

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 425/2001

Date of Decision: 8.01.2002

R.K. Dixit & 2 Ors.

Applicants

Shri G.S. Walia

Advocate for Applicants

Versus

Union of India & another

Respondents

Shri V.S. Masurkar

Advocate for Respondents

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT,

VICE

HON'BLE SMT. SHANTA SHASTRY.

CHAIRMAN

MEMBER (A)

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

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 425/2001

THIS THE ^{24th} DAY OF ^{January} ~~DECEMBER~~, 2001

CORAM: SHRI JUSTICE BIRENDRA DIKSHIT. VICE CHAIRMAN
SMT. SHANTA SHASTRY MEMBER (A)

1. R.K. Dixit
Residing at 48/2 Railway
Quarters, Kasturba Road,
Opp: Bhanu Park,
Kandivali (W),
Mumbai-67.
2. G.N. Singh, Residing at
Janupadaa Vaibhav Nagar,
Near Farid Estate,
Kala Pathar Kandivali (East),
Mumbai-400 010.
3. R.B. Desai, Residing at
5-Mun-Emp Akanksha
Co-operative Society,
21, Poddar Nagar S.V.F. Road,
Borivili (W), Mumbai-400 103. ... Applicants

By Advocate Shri G.S. Wadia.

Versus

1. Union of India, through
The General manager,
Western Railway,
Headquarters Office,
Churchgate,
Mumbai-400 020.
2. The Divisional Railway Manager,
Mumbai Division,
Western Railway,
DRM's Office,
Mumbai Central,
Mumbai-400 008. ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R

Smt. Shanta Shastri. Member (A)

This OA is against the non-selection and non-empanelment of the applicants - three in number to the post of Senior Commercial Inspector in the scale of Rs. 6500-10500 (RPS). The applicant No.1 joined railway service on 19.12.1986 as a clerk in the commercial department of Western Railway. Applicants No.2 and 3 also joined as clerk on 29.3.1989. They were promoted later-on as Commercial Inspector. Further, applicant No.1 was promoted on adhoc basis to the post of Senior Commercial Inspector in the grade of Rs. 6500-10500. The other two applicants were promoted on adhoc basis similarly on 31.10.2000.

2. The selection for the post of Senior Commercial Inspector was held by the respondents. The method of selection was viva-voce test. The applicants participated in the viva-voce test as their names were in the eligibility list for selection for the post published under letter dated 16.11.2000. However, their names were not included in the panel declared vide letter dated 12.7.2001.

3. There were nine vacancies of Senior Commercial Inspector, six were for general candidates two for SC and one for ST candidates.

4. According to the applicants, the selection is based on seniority cum suitability for the post of Senior Commercial Inspector and the employees' fitness.

has to be judged from their service record. The applicants have been working satisfactorily on adhoc basis in the post of Senior Commercial Inspector and there was no reason to exclude their names from the final panel. The applicants further submit that applicant No.1 and applicant No.2 have been given Chief Commercial Manager's awards for the year 2001 for their meritorious service. Such awards are given only to those selected employees, whose services are found to be extremely outstanding and useful to the Railway Administration. These awards meant that they are fit for promotion and there are no adverse circumstances which may come in the way of their further promotion.

5. The learned counsel for the applicants submits that according to the Railway Board's letter dated 26.9.1976 an employee who has been working on adhoc basis satisfactorily should not be failed in the interview. This has been acknowledged by the Supreme Court in its judgment in the case of R.C.Srivastava Vs. Union of India in SLP No.9866/93.

6. The applicants state further that in the matter of selection there is no comparative assessment. A person who secures 60% in professional ability (i.e. written test and interview) and 60% in the aggregate has to be placed in the panel. There was no written test. The whole selection is based on the interview which in turn is based on service records. So the bench mark is

to obtain 60% marks in the interview i.e. professional ability and 60% in the aggregate. According to the applicants, the selection has not been conducted in accordance with the rules and they apprehend that favours have been shown to junior employees superseding the seniors. Further, even according to the Government of India instructions in the matter, whenever a person is working on adhoc basis in the higher post for which selection is to be held, his AGR has to be upgraded by one grade i.e. 'Good' grading has to be upgraded as 'Very Good' and 'Very Good' as 'Outstanding'. But the respondents seem to have ignored both the letter dated 19th March, 1976 ^(No. 26-9-1976) as well as the orders regarding upgradation of the C.R. and have failed the applicants.

