

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Original Application No.510/1999

Dated: 4th August 2000

Miss Samrita L.Dhawan.

Applicant.

Shri M.S.Ramamurthy

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

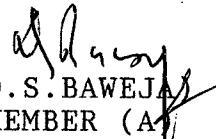
Mr. V.S.Masurkar.

Advocate for
Respondent(s)

CORAM :

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

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


(D.S. BAWEJA
MEMBER (A))

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.510/99.

Pronounced this the 4th day of August 2000.

Coram : Hon'ble Shri D.S.Baweja, Member (A),
Hon'ble Shri S.L.Jain, Member (J).

Miss. Samrita L.Dhawan,
24, Panchsheel, 5th floor,
Veera Desai Road,
Andheri (West),
Mumbai.
(By Shri M.S.Ramamurthy for
Shri R.Ramesh)

... Applicant.

Vs.

1. Union of India,
through the General Manager,
Central Railway,
C.S.T.
Mumbai - 400 001.
2. The Chief Personnel Officer,
Central Railway,
C.S.T.,
Mumbai - 400 001.
3. The Senior Deputy General Manager,
Central Railway, CST,
Mumbai - 400 001.
(By Advocate Shri V.S.Masurkar)

... Respondents.

: O R D E R :

{Per Shri D.S.Baweja, Member (A)}

The applicant joined Central Railway as Junior Clerk in 1987. She was promoted as Senior Clerk in 1989 and as Head Clerk in 1991. The applicant is a Law Graduate and was promoted as Law Assistant on ad-hoc basis as per order dt. 22.5.1996. A Notification was issued by the Chief Personnel Officer on 14.1.1999 inviting applications for selection to post of Law Assistant in the grade of Rs.6,500-10500. The eligibility condition was a regular service of 5 years in Group 'C' with Degree in Law. The applicant met with these conditions and applied for the selection. The list of eligible candidates was

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issued on 24.2.1999 and the name of the applicant appeared at Sl.No.8 of the said list. The written test was held on 20.3.1999 and the applicant appeared in the same. The result of the written test was notified on 10/11.5.1999 in which 44 candidates were shown as passed. The applicant did not find her name in the list. It is the case of the applicant that she has done exceedingly well in the written examination, as the questions in the question paper related to the subjects which she was dealing with as Law Assistant. The applicant made a representation on 17.5.1999 for her non-passing in the written test and this was followed by a reminder dt. 14.6.1999. On not getting any response, she has filed the present OA on 16.6.1999, as the viva voce was proposed to be held on 17.6.1999 and 18.6.1999.

2. The applicant has challenged the result of the written test in which she is not declared passed on several grounds which have been detailed in para 5 of the OA and will be delineated hereafter. Based on the grounds taken in para 5, the applicant has sought the following reliefs :

- (a) to set aside the result of the written test published as per letter dt. 10/11.5.1999,
- (b) to set aside the letter dt. 21.5.1999 through which the candidates who have passed in the written test have been called for viva voce,
- (c) to restrain the respondents from holding the viva voce test and finalise the result of the selection for the post of Law Assistant.
- (d) to direct the respondents to get all the answer papers evaluated by an Officer of higher rank and preferably who is a holder of a Degree in Law.
- (e) The viva voce should be held only after the revaluation.

- (f) to direct the respondents to reevaluate the answer paper of the applicant by an authority of a higher ranking than the officer who has done the original valuation.
- (g) to direct the respondents to call the applicant for viva voce test taking into account the marks obtained in the written test and marks for seniority as per extant rules.

3. The respondents have filed a written reply opposing the application. The respondents submit that the panel containing names of 12 candidates has already been notified on 13.7.1999. The respondents further add that her answer paper and supplementary answer sheets have been correctly filed together and all the attempted questions have been evaluated. Re-valuation of the answer paper is not called for as it is not provided as per the extant rules. It is also submitted that the selection committee has been constituted by the members who were all Law Graduates. The representation of the applicant has been already replied as per letter dt. 14.6.1999. The plea of the applicant for adding the seniority marks to the marks obtained in the written test for calling the candidates for viva voce test is not permissible in terms of the Railway Board's letter dt. 16.11.1998 issued in pursuance of the direction of the Hon'ble Supreme Court in the case of Ramjayram and a number of OAs decided by the Bench of this Tribunal. In view of these submissions, the respondents plea is that the applicant has no case and the OA deserves to be dismissed.

4. The applicant has not filed any rejoinder reply.

5. We have heard the arguments of Shri M.S.Ramamurthy for Shri R.Ramesh the learned counsel for the applicant and Shri V.S.Masurkar, the learned counsel for the respondents.

