

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.: 1008/94

27.6.2000  
Date of Decision :

M.I.Khatib & Anr. Applicant.

Shri G.S.Walia Advocate for the  
Applicant.

VERSUS

Union of India & Others. Respondents.

Shri A.L.Kasture Advocate for the  
Respondents.

CORAM :

The Hon'ble Shri D.S.Baweja, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library ?

*D.S.Baweja*  
(D.S.Baweja)  
MEMBER

mrj\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1008/94

Dated this the 17/6 day of June 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

1. M.I.Khatib,

2. S.S.Sharma

Both working as Fitter,  
Grade - B, Car Shed,  
Bombay Central,  
Western Railway,  
Bombay.

...Applicant

By Advocate Shri G.S.Walia

V/S.

1. Union of India through  
General Manager,  
Western Railway,  
Churchgate, Bombay.

2. Divisional Railway Manager,  
Western Railway,  
Bombay Central, Bombay.

... Respondents

By Advocate Shri A.L.Kasturey

O R D E R

{Per : Shri D.S.Baweja, Member (A)}

This application has been filed jointly by two applicants. The applicants are working as Fitter Grade III in Carshed, Mumbai Central, Western Railway. A notification was issued on 20.12.1993 for selection to the post of Intermediate

Apprentices against 25% quota of Chargeman Grade 'B' to be filled from the serving skilled fitters Grade I, II & III for 6 vacancies in the 'Carriage Unit' and 7 vacancies in the 'Electrical Unit'. Both the applicants applied for the same and were called for the Written test held on 22.6.1994. Both the applicants passed in the written test result of which was declared on 7.7.1994. The name of the applicant No. 1 was at S.No.4 of the 'Electrical Unit' list and that of the applicant No. 2 at S.No.4 of the 'Carriage Unit' list. The applicants were called for the viva-voce test held on 23.7.1994. The select panel was notified on 19.8.1994. However, the applicants did not find their names in the select panel. The applicants contend that they were sufficiently senior and deserved to be selected on 'preference' to the juniors. Feeling aggrieved by non selection, the present OA. has been filed on 5.9.1994.

2. The applicants have advanced the following grounds in support of their case :-

- (a) Action of the respondents in not selecting the applicants is arbitrary, contrary to rules and is abuse of authority.
- (b) Certain employees have been favoured as no criterion was fixed for guidance of the selection Committee and unguided discretion and power was given to the committee for selection of the candidates.

(c) Allocation of 40% marks for the viva voce is illegal & arbitrary.

(d) Impugned action of the respondents is violative of principles of natural justice and also contrary to provisions of Articles 14 & 16 of the Constitution of India.

3. With the above grounds, the applicants have sought the following reliefs :-

(a) Set aside the panel notified as per order dated 19.8.1994.

(b) In alternative, respondents be directed to hold interview of all the applicants again and proceed as per the law

(c) Or in alternative direct respondents to include the names of the applicants in the said panel.

4. The respondents have filed the written statement. The respondents submit that though the applicants passed in the written test but did not secure 60% marks in the viva voce test. Further, it is stated that seniority is not the sole criteria for consideration in selection but relative merit subject to securing 60% marks is the basis of being placed on the panel. The

selection has been done by a duly constituted Selection Committee as per the extant rules. The marks for viva voce have been distributed under various heads as professional ability, leadership qualities and record of service as per the extant rules. In view of these facts, the respondents plead that the applicants have no case and the OA. deserves to be dismissed.

5. The applicants have not filed any rejoinder reply for the written statement.

6. Heard the arguments of Shri G.S.Walia and Shri A.L.Kasture, learned counsel for the applicant and respondents respectively.

7. Though the applicants have taken several grounds in assailing the panel dated 19.8.1994 as detailed in para 2 above, the counsel for the applicant during the hearing dwelt only on two points. Firstly that the Selection Committee has not given marks for viva voce test under the various headings as laid down as per the rules and secondly the individual members of the committee did not give their own assessment of each candidate.

8. The counsel for the respondents during the hearing made available the file containing the selection proceedings under challenge. On going through the file, we note that the first contention of the applicant that the Selection Committee did not have guidelines for allocating of marks under different heads for viva voce test is a mere apprehension and not born by facts. We

note that viva voce test marks have been given under the various headings viz. professional ability, leadership and record of service and not lumpsome as contended by the applicants. In view of this factual position, the ground taken by the applicants is unfounded.

