

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No.811 of 1999

Dated this 7th the day of March, 2003

Coram: Hon'ble Mr.Govindan S.Tampi - Member (A)
Hon'ble Mr.K.V.Sachidanandan - Member (J)

Umakant Shankar More,
Depot Stores Keeper (Adhoc)
Grade - II,
O/o District Controller of Stores,
A/c Loco, Bhusawal - 425 201.
(By Advocates S/Shri D.V. Gangal and S.V.Marne) - For the Applicant

Versus

1. Union of India
through the General Manager,
Central Railway,
Headquarters Office,
Mumbai, CST,
Mumbai.
2. Controller of Stores,
Central Railway,
Headquarters Office,
Mumbai, CST, Mumbai 400 001.
3. The Chief Personnel Officer (S&M)
Headquarters Office,
Mumbai CST, Mumbai 400 001.
4. The District Controller of
Stores, A/C Loco,
Bhusawal - 425 201.
(By Advocate Shri S.C.Dhawan) - For the Respondents

O R D E R

By Hon'ble Mr.K.V.Sachidanandan - Member (J) -

The Applicant was initially appointed as Junior Clerk on 30.3.1983, further promoted as Senior Clerk in the year 1984 and again promoted as Depot Stores Keeper Grade-II, on 28.8.1992, which post he is holding at the time of filing of the Application. It is averred that the Respondents have failed to conduct proper selection for the post of Depot Stores Keeper for the last 8 to 10 years and have thus violated the various orders issued by the Railway Board requiring them to hold year-wise

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selection. The Respondents issued Notification dated 31.5.1999 directing that a selection will be held in the non-ministerial cadre for the promotion to the post of Depot Stores Keeper Grade - II and eligible staff list was produced along with the Notification. The Applicant is at serial no.2 in the list of eligible employees, as is also in the seniority list. The Applicant has alleged that he immediately submitted representation dated 3.7.1999 informing the Railway Administration that they have not published the detailed syllabus and hence he was appearing under protest. Written test was held on 4.7.1999 and he has done his best in the written examination but the question papers set by the Respondents were wrong and illegal. The applicant has challenged the said examination on the ground that (a) the detailed syllabus was not published; (b) question no.1 which was compulsory related to subjects and topics dealt with by ministerial staff and not by the non-ministerial like the Applicant. Therefore he loading straightaway 20 marks out of 100. Similarly, in question no.7 he was asked to write short notes on arbitration, negotiation, security deposit and risk purchase. This question also pertained to ministerial side. Consequently, the Applicant straightaway lost 16 marks. Out of 100 marks, the questions carrying 36 marks were totally outside the syllabus and outside the topics expected to be put to the non-ministerial staff like the Applicant. Despite a direction by the Railway Board issued vide letter dated 16.4.1982 for publishing the syllabus in advance, the same had not been published. There was a further direction by the Railway Board that 50% of the questions should be of objective type. However, not even a single question carrying a single mark was ever counted to that category. The applicant's plea is that as the

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question paper which the Applicant could answer consisted of merely 64 marks his passing or otherwise would have to be determined with reference to maximum marks of 64. The Notification dated 31.5.1999 merely stated the subjects as follows:

- (a) Departmental working knowledge,
- (b) Establishment matters,
- (c) General
- (d) Official language rules (Rajbhasha)

The Applicant could not have answered the question paper set for him. Hence on this ground he pleads that the entire examination is required to be set aside. Aggrieved by the irregular manner in which the examination was conducted, the applicant has filed this OA seeking the following reliefs:

- (a) that this Hon'ble Tribunal may be graciously pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the notification dated 31.5.1999 and the result of the written test dated 25.8.1999 (Annexure-A-2).
- (b) to hold and declare that the Notification dated 31.5.1999 and the result of the written test dated 25.8.1999 is illegal.
- (c) to hold and declare that the Respondents should be enjoined by an injunction or order from publishing or acting on the selection procedure initiated by notification dated 31.5.1999.
- (d) to hold and declare that the viva-voce test scheduled to be held on 20.9.1999 is illegal and should be quashed.

