

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 850/2000 & 180/2001.

Dated this Thursday, the 29th day of November, 2001.

CORAM : Hon'ble Shri Justice B. Dikshit, Vice-Chairman.

Hon'ble Smt. Shanta Shastry, Member (A).

Chhibubhai C. Rathod,
Head Ticket Collector,
Western Railway,
Kandivli, Mumbai.

... Applicant.
in both O.As.

(By Advocate Shri R. D. Deharia)

VERSUS

1. Union of India through
The General Manager,
Western Railway,
Churchgate,
Mumbai.
2. The Divisional Railway Manager,
Western Railway,
Mumbai Division,
Mumbai Central,
Mumbai.
3. Senior Divisional Commercial
Manager, Western Railway,
Mumbai Divisional Office,
Mumbai Central, Mumbai.
4. Shri Ramvilas R.,
Head T.C., Western Railway, DDR
C/o. Station Superintendent,
Western Railway, Dadar (West)
Station, Mumbai.
5. Shri Ramshi Shram B.,
Train Ticket Examiner, W. Rly., CCG,
C/o. Station Superintendent,
Western Railway, Churchgate, Mumbai.
6. Shri Babu Kalidas Chavan,
Train Ticket Examiner, W. Rly.,
Surat.
C/o. Station Superintendent,
Western Rly., Station Surat,
(Gujarat).

7. Shri Narendra Kumar S.K.
Train Ticket Examiner,
W. Rly., Churchgate,
C/o. Station Superintendent,
Western Railway Station,
Churchgate, Mumbai.
8. Shri Sanjay V. Kadam,
Sr. Ticket Collector,
W. Rly., CCG,
C/o. Station Superintendent,
Western Railway Station,
Churchgate, Mumbai.
9. Shri Ramdayal Saroj,
Sr. Ticket Collector,
W. Rly., BVI,
C/o. Station Superintendent,
Western Railway Station,
Borivli, Mumbai.
10. Shri Pramod Kumar Rokade,
Senior Ticket Collector,
W. Rly., BCT,
C/o. Station Superintendent,
Western Railway, Bombay Central,
Mumbai.
11. Shri Naren Sonavaria,
Train Ticket Examiner,
W. Rly., Balsar,
C/o. Station Superintendent,
W. Rly., Balsar (Gujarat)/
12. Shri Vinod Hararia,
Train Ticket Examiner,
W. Rly., C.C.G.,
C/o. Station Superintendent,
Western Railway, Churchgate,
Mumbai.
13. Shri Teeka Singh,
Train Ticket Examiner,
W. Rly., BL,
C/o. Station Superintendent,
W. Rly., Balsar (Gujarat).
14. Shri Balchandra N. Kadke,
Train Ticket Examiner,
W. Rly, ST.,
C/o. Station Superintendent,
W. Rly., Surat (Gujarat).
15. Shri Rajesh S. Gaikwad,
Train Ticket Examiner,
W. Rly., CCG,
C/o. Station Superintendent,
W. Rly., Churchgate,
Mumbai.

16.
17. Shri Bhagat Lalit D.,
Train Ticket Examiner,
W. Rly, CCG,
C/o. Station Superintendent,
Western Railway, Churchgate,
Mumbai.
18. Shri Ayodhya Prasad J. Verma,
Train Ticket Examiner,
W. Railway, Surat,
C/o. Station Superintendent,
W. Rly., Surat (Gujarat).
19. Shri Devidas Waghmare,
Train Ticket Examiner,
W. Rly., BVI.
C/o. Station Superintendent,
Western Railway, Borivali,
Mumbai.
20. Shri Mithulal S. Kori,
Train Ticket Examiner,
W. Rly., CCG,
C/o. Station Superintendent,
W. Rly., Churchgate,
Mumbai.
21. Shri Sambhaji R. Wankhede,
Train Ticket Examiner,
W. Rly, CCG,
C/o. Station Superintendent,
Western Railway, Churchgate,
Mumbai.
22. Shri Vijay Kumar Kannan,
Train Ticket Examiner,
W. Rly., BVI.
C/o. Station Superintendent,
Western Railway, Borivli,
Mumbai.
23. Shri Ramlal B. Yadav,
Train Ticket Examiner,
W. Rly, CCG,
C/o. Station Superintendent,
W. Rly., Churchgate, Mumbai.
24. Shri Sanjay Bansode,
Train Ticket Examiner,
W. Rly., BVI,
C/o. Station Superintendent,
W. Rly., Borivli, Mumbai.
25. Shri Sureshchandra Barud,
Senior Ticket Collector,
W. Rly, ST.
C/o. Station Superintendent,
W. Rly., Surat, (Gujarat)