7. The applicants are therefore praying that in view of the judgment of the Supreme Court in R.C. Srivastava Vs. Union of India & another (supra) the applicants should be considered as having passed the interview and should be included in the panel for Senior Commercial Inspector.

8. The respondents submit that the avenues of promotion of Commercial Inspector in the commercial department have been laid down in Annexure-3 attached to the letter dated 19.8.1994. According to this, promotion to the post of Commercial Inspector in the pay scale of Rs. 2000-3200 is by selection by viva-voce only. It is a non-selection post based on seniority cum

suitability. According to the respondents, the applicants were not able to secure 60% marks i.e. 30/50 marks in the viva-voce test as the qualifying marks are 30/50 for professional ability, they secured only 20, 18 and 22 marks respectively. Further, even in the aggregate they did not secure 60% marks. Therefore, on both the grounds, the applicants failed to pass the qualifying standard and therefore, they could not be included in the panel. The learned counsel for the respondents submits that the post of Senior Commercial Inspector is a selection ^{post}, having failed in the viva-voce test they cannot now challenge the process of interview as being arbitrary or unfair.

9. The respondents have also raised the plea that the applicants have not impleaded those who were selected and included in the panel of 27.4.2001 of Senior CMIs.

10. Referring to the letter dated 26.9.1976 (19th March, 1976) quoted by the applicants, the learned counsel for the respondents submits that according to the Railway Board's letter dated 09.8.1982 it is stated that it is not the right of the employees who are working on adhoc basis on higher post to be selected and included in the panel for those posts. He has enclosed copy of the letter for reference. The question of

giving higher grading in the ACR does not arise at all as the applicants did not secure the minimum qualifying marks in the viva-voce.

11. The learned counsel for the applicants argued further drawing support from certain judgments in this connection. He relies on the judgment dated 24th October, 2001 in OA 792/97 in the case of Dajiram Tatu Lokhande & Ors. Vs. Union of India & Ors. decided by this Tribunal. In this case, the issue was about non-inclusion of the applicant in the panel for the post of Chargeman "B". The applicant had been working on adhoc basis in the selection post. The applicant had passed in the written test, but was declared failed in the interview. The Tribunal relying on the Board's circular dated 19.3.1976 which shows that while preparing panel, care should be taken to see that employees who are working on adhoc basis quite satisfactorily should not be declared unsuitable in interview, in particular when employees reaching the zone of consideration may be safe guarded from harassment. The Supreme Court also upheld the aforesaid circular in SLP No. 9866/93 in the case of R.C. Srivastava Vs. Union of India & another decided on 03rd November, 1995. The Supreme Court concluded that "it must therefore be held that the applicant was entitled to the benefit of promotion contained in the circular dated 19th March, 1976. Applying the said circular, it must be concluded that the employee was wrongly denied the selection on

the basis of marks given to him in the viva-voce test. The applicant secured 24.15 marks in the written test. However, he secured only five marks out of 15 in the interview. Thus, in the aggregate he could secure only 59.15 marks falling short of 60% marks. The Supreme Court also held that "though the circular of the Railway Board cannot over-ride the statutory rule but a circular which is in the nature of administrative direction can certainly supplement the rules on matters on which the rules are silent". Based on this the Tribunal allowed the OA and quashed and set aside the panel and directed to hold a review DPC as per rules. The applicants claim that their case is covered fully by the aforesaid judgment. Further, the applicants have also produced another judgment dated 26th July, 2000 in OA 1210/95 in the case of V.N. Mangalanandan & Hari Kumar S. Vs. Union of India. In this judgment reference was made to the Full Bench decision of the Tribunal in OA No.306 to 308/90 in the matter of S.S. Shambus & Ors Vs. Union of India & Ors decided on 29.10.1991 as well as the decision of the Tribunal in B.N. Guin Vs. Union of India & Others reported in 1995 (1) CAT MAT 21. The Full Bench observed that ends of justice can be met if for the period during which the applicants shouldered the higher responsibilities of the higher Class-I posts of ASW/SW their gradation as SA should be treated as one level higher than the grading awarded to them as ASW as per the ACRs for that period i.e. if the ACRs as ASW reflect 'good', it should be taken as 'very good' and