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(e) the Respondents should be enjoined by an order of this Hon'ble Tribunal from publishing the panel of DSK - II.

(f) Cost of this Original Application be provided for.

and

(g) Any other or further order as to this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case may be passed.

2. The Respondents have filed a detailed reply contending that the Application was misconceived and not maintainable in law as the Applicant who participated in the selection has failed in the written test and was therefore precluded from turning round and challenging the said selection he has participated in the Applicant had been duly considered and allowed to participate in the selection process but has failed on account of his inability to secure the requisite qualifying marks in the written test. The Respondents had not committed any procedural irregularity or flouted any provisions of the Railway Board's circular. Nor was any ineligible candidate allowed to participate in the selection process, as alleged or otherwise. The Respondents have allotted notional seniority marks as per Railway Board's letter dated 5.12.1984 and the Applicant was only assuming and presuming for making such allegations without any basis. A notification dated 31.5.1999 for the selection for the post of DSK-II in the scale of Rs.5500-9000 (RSRP) was issued for filling up of nine vacancies (7 General, 1 SC & 1 ST) in the Bhusawal Unit of Stores Department along with the list of 26 eligible persons consisting of 21 General, 3 SC & 2 ST eligible candidates. As per seniority of Bhusawal Unit as only 2 ST eligible candidates were available and hence only 2 could be called as against 3 required as per Rules. The Respondents further submit that the feeder cadre for

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the said selection was the post of DSK-III in the Stores Department. Out of 26 eligible candidates, 25 candidates appeared in the written test held on 4.7.1999 and supplementary on 11.7.99 and 23.8.1999. Out of 13 candidates who became eligible for viva voce test. Out of the 13 candidates, one became eligible for viva voce test after adding the notional seniority marks as per Railway Board's letter dated 5.12.1984 and 2 ST and one SC candidate became eligible under relaxed standards and were also called for viva voce test. Even after adding notional seniority marks, the Applicant could not become eligible for being called for viva voce test. Hence he failed at the initial stage. The Applicant should therefore have no grievance for his non-selection as he could not secure the requisite qualifying marks even after adding the notional seniority marks for participating further in the selection process. The Applicant cannot now turn around and challenge the said selection as he had failed in the said selection process at the very threshold and he has taken a calculated risk, participated in the selection and failed on the ground of irregularity or otherwise. The Respondents further submit that only after the result of the written test was declared on 25.8.1999, that the Applicant woke up to challenge the selection process as his was not included in the list of successful candidates. Therefore the Respondents contended that the OA did not have any merit and has to be dismissed.

3. We have heard Shri S.V.Marne learned counsel for the Applicant and Shri S.C.Dhawan, learned counsel for the Respondents. Learned counsel has taken us through the pleadings,

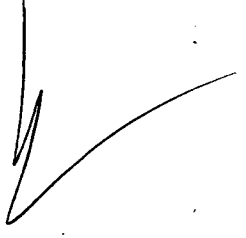
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materials and other evidence on record. The learned counsel, submitted that he was challenging the propriety, legality and constitutional validity of the initiation of the selection procedure vide letter dated 31.5.1999 and consequential written test held on 4.7.1999 and the result which is declared on 25.8.1999. He submitted that it is against the fundamental rights guaranteed under Articles 14 and 16 of the Constitution. The right to information and knowledge enabled a candidate to know in advance what he would benefit in the examination so that he should not be taken by surprise and consequential failure in the examination. This very basic and fundamental right has been denied to the Applicant. The non-furnishing of the syllabus to the candidates amounts to denial of equality of opportunity and therefore consequential violation of the provisions of the Constitution. The Respondents have also failed to set 50% objective type of questions and also failed to set questions relating to the actual working experience of the Applicant.

