

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 354 of 1999.

Dated this , the 5th day of Feb., , 2003.

Shri Jodh Pal Singh & 16 Others, Applicants.

Shri D. V. Gangal, Advocate for
----- Applicants.

VERSUS

Union of India & Others, Respondents.

Shri Suresh Kumar, Advocate for
----- Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not ?
(ii) Whether it needs to be circulated to other Benches of the Tribunal ?
(iii) Library.


(B. N. BAHADUR)
MEMBER (A)

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1. Jodh Pal Singh
2. Ghan Shyam S. Rahate.
3. Phool Kumar Gautam.
4. Yogendra S. Khobragade.
5. Ambadas D. Wankhede.
6. Pyarelal P. Harne.
7. Shyamsunder R.
8. Laxman Sitaram Adhale.
9. Ram Pal M.
10. Trimbak Gangadhar Dhote.
11. Malkhan Singh.
12. Kamlesh Kumar.
13. Chandrakant M.
14. Nandu Singh Dhan Singh
15. J. Hembram
16. N. M. Dhok.
17. A. H. Yunate.

(All the Applicants are working as
Shunters/Asstt. Drivers/Drivers
Assistant in the Electrical Department
Traction Diesel/AC under Bhusawal
Division of the Central Railway,
Bhusawal 425 201)

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Applicants.

(By Advocate Shri D. V. Gangal)

VERSUS

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1. Union of India through
The Secretary,
Ministry of Railways,
Railway Board,
Rail Bhavan,
New Delhi.
2. General Manager,
Central Railway,
Headquarters Office,
Mumbai C.S.T.,
Mumbai - 400 001.
3. Divisional Railway Manager,
Bhusawal Division,
Central Railway,
Bhusawal - 425 201.

... Respondents.

(By Advocate Shri Suresh Kumar).

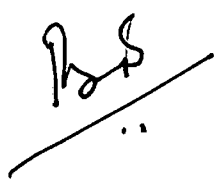
O R D E R

PER : Shri B. N. Bahadur, Member (A).

This application has been filed by seventeen Applicants, all stated to be working as Shunters/Assistant Driver/Drivers' Assistant in Electrical Department, etc. under Bhusawal Division. Applicants state their case as follows :

2. Their grievance is that they have been declared as failed in the selection to the post of Drivers 'C', even though they had passed the Driver's Training course, which, they aver, is an elaborate course. By notification dated 22.07.1998, a selection had been called for the post of Goods Driver 'C' (Scale Rs. 5000-8000/-). Number of posts notified were - 24 General, 48 SC and 10 ST (Annexure A-2). It is averred that the notification stated that the selection will be based on viva-voce test.

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Applicants submit that they appeared and did well. A panel dated 30.09.1998 was issued showing that 22 General candidates, 37 SC candidates and 4 ST candidates were selected. Thus, several vacancies remained to be filled, including seventeen SC/ST vacancies.

3. Certain grounds are taken and averments made by the Applicants in the O.A. mainly to the effect that rules are not followed (para 4.2), that certain persons against whom enquiry/penalty were pending/operative were promoted and in fact, that the entire selection is illegal and wrong. Special objection is taken to the rule providing that only viva-voce test is required. These grounds, among others, were argued by Learned Counsel for the Applicants, as will be brought out ahead in this order. Thus, the Applicants come up to the Tribunal seeking the relief for the quashing and setting aside of notification dated 22.07.1998 and of order dated 30.09.1998 and for holding that the rules which envisage holding of viva-voce test alone are illegal and constitutional.

4. The Respondents have filed a Written Statement (W.S.) of Reply, resisting the claims of the Applicants and first making the point that Applicants had appeared in the selection process, with full awareness of rules, and that rules and instructions, including those issued by Railway Board vide letter of 21.02.1983 have been followed (Annexure R-1). Since 1983, clearance in both i.e. in Selection Board test as well as promotion test conducted in the Zonal Training School (ZTS) is a must for promotion for

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Driver 'C'. The Applicants, it is contended, are now estopped from questioning the validity of the process of selection. Details regarding the selection process are provided in the W.S. and it is stated Goods Driver is a selection post. Applicants did not qualify in the selection held in August/September, 1998, and hence did not find a place in the panel published on 30.09.1998. The allegation of inclusion of persons who had not qualified ZTS exam are denied and the position in regard to the allegations regarding three persons named in para 4.3 has been explained in para 12 of the Written Statement.

