

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:545/1996

DATE OF DECISION: 25/10/2001

R.R.Ingole

Applicant

Shri G.S.Walia

-----Advocate for
Applicant.

Versus

Union of India & Anr.

-----Respondents.
Advocate for
Respondents.

Shri V.S.Masurkar

Coram:

Hon'ble Shri S.L.Jain, Member(J)
Hon'ble Smt.Shanta Shastry, Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to
other Benches of the Tribunal?
3. Library. ✓

Shanta S
(SMT.SHANTA SHAstry)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:545/1996
DATED THE 25th DAY OF OCT, 2001

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

R.R.Ingole,
working as
Permanent Way Inspector, (RT),
Andheri Station,
Bombay Division,
Western Railway. ... Applicant

By Advocate Shri G.S.Walia

V/s.

1. Union of India, through
General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai - 400 020.

2. Divisional Railway Manager,
Bombay Division,
Western Railway,
Bombay Central,
Mumbai - 400 008. ... Respondents

By Advocate Shri V.S.Masurkar

(O R D E R)

Per Smt.Shanta Shastry, Member(A)

The grievance of the applicant is that he has not been promoted to Permanent Way Inspector Grade-I. The applicant working in the Western Railway as Permanent Way Inspector (RT) was due for promotion to the Grade of PWI Grade-I. The respondents had proposed to hold a selection for the post of PWI-Grade-I scale Rs.2000-3200(RP) vide their letter dated 1/8/85. There were eleven vacant posts out of which two were reserved for schedule castes and one for schedule Tribe. The eligibility list was issued. Applicant's name was included in

...2.

the eligibility list for selection. The selection comprised of the written test and viva voce. The applicant appeared in the written test and the results were declared on 19/3/96. The applicant's name did not figure in the list of successful candidates. Thereafter, a viva voce was held and finally a panel of candidates for promotion to the post of PWI Grade-I was drawn up and nine candidates were placed on the provisional panel in order of merit vide letter dated 28/3/96. The applicant has challenged this panel and has sought to quash and set aside the same and to direct the respondents to re-bhold the selection persuant to the notification dated 1/8/95.

2. Under the relevant rules of the Railways, for the purpose of selection, marks are earmarked for written test, viva voce test and other items like personality, leadership, technical qualification, record of service and seniority. The candidate is required to secure not less than 60% marks in professional ability and not less than 60 marks in the aggregate to be eligible to be empanelled.

3. It is the contention of the applicant that he had done very well in the viva voce. He had completed 15 years of good service and therefore there was no question of his failing in the written test.

4. The applicant has taken other technical objections. According to the applicant no question of official language was asked in the question paper. It is mandatory to ask question of official language. In all the previous papers invariably a question of Hindi as official language asked as per the Railway Board's letter dated 14/2/82 and such a question would normally carry 20 marks as per the earlier procedure adopted. The

applicant has also raised the plea that the written test was not conducted by Competent Board/Committee empowered in this behalf. According to this, Selection Board is formed before the written test is conducted. In this case the Board was formed after the declaration of the results of the written test. The papers were not checked by authorised Competent Board. According to the applicant, the written test was a complete farce. Answer papers were not evaluated properly. Further, according to the applicant, the respondent authorities gave notional seniority marks to some senior candidates to enable them to appear for the viva voce test. This is not permissible. According to the applicant nine persons were added for viva voce test by giving notional seniority marks. Giving notional seniority marks is illegal and against the rules. The applicant states that the respondents have relied on the Railway Board's letter dated 5/12/84 for granting of Notional Seniority Marks to those candidates who were senior but had failed to secure 60% marks in the written test. Learned counsel for the applicant points out that the letter was a subject matter of controversy in OA-867/89 before the Jabalpur Bench of the Tribunal in the case of Chintamani Pandey. The Tribunal observed therein that there is no matter of doubt that the impugned Railway Board's letter of 5/12/84 discriminates amongst the candidates is unconstitutional and violative of Articles-14 and 16 of the Constitution of India as on 30/10/93 when this judgement was delivered. Therefore the Railway authorities should have stopped invoking the Railway Board letter dated 5/12/84. Therefore the selection of six candidates who had otherwise failed but were given notional seniority marks needs to be set aside.

5. The applicant being aggrieved made a representation on 21/3/96 to the Divisional Railway Manager pleading his case. However, he did not succeed.

6. The respondents submit that the applicant could not find a place in the viva voce test because he failed in the written test due to poor performance. He did not secure the requisite 60% marks in the written test.

7. The respondents have also taken the plea that the candidates in the panel of 28/3/96 are essential parties to the application because any orders passed in the instant case will directly effect them and therefore the OA is bad in law for non joinder of parties. The panel was declared on 28/3/96. The applicant has rushed to the Tribunal on 6/6/96 without making any proper representation. The earlier representation was of 21/3/96 i.e. before the announcement of the panel. The applicant should have atleast waited for six months before filing the OA. He has failed to exhaust all the departmental remedies.

