

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

OA 81/2001

OA 82/2001

OA 83/2001

OA 87/2001

MUMBAI, THIS THE 22nd DAY OF JUNE, 2001

HON'BLE SHRI S.L. JAIN, MEMBER (J)

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

OA 81/2001

Shankar Rama Chavan working
as Junior clerk in the office of
Senior Section Engineer (P.Way)
Central Railway, Daund and residing
at C-14/B, Banagla Side Area, Daund.

OA 82/2001

Prabhu D. Rathod, working as
Junior Clerk, in the office of
Sr. Section Engineer, Central
Railway, Wadi and residing at Railway
Quarter RB-I/122/G,
Wadi Junction, Pin-585 225.

OA 83/2001

Murlidhar Nagrao, working as
Junior Clerk, in the office of
Divisional Operating Manager,
Central Railway, Solapur and
residing at RBI-7/207, Modi
Railway Colony, Solapur.

OA 87/2001

Ms. Vaishali Chandrakant Timojkar
working as Junior Clerk in the office
of Senior Section Engineer (EL) Solapur
Central Railway, Solapur and residing at
Bhairav Colony, Manohargarh, 21/A-2
Damani Nagar, Solapur.

...Applicants

(By Advocate Shri G.K. Masand)

V E R S U S

1. Union of India : through
the General Manager, Central
Railway, C.S.T., Mumbai - 400 001.

2. Divisional Railway Manager
Central Railway, Solapur Division
Solapur.

... Respondents

(By Advocate : Shri S.C. Dhawan)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

This combined order disposes of four OAs as the issue was involved is the same, arguments canvassed were identical and all the OAs were heard together, against the same impugned order.

2. Heard Shri G.K. Masand, assisted by Ms. S.R. Gode Sawant, for the applicants and Shri S.C. Dhawan, learned counsel for the respondents.

3. Relevant facts stated in brief, with regard to OA No. 81/2001 filed by Shri S.R. Chavan as brought out in the application are that the applicant, belonging to Scheduled Tribe joined railway service in Gr. D on 5-1-1989 as Gangman. He responded to Note dated 3-11-1995 for selection for the post of Jr. Clerks in the pay scale from Rs. 950-1500/- / Rs. 3050-4590/ from Gr. D employees against Depttl. Promotion Quota. Though he applied for the written test held on 11-5-1996, he could not qualify in it and those who could do so in written as well as viva-voce were promoted by Office Order No. 72/96 dated 29-6-1996. Subsequently, in terms of Railway Board's directives candidates belonging to ST category, who failed in the written test were also called for the viva voce held on 16-5-1996, by letter dated 14-5-1996 in which he was placed at Sl. No. 1. He was

thereafter promoted by order No. 64/96 dated 13-6-1996 with a specific mention that the said promotion was on trial basis against Schedule Tribe quota in terms of Railway Board's letter No. E (SCT) 74 CM 15/34 dated 31-8-1974, for a period of six months and on completion of the said six months' trial, a review would be conducted and if found suitable the candidate will be placed below those who have already been empanelled. It is understood reliably that the applicants' superiors had given the requisite report in January 1997 about his satisfactory performance. Applicant has been continuously working in the said Jr. clerk's post since then and has earned annual increments regularly and has also been placed in the seniority list of clerical staff as on 1-4-1988. Suddenly thereafter, without giving any notice impugned office order No. 9/2001 dated 17-1-2001 has been issued directing the reversion of the applicant along with three others to their original post. This is the order under challenge in this OA. The same has been stayed by the Tribunal on 8-2-2001 and the said interim relief continues.

4. Shri P.D.Rathod, Applicant in OA 82/2001 is similarly placed as applicant in OA No.81/2001, and he was placed at Sl. No. 23 in the letter dated 14-5-1996, directing the failed candidates to appear for the viva-voce and he stood promoted vide order No. 72/96 dated 29-6-1996. He was also sought to be reverted by the impugned order dated 17-1-2001, stayed for the present.

5. Shri. Murlidhar Nagrao, Applicant in OA No. 83/2001 also similarly placed, was at Sl. No. 6 in the letter dated 14-5-96 and he was promoted by order No. 72/96 dated 29-6-96. He is also sought to be reverted by the impugned order dated 17-1-2001, presently stayed.