'very good' it should be taken as 'outstanding'. The applicants have also placed reliance on judgment of Govind Singh Verma Vs. Union of India & Others in OA No.94/99 decided by the Jaipur Bench of the Tribunal on 07.7.2000. In this case, the applicant had passed in the written test by relaxed standard being a SC candidate. He was however, declared failed in the interview. The Tribunal referred to the clarificatory letter issued on 09.8.1982 to which a reference has been made by the respondents in the present case also. The Tribunal observed that the benefit of the circular dated 19.3.1976 had been extended to applicants in a large number of cases by various Benches of the Tribunal even after 09.8.1982 and even the judgment of the Apex Court in SLP No.9866/93 - R.C. Srivastava was given on 03.11.1995 upholding the validity of the circular of 19.3.1976. Therefore, the Tribunal has no reason at all not to follow the settled legal position and held the applicant entitled to the benefit of the circular.

12. The applicants have also produced copies of the certificate of merits granted to applicant No.1 and applicant No.2. However, since these were produced at the lag end of the arguments and no copy was given to the respondents, they were not taken on record.

13. We have heard the learned counsel for both the sides and have perused relevant judgments and have given careful consideration to the arguments advanced.

14. The main grounds taken by the applicants are the circular dated 19th March, 1976 of the Railway Board and the judgment of the Full Bench in regard to upgrading of the grading received in the ACR in case of those working on adhoc basis in the higher post. It has been well settled now that the circular of 19.3.1976 laying down that adhoc persons working in higher post satisfactorily should not be found unsuitable in the interview particularly if they have reached the zone of consideration is to be followed. In the present case, there was no written test, it was only viva-voce which consists of 50 marks as against normal 15 marks when a written test is held. The question is whether the circular would apply even when only viva-voce is held. The learned counsel for the applicants argued that no such distinction can be made. The respondents opposed on this ground. In our considered view in the absence of any written test if the applicants have been considered eligible to appear in the viva-voce test then the circular on 19.3.1976 would apply because it would imply as if the applicants had passed the written test. The question of upgrading the gradings in the ACR in the case of the applicants is not material, in the present circumstances as the applicant had not cleared the first hurdle of ^{qualifying} ~~passing~~ in the ^{viva voce} ~~written~~ test. ^{ie. professional ability} Now if they are declared as having passed in the viva-voce in terms of the circular letter dated 19.3.1976 they would automatically get the requisite aggregate marks, thus,

fulfilling both the conditions for selection. There won't be any need for upgrading of the CRs. In the facts and circumstances of the case, in our considered view, the applicants' case needs to be reconsidered in terms of the circular dated 19.3.1976 of the Railway Board.

14. The respondents have raised a plea of non-joinder of parties. It is a fact that all the parties i.e. those selected in the selection panel have not been impleaded in this case. The respondents have argued that on this count alone the OA needs to be dismissed. In our considered view though it is true that the successful candidates have not been impleaded, non-joinder of necessary parties need not vitiate the entire selection. We find that there are two more vacancies left for general candidates and also one more vacancy from the reserved category is available. This being the position, we do not consider it necessary to quash and set aside the entire selection of those general candidates and the reserved candidates, who have already been empanelled, but the applicants could be considered along with other similarly placed persons against the remaining three vacancies. We therefore, direct the respondents to reconsider the selection of the applicants against the remaining vacancies along with other similarly placed persons in the light of the circular dated 19.3.1976 of the Railway Board, which has been upheld by the Hon'ble Supreme Court and relying

upon which the different Benches of the Tribunal have allowed similar applications. This may be done within a period of three months from the date of receipt of a copy of the order. The OA is partly allowed. No costs.