26. Shri Yongendraram H. Gond,
Sr. Ticket Collector,
W.Rly., BVI,
C/o. Station Superintendent,
Western Railway, Borivli,
Mumbai.
27. Shri Sandeep Bhombare,
Train Ticket Examiner,
W. Rly., ST,
C/o. Station Superintendent,
Western Railway,
Surat (Gujarat).
28. Shri Pandurang N. Kamble,
Sr. Ticket Collector,
W. Rly., BDTs,
C/o. Station Superintendent,
Western Railway, Bandra
Terminus, Mumbai.
29. Shri Pratapsingh Guljarilal,
Train Ticket Examiner,
W. Rly., BL.
C/o. Station Superintendent,
Western Railway, Balsar,
(Gujarat).
30. Shri Ramesh G. Pasi,
Sr. Ticket Collector,
W. Rly., GTR.
C/o. Station Superintendent,
W. Rly., Grant Road, Mumbai.
31. Shri Mahancharam,
Sr. Ticket Collector,
W. Rly., MEL,
C/o. Station Superintendent,
W. Rly., Marine Lines,
Mumbai.
32. Shri Kantilal P. Patel,
Senior Ticket Collector,
W. Rly., BCT,
C/o. Station Superintendent,
W. Rly., Mumbai Central,
Mumbai.
33. Shri Muthai Laxman,
Senior Ticket Collector,
W. Rly. MEL,
C/o. Station Superintendent,
W. Rly., Marine Lines,
Mumbai.
34. Shri Milind Dahgle,
Sr. Ticket Collector,
W. Rly. EPR.
C/o. Station Superintendent,
W. Rly. Elphinstan Road,
Mumbai.

35. Shri Manjunath Bellary,
Sr. Ticket Collector,
W. Rly., MEL.
C/o. Station Superintendent,
W. Rly., Marine Lines,
Mumbai.
36. Shri Doiphode Rajesh,
Sr. Ticket Collector,
W. Rly., MEL,
C/o. Station Superintendent,
W. Rly., Marine Lines, Mumbai.
37. Shri Barot Ashok Kumar,
Sr. Ticket Collector,
W. Rly., BCT,
C/o. Station Superintendent,
W. Rly., Mumbai Central,
Mumbai.
38. Shri Bipendra Singh Chonkar,
Sr. Ticket Collector,
W. Rly., MEL,
C/o. Station Superintendent,
W. Rly., Marine Lines, Mumbai.
39. Shri Ramesh Chandra Saroj,
Sr. Ticket Collector,
W. Rly., MEL,
C/o. Station Superintendent,
W. Rly., Marine, Lines,
Mumbai.
40. Shri Suresh Kumar Ram,
Sr. Ticket Collector,
W. Rly., MEL.
C/o. Station Superintendent,
W. Rly., Marine Lines,
Mumbai.
41. Shri Ganesh Madhukar Parmar,
Sr. Ticket Collector,
W. Rly., MEL,
C/o. Station Superintendent,
W. Rly., Marine Lines, Mumbai.
42. Shri Avinash Shikhare,
Sr. Ticket Collector,
W. Rly., MEL,
C/o. Station Superintendent,
W. Rly., Marine Lines, Mumbai.
43. Shri Mahavir Puranchand Bagli,
Senior Ticket Collector,
W. Rly., CYR,
C/o. Station Superintendent,
W. Rly., Charni Road, Mumbai.

44. Shri Lilhas Kewalkar,
Sr. Ticket Collector,
W. Rly., CCG.
C/o. Station Superintendent,
W. Rly., Churchgate, Mumbai.
45. Shri Shekhar Wainganker,
Senior Ticket Collector,
W. Rly., CCG,
C/o. Station Superintendent,
W. Rly., Churchgate, Mumbai.
46. Shri Kishor P. Wagh,
Sr. Ticket Collector,
W. Rly., NDB.
C/o. Station Superintendent,
Western Railway, Nandurwar,
(Maharashtra).
47. Shri Janaksingh Harpalsingh,
Sr. Ticket Collector,
W. Rly., BCT.,
W. Rly., Mumbai Central, Mumbai.
48. Shri Shrinath R. Saroj,
Sr. Ticket Collector,
W. Rly., JOS,
C/o. Station Superintendent,
W. Rly., Jogeshwari, Mumbai.
49. Shri Ramdayal N. Kori,
Sr. Ticket Collector,
W. Rly., BA,
C/o. Station Superintendent,
W. Rly., Bandra, Mumbai.
50. Shri J.S. Parmar,
Sr. Ticket Collector,
W. Rly., BVI,
C/o. Station Superintendent,
W. Rly., Borivli, Mumbai.
51. Shri Prabhudayal Verma,
Sr. Ticket Collector,
W. Rly., Kile.
C/o. Station Superintendent,
W. Rly., Kandivli, Mumbai.
52. Shri Subodh Mahajan,
Senior Ticket Collector,
W. Rly., GTR,
C/o. Station Superintendent,
W. Rly., Grant Road,
Mumbai.

