

30/7

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 117/92

Transfer Application No.

Date of Decision 18.9.97

A.B.Yadav & Ors.

Petitioner/s

Shri G.S.Walia

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar

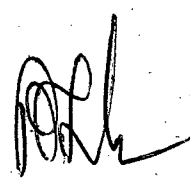
Advocate for
the Respondents

CORAM :

Hon'ble Shri.P.P.Srivastava, Member (A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not ? Yes
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? No


(P.P.SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.117/92

Thursday this the 18th day of Sept 1997

CORAM: Hon'ble Shri P.P.Srivastava, Member (A)

A.B.Yadav & Ors. ,... Applicants

By Advocate Shri G.S.Walia

V/S.

Union of India & Ors.

By Advocate Shri V.S.Masurkar ... Respondents

O R D E R

(Per: Shri P.P.Srivastava, Member (A))

In this OA. the three applicants have challenged the Notification dated 25.7.1991 on the subject of "Selection to the post of Asstt.Shop Supdt. Gr. Rs.2000-3200 in various trades of Matunga Workshop. The OA. was heard finally and the order was pronounced on 30.5.1996. The Learned Member (J) and Learned Member (A) differed. The matter was, therefore, referred to the Hon'ble Chairman who has nominated me as the Third Member under Section 26 of the A.T.Act. It is seen that no specific reason has been crystalised on which the opinion of Third Member is sought. However, it is mentioned that Member (J) is inclined to dismiss the OA. and Member(A) is inclined to allow the OA. partly.

therefore
It is necessary to bring out some facts and bring out the issues of difference on which the opinion of Third Member would be necessary.



2. In this OA, the selection for the post of Shop Superintendent Gr. Rs.2000-3200 has been challenged. The challenge has been raised on many grounds. The main issues are as under :- that there was a gross error in law in conducting a common written test for different trades which are technically different in nature and work. Secondly, it is brought out that no technical test questions pertaining to Carpentry trade were included in the question paper. Thirdly, the objective questions were only to the extent of 20% as against 50% in violation of Railway Board's instructions dated 17.4.1984. Fourthly, no selection committee had been appointed before holding a selection. The Learned Members of the Tribunal have differed only on the question of holding joint examination and on other points there is no difference of opinion expressed by the Learned Members. Both the Learned Members have referred to the instructions dated 5.12.1984 on the subject of "Selection Posts' Written Examination as part of selection process - Determination of eligibility for interview". The learned Member (J) has mentioned that the issue raised by the applicants that the instructions dated 5.12.1984 have not been followed, is not relevant. He has, therefore, rejected the OA. by observing as under :-

"However, on consideration of various contentions of the parties, we are of the view, that though the question paper is common to all the six trades, the same is clearly answerable by candidates belonging to different trades. In the instant case, since the applicants appeared for the examination but after receiving the question paper walked out of the examination hall leaving blank answer books therefore, in the circumstances, it is not legitimate for the applicant either to challenge the selection notification or the written test held on 31.8.91."



3. The Learned Member (A) has examined the instructions dated 5.12.1984 on the subject of Determination of eligibility for interview in detail and has held that to comply with these instructions of Railway Board dated 5.12.1984, it is necessary to hold separate written test. The issue has been discussed by the Learned Member in Para 10 which reads as under :-

"Learned counsel for the applicant Shri Walia contended that full effect must be given to the Railway Board's instructions dated 5.12.1984 while construing the instructions of Rule 215 of the IREM. According to him, unless separate tests are held in respect of trades which are treated as separate channels of promotions, the Railway Board's instructions will be impossible for implementation. This is because the relative marks obtained by way of weightage for the seniority will vary according to the seniority of the candidate in a particular trade and in case different tests are held, the results will be incommensurable and non-comparable. In my view, there is great force in the argument of the learned counsel for the applicant and we are bound to construe Rule 214 and 215 of the IREM in the light of the instructions of the Railway Board dated 5.12.1984 and hold that separate tests are necessary for different trades which constitute different channels of promotion."