6. Ms. V.C. Timoiakar, Applicant in OA No. 87/2001 stood at Sl. No. 14 in the letter dated 14-5-96 and was promoted by order No. 59/96 dated 3-6-1996. She also stood reverted by the impugned order dated 17-1-2001, which has been stayed, as above.

7. Shri Masand, counsel for the applicants indicates that the promotion of all the four applicants though provisional to start with, was strictly in accordance with the instructions of the Railway Board, contained in their letter dated 31-8-1974, permitting the consideration of those who have secured highest marks amongst those who have failed to make the grade, on a provisional basis subject to their performance being watched for six months by the superior officers. Once at the end of the trial period of the said six months, the performance has been certified to be satisfactory, as has understandably been done in the impugned cases and the applicants have completed four years in the higher grade and have even been placed in the seniority list, they could not have been reverted and that too, without notice. The impugned order was, therefore, ex-facie illegal and could not have been issued. Shri Masand further argues, relying upon the decision of the Full Bench of the Tribunal in the case of Jethanand & Ors. Vs. UOI & Ors. (1989 (2) ATJ 361), that a railway

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5714/98 dated 13-11-1998, Ram Ujarey Vs. UOI (1998 (8) SCC 405), which according to him covered the case of the applicants and protected them against arbitrary reversion.

8. Vehemently opposing the pleas of the applicants Shri S.C.Dhawan, learned counsel for the respondents points out that no cause of action has been disclosed and no prejudice has been caused by the reversion of the applicants from the post of the junior clerks, which they were not holding on any regular basis, and as the cancellation has been ordered by the higher authority on finding that there were procedural defects in the selection. Respondents point out that though 25 ST candidates including the 4 applicants, who were the best among the failures, and who were working in different places were called for viva-voce test on 16-5-96, but only 14 of them appeared for the same. Without verifying the reasons of absence for the other 11 candidates, the selection was held and 4 candidates - the 4 applicants in these OAs - were recommended for appointment on trial basis. Complaints were thereafter received from one who could not attend the viva-voce, some who were seniors and who had attained higher marks than the applicants in the written test about the irregularity in the procedure. Investigations were started by the Vigilance Branch while the applicants continued to work as Junior Clerks, but they were not regularised. The applicants continued to be holding the posts provisionally. On completion of the investigation, the Vigilance Branch communicated its advice vide letter dated 3-1-2001 that the earlier recommendation for selection be cancelled and fresh viva-voce be held again for all the 25 applicants. This had led to the impugned order. As the procedure adopted

employee holding a promotional post cannot be reverted back after the expiry of 18 months and that too in a cursory manner as has been done by respondents. The impugned order makes a mention of some investigation carried out by the Central Vigilance Organisation of the Railway Board about the alleged procedural irregularities of selection. But no opportunity whatsoever has been given to the applicants, to be heard, before the decision was taken against them. Moreso, the applicants are not held as responsible or guilty in any way in the commission of alleged irregularity. He further states that in terms of para 219 (1) of IREM, "a panel once approved should not normally be cancelled or amended. If after the formation or announcement of the panel with the approval of the competent authority, it is found subsequently that there were procedural irregularities or other defects and it is considered necessary to cancel or amend such a panel, this should be done only ^{with} the approval of the authority next higher than the one that approved the panel. The appointment order of the applicants had been issued on behalf of the Divisional Railway Manager and, therefore, it is doubtful whether the same could have cancelled with the sanction of the C.P.O. (Chief Personnel Officer) who is not the Officer higher in rank than the D.R.M. Further, Shri Masand, refers to para 220 of IREM, which states that "panels drawn with the Selection Boards and approved competent authority shall be current for two years from the date of approval of competent authority or if it is exhausted, whichever is earlier. It would mean that the cancellation of the panel after four years has no sanction in law. Learned counsel also invites our attention to the decision of the Hon'ble Supreme Court's decision in Civil Appeal No.

5714/98 dated 13-11-1998, Ram Ujarey Vs. UOI (1998 (8) SCC 405), which according to him covered the case of the applicants and protected them against arbitrary reversion.