53. Shri Sunil B. Bansode,
Senior Ticket Collector,
W. Rly., BCT.
C/o. Station Superintendent,
W. Rly., Mumbai Central, Mumbai.

54. Shri Rajesh Kalvankar,
Sr. Ticket Collector, W. Rly.,
DDR. C/o. Station Superintedent,
W. Rly., Dadar, Mumbai.

55. Shri Shrikant Sangole,
Sr. Ticket Collector,
W. Rly., DDR.
C/o. Station Superintendent,
W. Rly., Dadar, Mumbai.

56. Shri Mukund V. Salve,
Sr. Ticket Collector,
W. Rly., DDR.
C/o. Station Superintendent,
W. Rly., Dadar, Mumbai.

57. Shri Sunil Pedamkar,
Senior Ticket Collector,
W. Rly., STC.
C/o. Station Superintendent,
W. Rly., Santacruz, Mumbai.

58. Shri Hiralal Gopal,
Sr. Ticket Collector,
W. Rly., ST.
C/o. Station Superintendent,
W. Rly., Surat (Gujarat).

... Respondents.

(Sl. No. 1 to 12 as Respondents in
O.A. No. 180/2001.
(Sl. No. 1 to 57 as Respondents in
O.A. No. 850/2000.)

(By Advocate Shri R. R. Shetty)

O R D E R (ORAL)

PER : Smt. Shanta Shastry, Member (A).

Since O.A. No. 850/2000 and 180/2001. are interconnected
and with the consent of the Learned Counsel for both the parties
we have heard both the O.As. together, and are, we proceed to dispose of them
by a combined order.

O.A. No.: 850/2000.

2. The applicant in this O.A. is aggrieved that though he belongs to Scheduled Caste, he was wrongly shown as a general candidate and was thus deprived of relaxed standard and further selection for the post of Head Ticket Collector/Head Train Ticket Examiner.

3. A written test was notified for selection for promotion of Group 'C' staff category Head T.C/Head T.T.E. on 01.04.1998. Alongwith this notice, a list of eligible persons was enclosed. The applicant was shown at sl. no. 106 without mentioning that he belonged to the scheduled caste category. The applicant appeared in the written test held on 18.07.1998. The results were declared on 17.02.1999 and successful candidates were called for viva-voce. The applicant was not called for viva voce.

4. According to the applicant, he secured 55% of marks whereas the passing marks are 60% for general category candidates and for SC/ST candidates the requirement is only 50% marks. Since the applicant had secured 55% he should have been considered for being called for the viva-voce test.

5. The applicant represented on 15.03.1999 in writing for including his name in the list of scheduled caste candidates and to re-evaluate his examination paper. He had represented therein that from the very beginning he had been appointed as scheduled

caste candidate and had also been promoted accordingly. He had received some oral assurance that in the next list the mistake would be corrected and he would be shown as scheduled caste candidate. However, the correction was not carried out. He thereafter received a letter dated 08.07.1999 in reply to his representation. It was advised vide this letter that the applicant's case had been put up to the competent authority and it was decided that the discrepancy regarding the caste shown in the eligibility list issued on 01.04.1998 and 10.06.1998 had not been brought to the notice of the administration within ten days from the issue of notification in the written test which was held on 18.07.1998 and since the result had been notified on 17.02.1999 the question of giving special relaxation at a later stage does not arise. The applicant represented again but to no avail.

6. The learned counsel for applicant submits that he had approached the authorities concerned and represented before the viva-voce test was to be held. Also, there was no condition anywhere or rule that the representation against discrepancy in the eligibility list should have been brought to the notice of the concerned authorities within ten days. The applicant has brought to our notice that a seniority list of Class-III staff was issued on 16.01.1996 in which he was rightly shown as scheduled caste. Also, he was at sl. no. 16 in the list of 30.09.1997 (page 49 of the O.A., Annexure A-5). In spite of this position, the respondents did not consider his representation properly.

