

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.151 of 2000

_____ the ^{20th} day of April, 2001

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

1. Shri R.A. Tiwari
Working as Dy. Chief Controller,
Central Railway,
Mumbai CST,
Mumbai-400 001.

Residing at
Kavery Apartments
Near Durgamata Mandir,
Kolsewari,
Kalyan (East).

2. Shri O.P. Sharma
Working as Dy. Chief Controller,
Central Railway,
Mumbai CST,
Mumbai-400 001

Residing at
19/2, Dai Pushpa Milan Co-Op
Housing Society,
Sant Ramdas Road,
Mulund (E),
Mumbai-400 081.

..Applicants

By Advocates Shri S.V. Marne with Shri D.V. Gangal.

Versus

1. The Union of India through
General Manager,
Central Railway,
Head Quarters Office,
Mumbai CST,
Mumbai-400 001.
2. The Divisional Railway Manager,
Mumbai Division,
Central Railway,
Mumbai CST,
Mumbai-400 001.
3. Senior Divisional Personnel Officer,
Mumbai Division,
Central Railway,
Mumbai CST,
Mumbai-400 001.
4. Shri J.P. Shrivastava,
Working as Chief Controller,
Central Railway,
Mumbai Division,
Mumbai CST,
Mumbai-400 001.

5. Shri D.K. Tripathi
Working as Chief Controller,
Central Railway,
Mumbai Division,
Mumbai CST,
Mumbai-400 001.
6. Shri B.K. Sahu
Working as Chief Controller,
Central Railway,
Mumbai Division,
Mumbai CST,
Mumbai-400 001.

..Respondents

By Advocate Shri Suresh Kumar.

ORDER

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

This is a joint application filed by the applicants who are aggrieved of the fact that they have been illegally declared as failed in the viva-voce test conducted for promotion to the post of Chief Controller.

2. Facts in brief are that the respondents vide Notifications dated 25.3.1999 and 7.4.1999 called for selection for promotion to the post of Chief Controller in the grade of Rs.7450-11500/-. The applicants being eligible, appeared for selection which comprised of a Written Test and a viva-voce test. The applicants claim that they were declared successful in the written test, however, they were illegally declared as failed in the viva-voce test. They also pleaded that both of them have been working as Chief Controllers on ad hoc basis and they have worked for a considerable period on ad hoc basis still they have been failed in the viva-voce test.

3. It is further stated that the Railway Board had issued a circular dated 23.12.1976 laying down that care should be taken to see that while forming panels employees who have been

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working in the post on ad hoc basis quite satisfactorily are not declared unsuccessful in the interview. Non-selection of the applicants to the post of Chief Controller and their reversion to the post of Deputy Chief Controller, is illegal and void.

4. While assailing this formation of panel the applicants have also taken up a ground that in accordance with para 219(G) of Indian Railway Establishment Manual where written and oral test is held for adjudging professional ability, persons securing aggregate 60% of marks in both the written and oral test should be declared suitable for promotion. Thus it is pleaded that non-promotion of the applicants to the post of Chief Controller is violative of Articles 14 and 16 of the Constitution of India, so they have prayed for the following reliefs:-

- (i) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the respondents and after examining the same quash and set aside the panel dated 29.12.1999 and posting/reversion orders dated 3.2.2000.
- (ii) This Hon'ble Tribunal may further be pleased to direct the respondents to promote the applicants as Chief Controller w.e.f. 3.2.2000 along with all the consequential benefits such as back wages, seniority etc.
- (iii) This Hon'ble Tribunal may further be pleased to hold and declare that the reversion of the applicants to the post of Deputy Chief Controller is illegal and void and the same should be quashed and set aside.
- (iv) This Hon'ble Tribunal may further be pleased to hold and declare that promotions of respondent Nos.4 to 6 is illegal and should be quashed.

5. The OA is being contested by the department. The respondents



pleaded that an employee who has been given ad hoc promotion if fails to qualify the selection test then he can be reverted back to the lower post and there is no infirmity in that and for this they have sought support from a case entitled as Suresh Chand Gautam Vs. Union of India reported in 1991-93 Volume of Full Bench Judgments of the Tribunal at page 232.

6. As far as the provisions of Rule 219 (g) of IREM are concerned, the respondents pleaded that the same are to be read with Rule 320 of IREC. According to the respondents, a candidate must obtain a minimum of 30 marks in professional ability and 60% marks of the aggregate for being placed on the panel. Where both written and oral tests are held for adjudging the professional ability, the written test should not be of less than 35 marks and the candidates must secure 60% marks in the written test for the purpose of being called for the viva-voce test. This procedure is also applicable for filling up of general posts provided that 60% of the total of the marks prescribed for written examination and for seniority will also be the basis for calling candidates for viva-voce test instead of 60% of the marks for the written examination.