5. We have seen the papers in the case and have heard Learned Counsel on both sides. Shri D. V. Gangal, Learned Counsel for the Applicants, first took us over the facts and the documents at some length. He started with the contention that the selection based on only viva-voce test was wrong and that it had to be done by due process of selection. He reiterated the point that S/Shri Nagale, Hans and Ramji Prasad, were wrongly selected. It was further contended by Shri Gangal that the Rules/instructions contained in the letter dated 21.02.1983 (R-1) required that Written Test should also have been conducted, hence this was a case of providing 100% marks for viva-voce, which was against the settled law.

6. Shri Gangal argued that even if para 215 of I.R.E.M. gave powers to the Respondents, there were no guidelines and discretion exercised cannot be arbitrary.

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7. Arguing the case on behalf of Respondents, their Learned Counsel Shri Suresh Kumar, took the following line of argument. That para 215 of I.R.E.M. gave the option as to whether only viva voce was required to be conducted or both, written test and viva voce. Rules were clearly followed and guidelines are contained in para 219 (G) of I.R.E.M. He depended on the case of Siya Ram V/s. Union of India reported at 1998 SCC (L&S) 668. Learned Counsel cited the two other authorities in support of his arguments viz :-

- (i) All India SC & ST Association V/s. Artherjeen
(AIR 2001 SC 1851)
- (ii) Harjinder Singh V/s. State of Punjab
1996 (6) SCC 322

Shri Suresh Kumar then argued that since all rules were followed, and applicants had failed at the selection, there was no merit in any of the arguments raised.

8. Let us first settle the matter in regard to two of the issues raised, the first being that certain persons who had not passed the Z.T.S. exam had been included in the panel and the second that three persons under cloud of enquiry/punishment were also included in the panel (paras 4.2 and 4.3 of the O.A). These are factual in nature, and have been refuted/explained by the Respondents in their Written Statement, as discussed above. In the absence of any rejoinder or document to the contrary, this factual statement of Respondents will need to be accepted. Hence, the objections taken on these grounds by Applicants are rejected.



9. The next and crucial issue for deciding this case is whether any rule has been violated by the action of the Respondents in conducting, what the Applicants contend, is the conclusion of the process of selection by a viva-voce test alone. The specific objection also taken was that no written test was conducted and that this should have been done. We have carefully perused paras 215 and 219 of I.R.E.M. (Volume-I) and have also perused the letter containing instructions issued by the Railway Board dated 21.02.1983 (copy at Annexure R-1, page 52).

10. Clearly, the procedure first envisages the passing of Training Course at Z.T.S. and then the viva-voce test. Admittedly, both these ingredients/processes of the rules and instructions have been followed. The provisions of I.R.E.M. at para 215 clearly provide that the "positive act of selection may consist of a written test and/or viva-voce test;....." (underlining ours). It must be concluded therefore that there is clearly nothing wrong in conducting the viva-voce test. This conclusion can be reached also in the background of the fact that this viva-voce test is provided as a well considered policy decision by Railway Board in their letter dated 21.02.1983. Importantly, the base of the theoretical aspect have obviously been taken care of by the necessary condition of passing ZTS course. Under the circumstances, it is not correct, as argued by Learned Counsel for Applicants, that 100% marks has been provided for viva. In the background of the above facts and discussions, there is no justification for any challenge to rules/procedure/

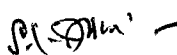
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instructions; nor do we find any illegality or unconstitutionality in the action of the Respondents culminating in the publication of impugned panel.

11. In this background, considering both the cases decided by Hon'ble Supreme Court in the matter of Madan Lal V/s. State of J & K [1995 (3) SCC 486] and Raj Kumar V/s. Shakti Raj [1997 (9) SCC 527] it can clearly be said that Applicants' case will be hit by the former judgement since no illegality has been noticed, as per the ratio of the latter case.

12. Under the circumstances, it is clear that no case has been made out by the Applicants for our interference in the matter before us. This O.A. is, therefore dismissed with no order as to costs.


(S. L. JAIN)
MEMBER (J).


(B. N. BAHADUR)
MEMBER (A).

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