8. Vehemently opposing the pleas of the applicants Shri S.C.Dhawan, learned counsel for the respondents points out that no cause of action has been disclosed and no prejudice has been caused by the reversion of the applicants from the post of the junior clerks, which they were not holding on any regular basis, and as the cancellation has been ordered by the higher authority on finding that there were procedural defects in the selection. Respondents point out that though 25 ST candidates including the 4 applicants, who were the best among the failures, and who were working in different places were called for viva-voce test on 16-5-96, but only 14 of them appeared for the same. Without verifying the reasons of absence for the other 11 candidates, the selection was held and 4 candidates - the 4 applicants in these OAs - were recommended for appointment on trial basis. Complaints were thereafter received from one who could not attend the viva-voce, some who were seniors and who had attained higher marks than the applicants in the written test about the irregularity in the procedure. Investigations were started by the Vigilance Branch while the applicants continued to work as Junior Clerks, but they were not regularised. The applicants continued to be holding the posts provisionally. On completion of the investigation, the Vigilance Branch communicated its advice vide letter dated 3-1-2001 that the earlier recommendation for selection be cancelled and fresh viva-voce be held again for all the 25 applicants. This had led to the impugned order. As the procedure adopted

by the respondents were correct, the applicants should have no grievance whatsoever. Even though, the certificates about the performance of the officers were received, those could not be considered as the investigations were already on. Decision taken was legal and proper. There was no case for giving any show cause notice or for providing any additional opportunity to the applicants as the investigation related to procedural irregularities and was not against any applicant in particular. In fact, the impugned order was no reversion at all but was only the posting of the applicants to their original posting, in view of the cancellation of the earlier recommendations for promoting them. In the circumstances of the case, reliance placed by the applicant on the judgement in the case of Jethanand & Ors. (supra) was not justified. Further in the case of A.S. Bakshi & Ors. Vs. Western Railway. (OA No. 606/93) Full Bench of the Tribunal had held on that if procedural lapses are noticed about a selection even after the selected panel has been exhausted, the competent authority can cancel the same, if it was found that irregularities had been committed. The said decision of the Tribunal was squarely applicable in the instant case and the OAs should be dismissed, urges Shri Dhawan.

9. Replying on behalf of the applicants Shri Masand avers that the points raised by the respondents do not support their case. He says that even the respondents concede that the irregularity in procedure, if any, which arose during the selection, was not caused by the applicants. Therefore, there was no reason to punish them. The applicants are definitely not to blame if the respondents had failed to intimate all concerned to attend

the test. But the respondents' failure to do their duty should not go against the genuine rights and claims of the applicant, specially after they had held the post of Jr. Clerks for over four years, had earned increments therein and have even been placed in the seniority list of the higher grade as on 1-4-1998. Learned counsel further says that the applicants do not at all mind, even if those who could not reach the venue of the viva on the relevant date, are given additional chances to appear in the test and are promoted if they qualify in it and even being placed above the applicants, if they infact are seniors. Their only plea was that the promotion which had been earned by them correctly, should not be taken away from them.

10. Shri Masand, further submits that Para 223 of IREM specifically provides for holding supplementary selection, when an individual cannot attend the Selection Board due to late receipt of the information or late relief by the administration or sickness of the candidate or other reasons over which he has no control, but such selection should be done by the same Selection Committee and be held within one month from the first selection. Respondents could have correctly taken recourse to the above, as the only irregularity in procedure which occurred was that some candidates could not attend the interview. Instead of taking action as provided above, respondents have chosen to cancel the order after four years for which there was no sanction, pleads the counsel.

11. We have carefully deliberated on the rival contentions and considered the facts and circumstances brought on record. Facts of the case are not disputed. Applicants in all the four OAs, belong to ST community, who have been promoted on the basis of the viva-voce conducted for the best among the failures in the written test, on the basis of the specific policy of the Railway Board as contained in their letter No. E (SCT) 74 CM 15/34 dated 31-8-1974. They were originally promoted on provisional basis in June 1996 subject to review of their performance by their seniors, who had given their reports in January, 1997. They had also continued to work uninterreptedly in the said posts since then. The impugned order was seeking to cancel their promotion on the ground that there were complaints about irregular procedure having been followed in the selection, which was proved in the investigation by the Vigilance Deptt. who have recommended the cancellation of selection after 4 1/2 years. It is evident and also admitted during the hearing that procedural irregularity was that, due to insufficient notice, 11 of 25 candidates called for viva-voce could not be present. This is a fact which would have been noticed immediately and acted upon in accordance with procedure prescribed for the purpose and need not have waited for a complaint to be filed for being acted upon. At the same time, it is clear that the Vigilance Deptt. who conducted the investigation did not point any incorrect or improper action committed by the applicant to gain improper or illegal selection. What has happened was a failure of the respondents to inform the candidates about the selection in time and the same cannot lead to any disqualification for the