4. The counsel for the Respondents on the other hand submitted that the question papers set were in subjects required to be known by the Applicant and similarly placed employees who handle the receipt, disposal, inspection and the issues of the material and therefore are required to judge the anticipated requirement based on the consumption pattern. It is absolutely essential for a DSK-II to know how the quantities that to be purchased are to be arrived at. The calculations are mere simple examples of arithmetic of weighted average that a DSK II should know. The cadre of DSKs is common with ministerial cadre at the level of Junior and Senior Clerks and the job of preparation of Estimate Sheets is done mostly by Junior and Senior Clerks and

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therefore it is the basic knowledge and pre-requisite for any DSK and Stores Department. The questions were set well within the purview of the syllabus and there was no change in the syllabus for many years. The objective type questions, as pointed out in the Railway Board's letter formed only guidelines and were not mandatory. The extract of item No.III (5) vide Para 219 (C) of Indian Railway Establishment Manual clearly indicates the same. Therefore, there is no merit in the Application.

5. We have given careful consideration to the pleadings and arguments advanced by learned counsel of both sides. We have also perused Annexure -A -5, the impugned question paper dated 4.7.1999 in which, option is clearly given to the Applicant to attempt five questions in total out of 7 with questions no.1 & 2 being compulsory. Though it is argued by the learned counsel that certain questions were difficult to answer keeping in view the standard of the Applicant's cadre, it is mandatory that they should know the rule position asked in the question paper and therefore they must be competent to know what has been tested through the question paper. The fact that the Applicant did not know those items does not come to his help. On the other hand, candidates who have written the same examination and who are similarly placed like that of the applicant have passed and the examination and were selected. On a specific query to the Respondents' counsel as to whether the same pattern of question paper was set for this examination and subsequently, he submitted that it is so. There is no challenge of the syllabus and this syllabus has been in force for a long time and subsequently also. It is an admitted fact that the Applicant had participated in the examination/selection and failed in the written test and it is

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only after the result of the written test declared on 25.8.1999 that the Applicant woke up to challenge the selection process as his name was not included in the list of successful candidates.

6. The examination was held on 4.7.1999 and written test examination result was published on 25.8.1999. The Applicant had not chosen to challenge the examination or the selection itself within that period which he could have adopted if he was really aggrieved by the selection process. He was obviously awaiting the results to be favourable and once he find they were not so, he had come up in this O.A. This is not acceptable.

7. The Hon'ble Supreme Court in the case of *Om Prakash Shukla Vs. Akhilesh Kumar Shukla & ors.*, AIR 1986 SC 1043, has declared in such circumstances the Applicant is precluded from challenging the selection having participated in the same. Adopting the dictum laid down in that decision, we are of the view that the Applicant is not justified in challenging the selection/having participated in it on the ground which he was aware even before participating in the examination on 3.7.1999. Therefore, the OA has no merit and it is only to be dismissed.

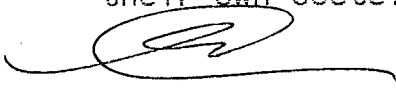
8. Besides the Applicant was selected in the next year of selection by appearing in a similar examination and has answered similar type of question paper. The Applicant's counsel has requested that the one post that has been kept reserved by an interim order passed of this Court, may be allotted to him without any arrears of salary etc. but in our view this position cannot be accepted since it is not shown that the Applicant was not the next best among the failed candidates. Therefore much

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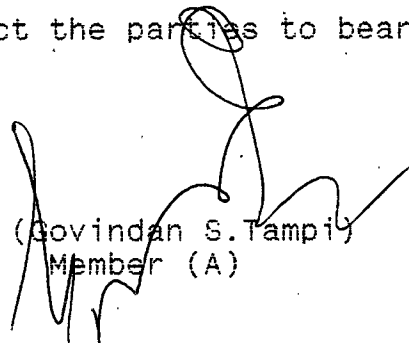
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prejudice will be caused to other candidates similarly placed who have not approached this Court for the same reasons. Apart from that they may be also adversely affecting the position of selected candidates in their seniority in case that recourse is adopted and they were not made parties to the OA and is bad for information of parties. For that reason also, the OA will not stand to merit and therefore deserves to be dismissed.

9. In the conspectus of the facts and circumstances, we are of the view that the OA is only to be dismissed and we do so accordingly. In the circumstances, we direct the parties to bear their own costs.



(K.V.Sachidanandan)
Member (J)



(Govindan S.Tampi)
Member (A)