

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.1185/96

____ this the 20th day of April, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MRS. SHANTA SHATRY, MEMBER (A)

1. K. Pradeepan
2. M.P. Nasi
3. G.L. Shiriskar
4. B.B. Raut
5. M. Ramaswamy
6. T.M. Shivnandan
7. R.M. Kondvilkar
8. J.R. Chawan
9. M.D. Moraya

applicants No.1 to 8 are working as
Office Superintendents and applicant No.9
as Head Clerk

C/o G.S. Walid
Advocate, High Court,
16, Maharashtra Bhavan,
Boara Masjid Street,
Fort, Mumbai-400 001.

..Applicants

By Advocate Shri G.S. Walia.

Versus

1. Union of India through
General Manager,
Central Railway,
Headquarters Office,
CST, Mumbai-400 001.
2. Chief Workshop Manager,
Central Railway's,
Parel Workshop,
Parel
Mumbai-400 012.

...Respondents

By Advocate Shri V.S. Masurkar.

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ORDER

Hon'ble Mr. Kuldip Singh, Member (J)

The applicants have filed joint application under Section 19 of the Administrative Tribunal's Act, 1985 vide which they are assailing the method and procedure adopted by the respondents in holding the selection for the post of Office Superintendent Grade-II scale Rs.1660-2660 (RPS).

The applicants are working under the respondents under the ministerial cadre of paral workshop and were posted as Head Clerks which is a feeder cadre for the promotion to the post of Office Superintendent Grade-II.

2. The post of Office Superintendent is filled up on the basis of selection which consists of two parts - Written test as well as the interview. A candidate has to obtain 60% marks to become eligible for interview and thereafter to further obtain 60% aggregate in the written test and interview for the purpose of empanelment.

3. The respondents vide their letter dated 2.7.96 issued a Notification for holding the written test for 31 posts for general category, one for SC and one for ST. Along with the Notification a list of the employees who were within the zone of consideration was also annexed, which included the names of the applicants.

4. It is further stated that before conducting the examination a committee has to be constituted comprising 3 JAG grade officers but in this case no committee was constituted.

5. The applicants further state that as per the rules the written papers did not include objective type questions to the



extent of 50% and a question^{paper} of compuslery language was also not given in its proper form. The question paper has been annexed as Annexure C.

6. It is further submitted that while assessing the performance, the respondents have adopted a dubious procedure by including the names of the candidates who are alleged to have passed the selection, i.e. with regular marks and notional seniority marks. So the applicants state that including of notional seniority marks is illegal and unconstitutional and there is no question of adding any selection marks based on merits.

7. It is further pleaded that Railway Board letter dated 5.12.84 by which the notional seniority marks were allowed to be added has already been quashed by the Tribunal. Hence, the preparation of the panel on the basis of this letter is illegal.

8. The applicant further claims that they have been holding the post of Office Superintendents on the basis of their seniority on ad hoc basis, so there was no question of declaring them unsuccessful in the written test, so it is prayed that the Tribunal may call upon the records and proceedings which led to the passing of the impugned order dated 27.11.96 and should quash the same.

9. The respondents are contesting the OA. The respondents denied that they have not constituted proper selection board, rather a selection board consisting of 2 JAG officers and 2 senior scale officers was formed. The exam. was conducted in accordance with the Railway rules and it was duly notified

16

and all the candidates were in the eligible zone including the additional stand by the candidates were brought under the zone of consideration. At the time of conducting of the written examination, vigilance team of the Railways was present there to monitor the test so all the answer sheets were given the code number on the same day and thereafter result was duly declared and it is further pleaded that if the OA is allowed it will directly affect 59 qualified employees so they are absolutely necessary parties so in these circumstances the present OA be dismissed on the ground of non-joinder of parties alone.

10. It is denied that the question papers were not set by the competent persons. As regards assigning of marks for notional seniority is concerned, the same is stated to have been awarded in terms of letter dated 5.12.84. The notional marks were awarded to 3 seniormost candidates who were declared eligible for appearing in the viva-voce test. Thus it is pleaded that selection to the post of Office Superintendent had been made in accordance with the Railway Board instructions and guidelines.