Since Learned Member (A) has held that to comply with the instructions dated 5.12.1984, it is necessary to hold a separate test, The OA. has been partly allowed. The final order of Member(A) reads as under :-

" The OA. is allowed but without disturbing the selection already made. The respondents are directed to subject the applicants and employees similarly situated in the Matunga Workshop who are belonging to the Carpentry Trade to a separate written test and finalise the result of the written test after taking into account marks in the written test plus the marks for seniority in terms of Railway Board's instructions dated 5.12.1984 and thereafter held viva-voce test and then finalise the selection. The selection earlier

made will not be disturbed but in case any of the applicants are held to be successful in the test, they would be entitled to all the consequential benefits including interpolation of their names in the seniority list of promotional post and the notional fixation of pay."

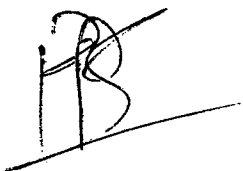
4. During the hearing, the learned counsel for the applicant emphasised that the issue of grant of notional marks for the purpose of seniority as envisaged in the Board's letter dated 5.12.1984, can only be satisfactorily complied with if the written tests are held separately. Since the seniority list of different trades are separate, if a common test is held the notional seniority marks cannot be given as in a common seniority it will be impossible to determine marks. Therefore, the instructions dated 5.12.1984 cannot be complied with for different trade, ^{with} ~~different~~ seniority ^{if} ~~a~~ common test is held.

5. The learned counsel for the respondents on the other hand has argued that although ^{a common} ~~a~~ written test was held, the selection has been made for each trade separately and the seniority marks in terms of Railway Board's instructions dated 5.12.1984 have been given separately for each trade for which a separate seniority is maintained. The learned counsel for the respondents has also argued that although a common test was held, the selection process has been held separately for each trade and the seniority marks on notional basis as envisaged in Railway Board's instructions referred to above have been granted separately for each trade.




6. Learned counsel for the respondents has produced the selection proceedings which are under challenge in this OA. A perusal of the proceedings shows that the selection was held for 5 General, 2 SC and 1 ST candidates. Out of 21 General candidates who appeared, 6 candidates were called for interview. 4 candidates have ^{qualified for} the interview and 2 candidates were considered based on the basis of marks of notional seniority. The six persons i.e. S.D.Uplekar, P.N.Panchal, S.S.Saraf, A.N.Malviya, S.N.Chatopadhyay and Promodkumar Jha were called for interview on 14.5.1992 and 14.7.1992. After the final selection six persons were found suitable, they were P.N.Panchal, S.S.Saraf, A.N.Malaviya, S.N.Chatopadhyay, Promodkumar Jha and S.D.Uplekar. It is seen from the record that S.D.Uplekar and P.N.Panchal had received less than 20 marks in the written test. However, they were called for interview by adding notional marks for seniority as has been brought out in the record of the proceedings. In view of the factual position as seen from the proceedings, it is quite apparent that although the written test was common, the selection process had been separately undertaken for each trade and it is also seen that in terms of Railway Board instructions dated 5.12.1984, the two persons were called for interview by awarding notional seniority.

.. 6/-



7. It seems that the facts were not properly put up before the Bench who heard the OA. and therefore misunderstanding of the facts occurred because of which it was held that the provisions of Railway Board instructions dated 5.12.1984 could not have been followed in this case as it was not possible to grant the marks with the common selection. However, on facts, it is seen that although common written test was held, the selection had been held for each trade. It is also seen that the notional seniority marks ^{were} awarded in terms of the Railway Board's instructions. I am of the view that, the claim of the applicant, that the selection was vitiated as provisions of Railway Board's instructions of 5.12.1984 have not been complied with, cannot be accepted. Since the only point on which the Learned Member (A) had allowed the OA. partly was that the Railway Board's instructions dated 5.12.1984 could not have been complied with and since on the fact that these have been complied with, the OA. is liable to be dismissed. Accordingly, I dismiss the OA. There will be no orders as to the costs.


(P.P. SRIVASTAVA)
MEMBER (A)

mrj.