

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 634/2001

THIS THE 04TH DAY OF DECEMBER, 2001

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

Gopalal Nai,
Working as Sr. Sleeper Inspector,
under Dy. Chief Engineer (TS),
2nd floor, HQ Office,
Western Railway, Churchgate,
Mumbai-20. ... Applicant

By Advocate Shri Rahul Walia

Versus

1. Union of India, through
General manager,
Headquarters Office,
Western Railway,
Churchgate, Mumbai-20.
2. Divisional Rly. Manager
DRM's office, Western Railway,
Mumbai Central,
Mumbai-400 08.
3. Shri Pravin Kumar Passi,
PWI RT Andheri,
Western Railway,
Aandheri (East),
Mumbai-400. ... Respondents

By Advocate Shri Suresh Kumar for R1 & 2.
Shri S.V. Marne for R3.

O R D E R

Smt. Shanta Shastri. Member (A)

The applicant in this case is aggrieved by his non selection to the post of PWI Grade-I in the scale of Rs.6500-10500.

2. A notification was issued on 02.02.2001 for conducting selection for the post of PWI Grade-I. The applicant being in the zone of consideration, also appeared for the selection which consisted of a written

test as well as viva-voce. 60% marks are required to be obtained in the written test for appearing in the viva voce test. The applicant secured the necessary marks and qualified for the viva voce test. He was, however, unable to get 60% of marks in the professional ability i.e. written test plus viva voce put together. Therefore, the applicant did not find a place in the selection panel which was declared on 01.3.2001. In all ten vacancies had been notified out of which eight were for general category and two were for SC category. Against these seven general and one SC candidates have been empaneled leaving two vacancies, one for general and the other for SC.

3. The applicant is further aggrieved that Respondent No.3, though not eligible to appear in the viva voce test on account of his having failed in the written test was allowed to appear in the viva voce test by granting notional seniority marks.

4. It is the case of the applicant that having passed in the written test, he should not have been found unsuitable in the viva voce test. He has relied on the Railway Board's circular dated 25th January, 1976 wherein, in para 2.2 it has been laid down as follows: "panel should be formed for selection post in time to avoid adhoc promotion. Care should be taken to see while forming panel that employees working in the post on adhoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the zone of consideration should be safeguarded from harassment." The learned counsel for the applicant

submits that this particular letter of the Railway Board has been up-held by the Supreme Court in the case of R.C.Srivastava Vs. Union of India & another. The applicant is already working on adhoc basis for the past four years in the higher grade of Rs.6500-10500, which is the grade for the PWI Grade-I. He has been working quite satisfactorily and has reached the zone of consideration. Therefore, he should not have been denied the selection after the vivo voce test. Further, the learned counsel has drawn our attention to the judgment of Full Bench (Hyderabad) of this Tribunal in OA No.306/90 in the case of Mr. S.S. Sambhus Vs. Union of & Others wherein the head note (c) reads as follows: "Adhoc promotion - selection - held that if a person is discharging higher responsibilities satisfactorily and also allowed to cross EB in the higher post, it is unjust to ignore that fact as it clearly furnishes the evidence of the merits and the suitability of the person to discharge the higher duty in comparison to those who are yet to show their performance." On this ground also according to the applicant, he should have been considered for selection.

5. The learned counsel for the applicant also made another point that when a person is working in a higher grade on adhoc basis while assessing his performance in the Confidential Report his grading should be upgraded. The proposition made out in the Full Bench has been approved by the Supreme Court, so submits the learned counsel for the applicant.

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6. The applicant has also opposed the selection of Respondent No.3. According to him Respondent No.3 was not eligible for being called for the viva voce test on the basis of notional seniority marks. The notional seniority marks have been granted in terms of the Railway Board's circular dated 05.12.1984 [para 219 (g) of the IREM Volume-I.] According to this when both the written and oral test are held for professional ability. The written test should not be of less than 35 marks and the candidates must secure 60% marks in written test for the purpose of being called in 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. The learned counsel for the applicant submits that this particular circular of 05.12.1984 has been quashed and set aside by the Jabalpur Bench of this Tribunal in OA 867/89 decided on 13th August, 93. The operative part reads as follows: "For the reasons discussed above, we quash the impugned order dated 05.12.1984 prospectively and direct the Government of India Ministry of Railways to modify their orders for examination to be conducted in future for selection post of IOW Grade-I. The Railway Board in its discretion may either declare the post of IOW a non selection post or modify the rules of selection to IOW Grade-I." As the selection was held in 2001, this judgment would apply in the present case also and

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therefore, the respondents should not have granted notional seniority marks to Respondent No.3. Therefore, the selection of Respondent No.3 is illegal.

7. The learned counsel for the respondents submits that the applicant failed to get the requisite aggregate of 60% marks in professional ability and therefore, has rightly not been selected for the post of PWI Grade-I. The learned counsel further points out that the judgment in the case of R.C. Srivastava (supra) is not applicable in this case because the applicant is not working in the same higher post i.e. PWI Grade-I, but he is working in the post of Sleeper Inspector, which is an equivalent grade but not the post for which the selection was held; it is not the cadre post. Therefore, the circular dated 25th January, 1976 does not apply.