11. We have heard the learned counsel for the parties and gone through the record.

12. The applicants in their case have taken two main grounds to challenge the procedure for holding selection to the post of Office Superintendent Grade-II. The first and foremost ground is that some of the candidates have been given notional seniority marks to make them eligible to be called for viva-voce test. As per the scheme of the examination only that candidate is called for viva-voce who secured a minimum of 60% marks and in this selection process admittedly 3 candidates have been made eligible of total for viva-voce despite the fact that they did not secure 60% marks

in the written test meaning thereby that they had failed in the written test but by adding the notional seniority marks they had been made eligible to appear for viva-voce test. The counsel for the applicants contended that this has been done on the basis of the Railway Board letter dated 5.12.84 and it is so admitted by the respondents in their written statement but since in an earlier case the letter dated 5.12.84 had already been held to be discriminatory and arbitrary and, therefore, had been quashed, so the respondents could not have invoked the letter dated 5.12.84 to make 3 persons eligible for viva-voce despite the fact that those 3 persons have failed to secure the minimum qualifying marks, i.e., 60% of the total marks in the written test.

13. In reply to this, Shri Masurkar appearing for the department submitted that the 3 persons who had been given the notional seniority marks were the 3 seniormost candidates and even if their selection is set aside still the ^{not} applicants will nowhere be near the persons who had qualified the test. In our view this contention of the learned counsel for the respondents has no merits because the question is not whether these applicants will be near the position of qualifying the test or not but the real question is whether the test has been conducted in accordance with the rules or not. Since admittedly the respondents had invoked the Railway Board letter dated 5.12.84 to make those 3 persons eligible for appearing in viva-voce test, that amounts to discriminating the other

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persons who had failed and it is an arbitrary invocation of power in respect of 3 persons only. The letter dated 5.12.84 was a subject matter of controversy in OA 867/89 before the Jabalpur Bench of the Tribunal in case of Chintamani Pandey Vs. U.O.I. & 6 others. The Hon'ble Tribunal had discussed the letter dated 5.12.84 and observed that there is no manner of doubt that the impugned Railway Board circular of 5.12.84 discriminates identically placed individuals and held the same to be unconstitutional and violative of Article 14 and 16 of the Constitution of India and this is so done as early as on 13.8.93 when this judgment was delivered. The Railway authorities should have stopped invoking letter dated 5.12.84 but we are surprised to find that this letter has been used even in selection for which test was conducted 30.7.96 and results were declared on 27.11.96. Thus the giving of notional seniority marks to 3 persons cannot stand.

14. The next ground taken by the applicants is that while setting the papers for examination the department has not followed the instructions provided for type of question papers to be set as the question paper did not contain the 50% of the objective type of questions. So to that extent also the selection process adopted by the respondents has also been challenged. The counsel for the applicant has also referred to a judgment reported in ATR 1990(1) CAT 458. To oppose this contention the counsel for the respondents submitted that it is for the selection board to see to it that what type of question papers are set up and in the case of applicants it

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was test for a promotion to the post of Office Superintendent who were supposed to record office notes in the files so if more question of narrative type are set up in the question papers that will not cause any prejudice to the applicants nor any principles of natural justice will be violated.

15. We have considered this aspect also and we find that there is no denial on the part of the respondents as per the directives of the Railway Board it is very clear about the style of the papers. The respondents did not deny that as per the directives of the Railway Board the 50% of the paper must contain objective type of questions. So in our view the selection board constituted for holding the examination have no right to deviate from the settled guidelines for setting up of the paper. The selection board cannot substitute their own wisdom over the wisdom of the Railway authorities which have prescribed the rules regarding setting up of papers to the extent that 50% of the question paper must contain objective type questions. Since the question paper annexed along with the OA has not been denied so we have no option but to hold the written test as illegal and void as it is violative of the directions issued by the Railway Board, and for that purpose we follow the judgment given by the Principal Bench in the case of Munshi Ram & Another Vs. U.O.I. & Others, ATR 1990(1) CAT 458.

16. To oppose the OA the respondents have also taken an objection that the OA is hit by principle of non-joinder of parties, we find that this objection has no merits since the applicants are challenging the selection process and not the

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selection of a particular individual.

17. In view of our discussion above, we find that the test conducted for the post of Office Superintendent conducted on 30.9.96 cannot stand and the same is liable to be quashed and set aside. So we do hereby quash and set aside the selection. OA is allowed to this extent, with a ~~further~~ direction that the respondents shall hold fresh test in accordance with the rules and instructions on the subject and in the meantime those employees who were working on the basis of selection which is being quashed are allowed to work on ad hoc basis, till a fresh test is conducted and selections are made *at a later date* thereon. No costs.

I am of

(MRS. SHANTA SHAstry)
MEMBER (A)

Kuldeep
(KULDIP SINGH)
MEMBER (J)

Rakesh