and content and by no stretch of imagination can it be said that they formed a single test. The second test was necessitated by the failure of the applicants at the first selection. The applicants had not qualified in the first selection and it was therefore that they had to appear in the second selection based on a different standard.

6. The learned counsel for the Respondent No. 5 urged that he was also aggrieved by the second selection process. He has not filed an OA. questioning the placement given to him in the panel dated 5.9.1984 and his placement cannot be challenged merely by filing a reply in this OA. for answering the claim made by the applicants and his entitlement.

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7. In the circumstances, we see no merits in the applications. ~~They~~ are dismissed but with no order as to costs.

V.Ramakrishnan

(V.RAMAKRISHNAN)
MEMBER (A)

unseen

(M.S.DESHPANDE)
VICE CHAIRMAN

MRJ.