8. Coming to the selection of Respondent No.3, the learned counsel says that no doubt, the Jabalpur Bench of the Tribunal quashed the circular dated 05.12.1984 regarding grant of notional seniority marks to those senior persons, who fell short of marks in the written test. However, SLP was filed against the same the Supreme Court decided that it was not necessary to go into the question of illegality of the circular. In this order, it was further stated that we find no justification to interfere with the order under challenge. The SLP was dismissed on 08th May, 2001. The learned counsel further pointed out that that

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Respondent No.3 secured 60% in the professional ability and also in the aggregate and therefore, he was selected.

9. Shri S.V. Marne appearing for Respondent No.3 defended the selection of Respondent No.3 by stating that such notional seniority marks had been given in various cases and though the circular of 05.12.1984 was quashed by the Jabalpur Bench of the Tribunal and further the SLP against the same was dismissed by the Supreme Court, the Supreme Court has not considered it necessary to go into the legality of the circular and therefore, the judgment of the Jabalpur Bench could not be said to be final. It was pointed out that this issue has come up in a writ petition filed before the High Court of Bombay as part of a larger application and the same is pending and is likely to be decided shortly.

10. The learned counsel for Respondent No.3 pleads further that Respondent No.3 having been allowed to appear in the viva voce test and having succeeded by securing the requisite marks, not only that after being empaneled, he has also been promoted and he is actually working in the post of PWI Grade-I. Therefore, it would be harsh on Respondent No.3 to set aside his selection at this stage. When the notional seniority marks were given to Respondent No.3, it has not been challenged at that time.

11. We have given careful consideration to the arguments advanced on behalf of the applicant, official respondents as well as Respondent No.3. Also the

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official respondents have produced the relevant record pertaining to the selection. We have perused the records. We find that the applicant had secured 22.05 out of 35 marks in the written test and 07 out of 15 marks in the viva voce test. The aggregate of this comes to 29.05 marks which fall short of the 30 marks i.e. 60% required, thus, rightly he was not selected. The applicant's argument is that he was already working on adhoc basis in the higher post, he should have been given the benefit of Railway Board's circular dated 25th January, 1976. The respondents have argued against it by saying that this particular circular is not applicable to the applicant because he is not working in the post of PWI Grade-I, but in an equivalent post, which is not a cadre post. A reading of the relevant portion of the circular says that employees who were working in the post on adhoc basis quite satisfactorily are not declared to be unsuitable in the interview. The main purpose behind this is one should avoid adhoc promotion and care should be taken to see while forming panel that employees working in the post on adhoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the zone of consideration should be safeguarded from harassment." The applicant has reached the zone of consideration and he did well in the written test. There is no adverse report against his performance in the post held by him on adhoc basis, though it is not a cadre post. No such distinction has been made in this regard. In our considered view, therefore, the benefit of this circular should have been made available to the applicant. The learned counsel has harped on upgradation of

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confidential report. In our considered view since the applicant has secured more than 60% marks in the aggregate, it is not material for deciding the OA.

12. The applicant has also prayed to quash and set aside the selection of Respondent No.3. Strictly speaking, the selection of R3 does not come in the way of the applicant's selection. However, we do note that so long as the circular of 05.12.1984 which was quashed and set aside by the Jabalpur Bench is not restored or so long as the judgment of the Jabalpur Bench is not aside, the ruling given by the Jabalpur Bench stands and is binding on the Railways. Any selection made after 1993 therefore, has to refrain from giving any notional seniority marks for purpose of enabling the candidates to appear for the viva-voce test if they have failed in the written test. Therefore, according to us, the selection of Respondent No.3 has to be held as illegal. At the same time, since the selection of Respondent No.3 is not coming in the way of selection of the applicant, yet challenging the selection of Respondent No.3, by the applicant would amount to Public Interest Litigation, which cannot be adjudicated upon by this Tribunal as the remedy for the same lies elsewhere. All the same, in view of the pleadings of the learned counsel for Respondent No.3 and because the Respondent No.3 is already promoted and is working in the post of PWI Grade-I and his selection is not really affecting the selection of the applicant, also vacancy is available if at all the applicant were to be considered, we do not consider it necessary to disturb the selection of Respondent No.3.

13. In the facts and circumstances of the case, we hold that the applicant's case is squarely covered by the judgment of the Supreme Court in the case of R.C. Srivastava (supra). We therefore, direct the respondents to consider the selection of the applicant in the light of the aforesaid judgment of the Supreme Court. This exercise shall be carried out within a period of two months from the date of receipt of copy of this order.

14. In the result, the OA is partly allowed with all consequential benefits. We do not order any costs.

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

B. B. Dixit
(BIREJDRA DIKSHIT)
VICE CHAIRMAN

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