

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 490/2000

Date of Decision : 27<sup>th</sup> Sept, 2000

A.E.Ramteke & Ors. Applicant.

Shri S.V.Akolkar Advocate for the  
Applicant.

VERSUS

DRM, SE Rly., Nagpur & Anr. Respondents.

Shri P.S.Lambat Advocate for the  
Respondents.

CORAM :

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

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

- (i) To be referred to the Reporter or not ? yes
- (ii) Whether it needs to be circulated to other ~~No~~ Benches of the Tribunal ?
- (iii) Library yes

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

mrj\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.490/2000

Dated this the 27<sup>th</sup> day of Sept., 2000.

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

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

1. Ashok Eknath Ramteke
2. Narayanrao Kanhooji Rangari
3. Haishyam Jaganath Sukhdeve
4. Devchand Rajaram Meshram
5. R.P. Chavan
6. Vinayak Shravan Ninawe

All the applicants are working as  
Head Clerk under the DRM, Nagpur  
Div. of S.E.Railway.

... Applicants

By Advocate Shri S.V.Akolkar

V/S.

1. Divisional Railway Manager,  
South Eastern Railway,  
Nagpur.
2. Senior Divisional Personnel  
Officer, South Eastern Railway,  
Nagpur.

... Respondents

By Advocate Shri P.S.Lambat

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the A.T.Act, 1985 to quash and set aside the orders dated 29.6.2000 and 13.7.2000 whereby the respondents have informed that the earlier selection proceedings conducted in the year 1999 has been

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cancelled and further communication that the written test is fixed on 5.8.2000 for the same post of O.S. Gr.II at Nagpur with a direction to declare the results of the Viva voce conducted by the respondents on 11.10.1999 and 14.2.2000 and a further direction to issue promotion order of the applicants on the basis of the results declared by the respondents.

2. The applicants who were working as Head Clerk have a promotional chance of Office Superintendent (O.S.) Gr.II after putting 2 years service in the cadre of head Clerk. All the applicants are entitled as they possess the eligibility for the post of O.S.Gr.II. The Respondent No. 2 by order dated 28.5.1999 decided to fill up the post of O.S. Gr.II in the scale of Rs.5500-9000. The written test was conducted on 29.6.1999 in the Office of Senior Divisional Engineer (Co-ordination), Nagpur. The applicants were called for appearing for the written test on 29.6.1999 and they appeared in the said written test. They were declared qualified on 1.10.1999 and directed to appear in Viva voce test to be conducted on 11.10.1999 at 11.00 hrs. in Senior Divisional Engineer's office with appropriate identification. Accordingly, all the applicants appeared for viva on 11.10.1999. Those who were absent on 11.10.1999 were given another opportunity to appear in viva test on 14.2.2000. Only one applicant Haishyam Sukhdeve appeared on 14.2.2000. Since then respondents failed to declare the result of the said examination. Instead of declaring the result and issuing a promotion order, the Respondent No. 2 informed the applicants on 29.6.2000 that

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entire selection procedure for the cadre of O.S.Gr.II pertaining to the Engineering Department is hereby cancelled as per the order of DRM, S.E.Railway, Nagpur. The said order did not contain any reason for cancellation of the said selection. The applicants made representations to the Respondent No. 1 through proper channel requesting for declaration of the result but no response to the same. The Respondent No. 2 again called the applicants to appear in the written test to the post of O.S.Gr. II which is fixed on 5.8.2000. In respect of the above facts, there is no dispute between the parties.

3. The grievance of the applicants is that there is no reason for cancellation of the examination which includes written test as well as viva. The respondents were erred in cancelling the above examination. The respondents were duty bound to declare the result of the same. The respondents also failed to reply the representations of the applicants. Once the applicants were declared successful in the written test and viva as conducted by the respondents, the only thing remains to be done is the declaration of the result. Hence, this OA. for the above stated relief.