7. The respondents have further submitted that the selection board had assessed the suitability of the employees on the basis of written test as well as viva-voce test and took into consideration their service, confidential reports etc. and had recommended 11 unreserved and 2 Scheduled Caste candidates for empanelment in the order of seniority among the employee who had been empanelled. According to the respondents as per para 219(g) of IREM ^{being} before ~~being~~ eligible to be empanelled an employee must secure 60% marks in professional ability and 60% marks in aggregate and since both the applicants had failed to secure

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the minimum qualifying marks in the written test as well as viva-voce; thus they were found unsuitable by the duly constituted selection board.

8. Reoinder was also filed wherein it was pleaded that the respondents have not replied to the specific plea taken by the applicants that under Rule 219(g) of the IREM, 60% aggregated marks in the written and viva-voce test is the criteria for declaring a candidate successful in the selection and if a candidate secures 60% marks combining written and oral test, then he should be put up on the panel.

9. We have heard the learned counsel for the parties and gone through the records of the case.

10. The short question raised by Shri S.V. Marne, counsel for the applicant was that a candidate was not required to obtain 60% marks each in written and viva-voce test. As per the interpretation of Rule 219 (g) of the IREM the only imperative requirement that a candidate must obtain more than 60% marks in written test, but does not answer that he must obtain 60% marks in vivo-voce^{test also}. However, if in the aggregate of written test and viva-voce test a candidate is able to make up 60% of aggregate then he should be empanelled in the panel for selection. To support his contention, the counsel for the applicants has referred to a judgment given by the CAT, Mumbai Bench in OA Nos. 982/92 ad 482/92 Bansidhar R. Chaube & Others Vs. UOI & Others.

11. On the contrary, Shri Suresh Kumar, learned counsel for the respondents has submitted that a candidate is required to obtain 60% marks in the written test as well as 60% in the viva-voce test and aggregate in any case should not be less than 60% so only those candidates can be empanelled. He further submitted that if a candidate gets more than 60% marks in the

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written test but fails to get 60% marks in the viva-voce test then also he can be rejected because the aggregate of both the written test and the viva-voce test may have reached upto 60% of marks.

12. We have gone through the judgment cited by the learned counsel for the applicant and we find that relying upon a previous judgment in the case of N.I. Bansal (OA 462/89) the court had come to the conclusion as follows:-

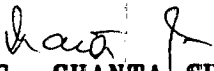
"[S]o long as the candidate obtains 90 marks in the written test and viva-voce together subject to minimum 60% in written test, he ought to have been declared as successful because that is the test laid down in the Indian Railway Establishment Manual, para 219. But the criterionⁿ applied by the Selection Committee was to insist on 60% marks separately under the viva-voce test and written test. The rules do not support such a procedure".


13. Thus the court had held in the earlier OAs that the candidate must obtain 60% of the aggregate marks and minimum 60% in the written test and in the oral tests itself the marks may be less than 60% but the aggregate of written test and oral test should not be less than 60%. In this situation of law, we had asked the respondents to produce the file relating to the formation of the panel so that we may see ourselves as to how much marks each of the applicants had obtained in written test as well as viva-voce test. A comparative chart is drawn to find out how much marks each of the applicants had obtained:-

S.No.	Name	Marks obtained in written test	Marks Obtained at the time of Interview	Total
1.	R.A. Tiwari (applicant No.1)	25/35	5/15	28 ⁹ 30
2.	O.P. Sharma (applicant No.2)	26/35	3/15	29

In addition to the above, applicant No.1 was assigned 14/15 marks for seniority, 9/15 for record of service and 5/20 for personality, address, leadership and academic qualification. Thus his grand total is 56. In the case of Shri O.P. Sharma, applicant No.2 he had secured 14/15 marks for seniority, 9/15 for record of service, 3/20 for personality, address, leadership and academic qualification and his grand total comes to 55. A perusal of this record pertaining to the details of the marks both obtained by the applicants would go to show that though the applicants had secured 60% and above marks in the written test but in the interview their marks were so low that the aggregate marks of written and oral test could not reach even the 60% and even otherwise their total marks based on seniority and record of service also could not reach 60%. Thus we find that even if we apply the law laid down in the case of Bansidhar (Supra), the applicants do not qualify for being empanelled as they had not obtained the 60% of the aggregate marks in the written test and interview.

17. In view of the above, we find that the OA does not call for any interference and the same is dismissed. No costs.


(MRS. SHANTA SHASTRY)
MEMBER (A)


(KULDIP SINGH)
MEMBER (J)

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