applicants who had appeared for the viva-voce and made the grade. Respondents could have taken action, if they felt needed to consider the case of those who could not attend the viva-voce and given them another chance, within a short while and rendered them justice. Instead they have chosen to wait for four ^{and half} years and direct reversion of the applicants who have already put in more than four years in the promotional post. The plea by the respondents that the applicants' promotion was only provisional does not cut any ice on the said promotion was subject to the satisfactory nature of their service being certified by their superiors by six months, which the latter had also done. That being the case, respondents' action in re-opening the issue and reverting the applicants after four and half years and that too without any notice was irregular.

12. From the facts brought out on record, it is evident that the only irregularity in the procedure which arose was that eleven (11) out of twenty five (25) candidates could not appear for the viva-voce held on 16-5-1996, on account of insufficient or late notice. This is a case clearly covered by para 223 of IREM dealing with supplementary selection/suitability test. Relevant portion of the said paragraph reads as below :-

(i) A supplementary selection may be held in the following types of cases :-

(a) summons for interview being received too late by the candidates making it difficult for him to reach the place of interview;

(b) Administration's failure to relieve him in time for interview;

(c) Sickness of the candidate or other reason over which the employee has no control. Unavoidable absence will not, however, include absence to attend a wedding or similar function or absence over which he has controlled. Sickness should be covered by a specific service from the

Railway Medical Officer.

(ii) The supplementary meeting of the Selection Board should as far as possible be attended by the same Officers who were present at the first Selection Board and held within one month of the first selection or the return to duty of the employee concerned provided that the employee returned to duty not later than three months after the holding of the first selection. In case the return of the employee is delayed beyond three months, the result of the selection need not be deferred, the name of the employee being incorporated as if he had appeared at the selection when first held. The employee will not be eligible to be considered if he returns to duty more than six months after the date of the first selection.

(iii) Not more than one supplementary selection should normally be held to cater to the needs of absentee due to sickness, non-intimation/late intimation of dates of tests etc. The second supplementary selection should be held rarely and with the personal approval of Chief Personnel Officer based on merits of each case.

The viva-voce test having been first held on 16-5-1996, it was essential that the supplementary selection of test could have been held if felt needed within one month from that date and not later. The respondents in these cases have chosen to cancel the recommendations relating to the first test after four and half (4 1/2) years without adducing any reason for such deviation from the procedure prescribed in para 223 of IREM. The same has no sanction in law and cannot be endorsed.

12. We have perused the relevant records concerning the complaint about the alleged irregularity in the selection process. The investigation undertaken on the basis of the telegram dated 31-5-1996 and its result have led to the cancellation of recommendation and the reversion of the applicants to their original posts. It is seen that the investigation has been initiated on the basis of a telegram five line complaint indicating that insufficient time has been given to the ST employees while calling them for viva-voce test for selecting the best among the

failures and that there was pick and choose policy. But at the same time it is clear from the Investigation Report that the applicants were not responsible for any irregularity in the conduct of the examination or that they made any special efforts to obtain selection by any improper methods. That being the case, the question of their being reverted after four and half years and after they have been placed in the seniority list cannot arise.

13. In view of the above findings, we hold that the action of the respondents in seeking to cancel the promotions of the applicants in these ^hfour OAs cannot be sustained in law. The order No. SUR/P/ADM/TFR/Promotion dated 17-1-2000 and office order No. 9/2001 impugned in all these OAs are quashed and set aside with relief of regularisation to the applicants. We also order that the respondents shall pay to the applicants cost quantified at Rs. 2000/(Rupees Two thousand only) in each of the OAs.

(GOVINDAN S. TAMPA)
MEMBER (A)

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(S.L. JAIN)
MEMBER (J)