4. The respondents have resisted the claim and urged that the applicants were declared successful in the written test by taking into consideration the relaxed standards meant for SC/ST. The South Eastern Railway Mens Union (Recognised Union) vide its

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letter dated 23.3.2000 and South Eastern Railway Mens Congress vide letter dated 1.3.2000 have submitted representations to the Respondent No. 1 that all the candidates have failed in the written examination and hence fresh selection be made. The respondents have considered the matter and thought that since all the candidates have not secured the requisite marks in the examination (written), the said written examination might be tough hence the candidates could not be successful and therefore it will not be possible to fill up the 12 posts of O.S. Gr.II and the work of the department will suffer. The said selection was for 12 posts of O.S. Gr.II, i.e. 10 unreserved, 1 for S.C. and 1 for S.T. Hence, a decision was taken, considering all facts that all the applicants who appeared in the said examination failed and all posts cannot be filled, to conduct a fresh selection by taking written examination again and hence a notification was issued on 13.7.2000 to conduct the written examination and further communication dated 2.8.2000 was issued mentioning the date of supplementary examination on 16.8.2000. The another reason for cancelling the said process of selection is that at that time it was notified that there were 12 posts of O.S. Gr.II i.e. 10 unreserved, 1 for S.C. and 1 for S.T., but it is found that as per the roster now there exists 17 posts of O.S. Gr.II, out of which 14 are unreserved and 3 for S.C. and there was an error in coming to the conclusion that 1 post for S.T. exists. The third ground which is stressed by the respondents is that the final selection process has not been completed as per the letter dated 28.5.1999. A letter from

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Railway Ministry dated 27.3.2000 was received which is to the effect that relaxation in qualifying marks stands withdrawn in written examination in respect of SC/ST candidates and further directed that selections which are under process of finalisation will be finalised as per the revised instructions. Hence prayed for dismissal of the OA. along with the cost.

5. The respondents placed before us the concerned file of DRM, Nagpur regarding the selection. On perusal of the same, we find that the DRM has cancelled the selection vide its order dated 15.6.2000. The ground for cancellation of the selection is representations of two Unions. It is suffice to state that the remaining two grounds were not mentioned in the note-sheet as stated above.

6. The selection process was not complete for the reasons that in view of the order dated 20.9.1999, it is mentioned that "Necessary steps may be taken to conduct viva-voce test early. Please indicate in the notice that the candidates at Srl.No.5,7,9,10,14,19 have qualified on relaxed standard and their empanelment will be subject to their getting 50% in Professional ability and 50% in aggregate marks in the final selection." Only viva voce has been held in compliance of the said order. No further steps have been taken.

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7. It is true that Board has issued letter No. 97-E (SCT)-I/49/14 dated 27.3.2000 addressed to the General Managers, All Indian Railways and others which is in respect of Qualifying marks in promotion to SC/ST candidates in safety/non-safety categories. On perusal of Para 2 of the same letter, it is mentioned that relaxations in qualifying marks stand withdrawn from the date of issue of this letter, i.e. operative from 27.3.2000 but in para 3 of the same, it is further mentioned that selections which are already finalised on the basis of earlier instructions will not be required to be reviewed or revised. However, selections which are under process of finalisation will be finalised as per revised instructions. Thus a retrospective effect has been given only in respect of those selections which are under process. The present selection was under process. Therefore, the respondents have committed no error in cancelling the same.

8. After filing reply, the applicant filed a rejoinder alleging the fact that the selection is being cancelled only because of the pressure of the representations sent by the two Unions. Regarding the vacancy position, there is no rebuttal by the applicants. Thus, the vacancy position is being changed due to mistake earlier and 1 post for S.T. does not exist.

9. It is true that at the time of cancellation of selection, the last two grounds were not within the consideration of the respondents but these being the grounds which are based on mixed question of fact and law which at this stage emerges, the respondents are entitled to cancel the selection.

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10. We are aware that grounds cannot be supplemented if they do not exist in the file but if the grounds which are raised by the respondents for which there cannot be any dispute <sup>then they</sup> can be taken into consideration for cancellation of the selection.

11. The candidates/applicants who are declared successful in written test and having appeared in viva-voce are only entitled to know the reasons for cancellation and no right accrues to them if a selection is cancelled in view of the Railway Board's letter which has the force of law.

12. In the result, we do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly. Interim order passed on 24.7.2000 which is to the effect that " it is provided that result of the written test which is proposed to be conducted as per notification dated 13.7.2000 will not be declared till the next date of hearing", which was continued from time to time stands vacated. No order as to costs.

*S.L.JAIN*  
(S.L.JAIN)

MEMBER (J)

*B.N.Bahadur*  
27/9/2000  
(B.N.BAHADUR)

MEMBER (A)

mrj.