8. The respondednts do admit that the question of Hindi was not included, but this was not objected to by anyone including the applicant at the time of the written test. The objection on the part of the applicant appears to be an after thought after the results were announced and the applicant had failed. According to the respondents a question of Hindi cannot be construed as vital or most important because the selection was for a technical safety category post. Having written the test and having taken a calculated risk, the applicant cannot now challenge the selection on technicalities after having failed in the test. The respondents have relied on the case of Madanlal V/s State of J & K (1995) 3 SCC 486. They state that the

notional seniority marks were given to the applicant also. However, inspite of adding those marks, the applicant could not qualify for the viva voce test and therefore in any case the applicant could not have been considered for viva voce test irrespective of the letter dated 5/12/84 of the Railways having been set aside by the Jabalpur Bench of the Tribunal.

9. The learned counsel for the applicant defended his action in not joining the successful candidates from the panel of 28/3/96 in this application as parties as according to him the applicant is only challenging the selection process i.e. the procedure and not the selection of a particular candidate. The learned counsel has relied on the judgement in the case of V.P.Srivastava V/s. State of M.P & Ors 1996 SCC (L&S) 670. In this judgement, it was held that non impleading of all the parties was not fatal to the application as what was challenged was the procedure. The learned counsel for the applicant is further relying on the judgement of the Supreme Court in the case of R.C.Srivastava V/s. Union of India and Another wherein the same selection procedure has been discussed with reference to the selection for the post of Law Assistant. In this case the applicant therein had referred to Railway Board's circular dated 19/3/76, whereby instructions were given that 'panel should be formed for selection post in time to avoid adhoc promotions. Care should be taken to see while forming a panel that employees who have been working in the past on adhoc basis, quite satisfactorily are not to be declared unsuitable in the interview in particular any employee reaching field of consideration should be saved harassment.' This was upheld by the Supreme Court stating that though such instructions cannot have statutory force

and cannot override statutory rule, but a circular which is in the nature of administrative direction can certainly supplement the rules on the matter on which rules are silent. The Supreme Court held that this circular was not inconsistent with any statutory rule. The applicant submits that even the aforesaid circular was not followed while not calling him for the viva voce.

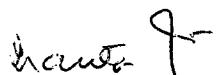
10. The learned counsel has further relied upon the judgement of one Bench of this Tribunal of which one of us was a Member in OA-1185/96 in the case of K.Pradeepan V/s. Central Railway. The Tribunal held the selection therein to be invalid on the ground that the proper procedure had not been followed, including that no objective type question were asked and notional seniority marks were given. Further, the learned counsel for the applicant states that the judgement in the case of Madanlal does not apply to his case. He is drawing support from another case of Raj Kumar & Ors. V/s. Shakti Raj & Ors 1997 SCC (L&S) 1029, wherein the case of Madanlal was discussed and it was held that where the procedure of selection and the exercise of power to exclude the post from the purview of the Staff Selection Board suffered from glaring illegalities, the candidates appearing for selection and remaining unsuccessful were not barred from questioning the selection - Acquiescence/Estoppe not applicable in such a case. In Madanlal's case there were no statutory rules to be followed which were violated. However, in the present case there are statutory rules and the method of selection is prescribed. There cannot be estoppel of law.

11. We have heard learned counsel for both the sides and have given careful consideration to the pleadings. It is seen that

the selection was through a written test and a viva voce test. To be eligible for viva voce, one has to pass the written test with 60% marks. The applicant did not get 60% marks and failed. Therefore rightly he was not called for the viva voce test.

12. However, the applicant has raised infirmities in regard to the written test. The main point is that there was no question of official language included in the question paper. While the respondents have not denied that it was necessary to include such a question at the same time the respondents submit that it was not so important or vital for the selection. Be that as it may, the fact remains that the question should have been asked. However, the applicant failed to question the non inclusion of the official language question. It was all the same the duty of the respondents to ensure that there were no procedural lapses. Though we agree that the applicant having failed cannot question the selection as an after thought, it is also clear that there has been a glaring omission. Therefore there is no estoppel of law. We also hold that granting of notional seniority marks to enable the candidates to become eligible for viva voce was certainly wrong as the circular dated 5/12/84 providing for the same has already been quashed and set aside by the Jabalpur Bench[✓] in OA 867/89 of the Tribunal as already pointed out by the learned counsel for the applicant. In view of this the action of giving notional marks to candidates who had otherwise failed in the written test and calling them for interview was not justified. In view of the reasons recorded above, we hold that the selection was not conducted according to

prescribed procedure and rules. Therefore, we quash and set aside the selection dated 28/6/96 for the post of PWI Grade-I with a direction to the respondents that they shall hold fresh written test in accordance with the rules and instructions on the subject and also not grant notional seniority marks for those who do not otherwise qualify in the written test. This shall be done within a period of three months from the date of receipt of a copy of this order. In the meantime, those employees who are working on the basis of selection held earlier are allowed to work on adhoc basis till a fresh examination is conducted and selections are made as per prescribed procedure and rules. OA is allowed to that extent. No costs.



(SMT. SHANTA SHAstry)
MEMBER(A)



(S.L.JAIN)
MEMBER(J)