Shanta S
(SMT. SHANTA SHASTRY)
MEMBER(A).

B. Dikshit
(BIRENDRA DIKSHIT)
VICE CHAIRMAN

Order signed 28/11/02
29/11/02
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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

REVIEW PETITION NO. 29/2002
IN
ORIGINAL APPLICATION NO. 425/2001

THIS THE 29TH DAY OF AUGUST, 2002

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE
CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

R.K. Dixit & 2 Others. .. Applicants

Versus

Union of India & Others. .. Respondents

O R D E R
Hon'ble Smt. Shanta Shastri. Member (A)

This review petition is filed against the order dated 08.01.2002 by the respondents in the Original Application No.425/2001. By the aforesaid judgment and order, the respondents were directed to reconsider the selection of the applicant against the remaining vacancy along with other similarly placed persons in the light of the circular dated 19.3.1976 of the Railway Board which had been upheld by the Hon'ble High Court and relying upon which different Benches of the Tribunal had allowed similar applications. This was required to be done within a period of three months.

2. The respondents submit that the post of Senior CMI is a selection post comprising of only viva voce. The applicant failed to secure qualifying marks and therefore, there were not placed on the panel. According to the review petitioners identical points

were raised in OA No.796/99 in the case of J.K. Verma & 2 Ors Vs. Union of India & 4 Ors including the General Manager, Western Railway. The aforesaid OA was decided by the Ahmedabad Bench of the Tribunal on 18.10.2001. It was held in this OA that the earlier judgment of the Jaipur Bench in the case of V.N. Sharma in OA No.455/96 was decided in favour of the applicant without considering the circular of 1982 of the Railway Board. The circular has clarified that the direction given in the circular dated 29th March, 1976 does not give any enforceable right to the candidate and the intention was not to by-pass or to supersede in any manner the normal rules of selection as contained in IREM and orders issued from time to time. The review petitioners contend that the judgment and order dated 02.01.2002 in OA No.425/2001 is against the settled law. Necessary parties were not added to the OA. The General Manager of Western Railway is bound by the judgment of the Ahmedabad Bench dated 18.10.2001. Since the judgment of this Bench and the judgment of the Ahmedabad Bench are on identical issue, but in different directions, it is necessary to review the judgment of this Bench dated 08.01.2002.

3. Further, the review petitioners have also referred to a judgment of the Supreme Court in the case of Surjit Singh Vs. Union of India reported in 1997 (10) SCC 592 wherein the ratio laid down is that "the

Tribunal wrongly stated that if they commit the mistake, it is for the Supreme Court to correct the same. That view of the Tribunal is not conducive to the proper functioning of judicial service. The Tribunal is duty bound to correct with grace its mistake of law by way of review of its order."

4. We have considered the grounds raised by the review petitioners. In our judgment dated 02.01.2002 we had taken note of the circular of 1982 to which the review petitioners are referring. In para 11 of the judgment the circular of 09.8.1992 has been discussed. It was observed that the benefit of the circular dated 19.3.1976 had been extended to the applicants in a large number of cases by various Benches of the Tribunal even if circular dated 09.8.1992 and even the judgment of the Apex Court in SLP No.9866/93 in the case of R.P. Srivastava was given on 31.01.1995 i.e. after 09.8.1982 upholding the validity of the circular of 19.3.1976. The judgment of the Ahmedabad Bench now being referred to by the review petitioners was not brought to our notice though it must have been within the knowledge of the review petitioners at the time of hearing. In our considered view, no review is called for in the present case. Accordingly, review petition is dismissed.

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

B. Dixit
(BIRENDRA DIKSHIT)
VICE CHAIRMAN

Gajan