7. The respondents do admit that the applicant is a scheduled caste and it was an administrative error that he was wrongly notified as a general candidate. The applicant has approached after the result of the written test. He could have very well approached as soon as he noted that his name was shown as a general candidate in the notification of 01.04.1998. The written test was held on 18.07.1998. He had ample time to have pointed out the discrepancy. After having failed in the written test, now he cannot come with the grievance that he has been considered as a general candidate. He took the calculated risk of sitting in the written test as a general candidate. The situation cannot now be rectified. However, in future ^{his claim} ~~he~~ would be considered as a scheduled caste candidate. In this context, the learned counsel for the respondents relied on the judgement in Madanlal & Others V/s. State of J & K and Others (1995 SC L&S 712) wherein it has been held that having taken a calculated chance, the person cannot question the selection after having failed. Further, the Learned Counsel for respondents has taken the plea that the applicant has approached this Tribunal belatedly, beyond the prescribed time of limitation and, therefore, on that ground also the applicant's request needs to be turned down. The learned counsel is relying on the judgement in the case of State of Punjab V/s. Gurudev Singh wherein it has been held that even void action gets vitiated by limitation. The learned counsel for the respondents also submitted that the seniority position has now been well settled and any consideration of the applicant at this stage ~~was~~ as a scheduled caste ^{candidate} would affect the seniority of other scheduled caste candidates.

8. The applicant has filed M.P. no. 975/2000 for condonation of delay. The applicant has stated therein that he was continuously approaching the officials concerned who promised that they would reconsider the decision as conveyed to him vide letter dated 08.07.1999. The applicant should have approached this Tribunal on or before 08.07.2000 whereas he has come on 08.12.2000, a delay of five months. He was waiting for the decision of the respondents in good faith and wanted to avoid litigation and, therefore, there has been delay. However, the applicant has a strong case.

9. The applicant has also filed another M.P. No. 985/2000 for orders to issue notice to the private respondents No. 4 to 58 and had sought directions to the respondents to produce relevant documents and to make necessary corrections in the eligibility list by deleting the name of the applicant from the general seniority list and including it in the list of scheduled caste candidates and to re-evaluate his answer paper. A request was also made that the notice on the private respondents be served through Respondent No. 2.

10. We have heard the learned counsel for both the parties and have given careful consideration to the pleadings. We find that this is a genuine case where the applicant, though belonging to Scheduled Caste, and having been shown as SC right from beginning, was inadvertently not shown as SC in the eligibility list attached to the notification dated 01.04.1998. It was apparently an administrative error. No doubt, the applicant

could have brought to the notice of the respondents the discrepancy even before the written test, however, he has given a written representation only after the written test was over and the result of the test was declared but there was still scope as the selection was not complete and viva-voce was yet to be held and the Respondents could have easily considered the representation of the applicant at that stage as no ones interest would have been affected had the applicant's request been considered. The marks secured by the applicant were already known. In our considered view, therefore, it was not right on the part of the respondents to have rejected the claim of the applicant for being considered as scheduled case candidate for viva-voce.

11. Nodoubt the applicant has approached this Tribunal belatedly. We have perused his M.P. for condonation of delay. Since this is a genuine case and the mistake occurred inadvertently on the part of the respondents, we are inclined to condone the delay in this case. ^{It is a fact that the applicant belongs to SC and this is not disputed.} In the judgement cited by the learned counsel for respondents in the case of Madanlal (supra) the entire selection process had already been complete. That is not the case here. Only the written test had been held and the results had been declared. The viva-voce test was still not over when the applicant had represented. Therefore, the applicant's case is distinguishable. Since notices were served on the private respondents, M.P. No. 985/2000 has also to be treated as allowed.

12. In the facts and circumstances of the case, we hold that the applicant was eligible for being considered for the viva-voce as schedule caste candidate. Accordingly, we direct the respondents to call the applicant for the viva-voce test and if found successful, he shall be considered as a selectee for promotion to the post of Head T.C./Head T.T.E. from the date his juniors were promoted. This exercise shall be carried out within a period of three months from the date of receipt of a copy of this order. No order as to costs.

O. A. NO. 180/2001

13. In this O.A. the applicant is aggrieved by his reversion from the post of Head T.T.E. to the post of Sr. Ticket Collector ordered vide letter dated 02.03.2001. The applicant is aggrieved by this order as well as by the panel dated 06.12.1999 consisting of 115 employees selected for promotion as Head T.T.E./Head T.C. According to the applicant, it came to his notice only on 05.03.2001. In this case, the applicant had also prayed for interim relief that pending the hearing and final disposal of the application, the respondents be restrained to stay the operation of the impugned reversion order dated 02.03.2001. The Tribunal granted status-quo on 16.03.2001 and the same has continued till date. In view of our directions in O.A. No. 850/2000 the applicant needs to be continued in the post of Head T.C. which he has been holding on ad hoc basis till the result of the viva-voce

becomes available. We, therefore, direct that the status-quo granted earlier shall continue and the applicant shall be allowed to continue on ad hoc basis in the post of Head T.C. until the results of viva-voce to be held for the applicant becomes available.

14. The O.A. is ^{thus allowed} disposed of with the above directions. No order as to costs.

(Smt. SHANTA SHASTRY)
MEMBER (A).

(B. DIKSHIT)
VICE-CHAIRMAN

os*

dt 29/11/01

27/12/01
O.C. 17850/00
24/11/02