6. As brought out earlier in para 2, the applicant has sought several reliefs which include the setting aside of the result of the written test, withholding of the viva voce test and non-finalisation of selection. The applicant has also prayed for re-valuation of the answer papers of all those who have passed in the written test. It is also noted that the final panel has ~~also~~ been notified during the pendency of the OA. The applicant has neither challenged the panel nor has made the candidates who have passed in the written test and those who have been placed on the panel as a party respondent. However, when these infirmities were brought to the notice of the counsel for the applicant, he made a statement at the bar that he does not press for any of these reliefs which are likely to affect the interest of those candidates who have passed in the written test and those who have been placed on the panel. He further submitted that, he presses only for a relief of revaluation of the answer paper of the applicant to determine the correct marks in view of doing exceedingly well in answering the questions ~~have scored by her~~. In view of this submission, the deliberations hereafter are confined only to this relief.

7. The applicant has also taken one more ground that in terms of para 219 (g), Note - II, of Indian Railway Establishment Manual seniority marks are to be taken into account for determining the eligibility for calling the candidates for viva voce test. However, during the hearing, the counsel for applicant submitted that he does not press for this ground in view of the Railway Board's Circular and the Judgment of the Hon'ble Supreme Court cited by the Respondents in the written statement.

8. Now, coming to the relief of revaluation of the answer paper, the applicant has sought the revaluation on the plea that she has been dealing with the subjects on which the questions have been asked in the question paper and therefore she had done exceedingly well. It is contended that the applicant has not secured pass marks in the written test due to the following grounds:

- (a) non-inclusion of the name of the applicant in the list of successful candidates in the written examination is either inadvertant or deliberate.
- (b) Valuation has not been carried out properly and objectively.
- (c) All answers and all the answer sheets including the original and supplement have not been properly connected and evaluated.
- (d) It is possible that while coding and de-coding a deliberate mix up has been done. The applicant alleges that coding and de-coding had been done by the Senior Personnel Officer with whom she had strained relations on account of her representation made against non-grant of benefits due to the applicant as per the recommendations of the Vth Pay Commission.
- (e) The candidates who have passed in the written test belong to the category of Junior and Senior Clerks, Travelling Ticket Examiners, Goods Guards, Junior Stenographers, while the applicant was well qualified and possesses a Degree in Law and having adequate experience as Law Assistant has been failed in the written test.
- (f) The three officers who constituted the Selection Committee do not appear to be Law Degree holders or Officers from the Law Department and therefore, it is feared that the evaluation of the answer papers has not been done by competent examiner.
- (g) Since the applicant was working on ad-hoc basis as Law Assistant, she could not be dropped from being selected.
- (h) Number of candidates who have passed in the written test are reported not to be holders of law degree or the degrees claimed by them are fake. This position needs to be verified by the vigilance department as to how their names could be included in the list of candidates who have passed in the written test.

9. The grounds which have been taken by the applicant in challenging her failure in the written test and indicated above are based on the conjectures and surmises. She has not brought

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any material on the record to supplement her allegations. She ^{has} alleged that there has been a mix up in the coding and de-coding of the answer papers due to the Senior Personnel Officer being ill-disposed against her. The applicant has neither named the Senior Personnel Officer nor she has made him a party respondent. No allegations of mala fides can be made against an officer without making him a party respondent, ^{or} that such a party has an occasion to meet with the allegations. Therefore, this ground does not have any substance. As regards the fear of the applicant that all the pages of her original answer books and the supplements have not been taken into account is illfounded. The respondents have made available the answer papers of the applicant and we find that all the five answers attempted by the applicant have been evaluated, which indicates that all the answer sheets have been taken into account. The allegation of the applicant that the valuation of answer papers has been done by an Officer who did not possess a degree in law is also not tenable as the respondents have categorically stated that all the members of the Selection Committee, who have set the question paper and have evaluated the answer papers are law graduates. In view of these observations, none of the grounds taken by the applicant have any merit. As regards the plea of the applicant for revaluation of her answer paper the applicant has not cited any rule under which the valuation of answer sheets can be sought to be revalued. The applicant cannot seek re-valuation just on a presumption that she has done exceedingly well and is entitled to get pass marks. Any valuation of answer paper done by examiner cannot be subject of judicial review until and unless it is alleged that the authority evaluating the answer paper acted with

mala fides. There is no such ground taken by the applicant. We are therefore not persuaded to find any merit in the plea of the applicant that revaluation of the answer paper is called for.

10. In the result of the above, we do not find any merit in the O.A. and the same is dismissed. No order as to costs.

SLJ
(S.L.JAIN)

MEMBER (J)

DSB
(D.S.BAWEJA)

MEMBER (A)

B.