9. The second ground is that the members of the Selection Committee did not assess the candidates individually. This ground has not been pleaded in the OA. and has been advanced by the counsel for the applicants for the first time during the hearing. The counsel for the applicants argued that the record of the selection proceedings is with the respondents and the applicants can base their defence only on the apprehension as they have no means to verify the same from the record. Since the respondents have made available the selection proceedings, the Bench can verify the statement of the applicants. If the same is supported by the record, then this infirmity vitiates the selection proceedings and the applicants deserve the reliefs prayed for even if this plea was not taken in the OA. The counsel for the respondents, however, strongly reacted to the arguments of the counsel for the applicants and submitted that the new grounds cannot be taken at the time of final hearing. The plea now made is a question of facts and not a question of law and should have been taken in the OA. so that the respondents had the opportunity to counter the same in the written statement. After careful weighing of the rival arguments, we are inclined to endorse the stand of the counsel of the respondents. The plea

made by the counsel of the applicants is a question of fact and not question of law. Question of fact has to be pleaded in OA. so that the respondents have opportunity to meet with the same in the written statement. Such a plea cannot be allowed to be raised at the time of final hearing. Whether the fact of record can be verified by the Bench from the record produced by the respondents does not give a free hand to the applicants to take new pleas at the time of hearing. Even if the statement made by the applicants can be verified from the available record, <sup>then</sup> ~~but~~ the same cannot be the foundation for recording findings on merits without the respondents having the opportunity to put forward their position. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of National Building Construction Corporation vs. S.Raghunathan & Ors., 1998 SCC (L&S) 1770, wherein in para 31 it is held that the ground which involves the question of fact must be pleaded in the Writ Petition. Hon'ble High Court allowed the Writ petition based on the plea advanced before the court during the hearing but the Hon'ble Supreme Court did not approve of such a approach in the absence of any pleadings on the record. In the present case, situation is same and the plea under deliberation has been raised for the first time at the time of hearing without any foundation for the same being laid in the pleadings in the OA. In the back ground of these observations, this plea raised by the applicant cannot be allowed to be taken to assail the impugned selection.

10. Irrespective of our findings above in para 9, we find on perusal of the record that plea raised by the applicant lacks merit also. The counsel for the applicant relied on the provisions of para 219 (f) of Indian railway Establishment Manual as per which the members are required to assess each candidate independently. On going through the para 219 (f), we note that after the interview is over, the Personnel officer is required to complete the final result on the basis of the marks given by the individual members of the Selection Board. The evaluation chart prepared by the Personnel officer is thereafter to be signed by all the members of the Selection Board. In the present case, we note that only the compiled result of the selection after viva-voce test duly signed by all the members is on the record but the assessment charts of the individual members are not on the file. However, on going through the notings on the file, we note that the final result has been compiled by the Personnel Branch and then the compiled result has been put up to all the three members for signature. This implies that the members had individually assessed the candidates as otherwise there was no need for compiling of the result by the Personnel Branch. Thus, in our opinion, there is no violation of the extant rules as alleged by the applicants and even the plea taken at the time of hearing is devoid on merits.

11. The applicants have raised several other grounds as detailed in para 2 above in addition to what was argued during the hearing and deliberated above. However, we are recording our

8

..8/-

findings on all the grounds taken by the applicants in the OA. The first ground is of violation of principles of natural justice and provisions of Articles 14 & 16 of the Constitution of India is baseless. The applicants have not elaborated as to on what basis this ground has been taken. The panel has been notified based on the open selection and it is not clear as to how the applicants have been discriminated by non selection due to failure in the viva-voce test and merit. The second plea of the applicants is that 40% marks for the viva voce test are illegal and arbitrary is also without merit. It is noted that marks for viva-voce are only 25 out of 100 marks and therefore are not considered excessive in view of the fact that the selection was open to serving employees. The third ground that certain employees have been favoured is just a speculation exercise. No names of such candidates have been disclosed. Who has favoured such candidates has not been named? Such a plea of malafide cannot be based on bald statements. With these observations, we find that none of these grounds have any merit to vitiate the selection under challenge.

12. We note that the applicants have prayed for setting aside the panel dated 19.8.1994. However, the applicants have not made any of the selected candidates as a respondent party. Selected candidates on the panel are necessary party as any order setting aside the panel as prayed for by the applicants will adversely effect the selected candidates. No adverse order can be passed

(v)

..9/-

against them without hearing them. Therefore the present OA. suffers from seriour infirmity of non joinder of necessary parties and on this account alone, the present OA. deserves to be dismissed.

13. In the result of the above deliberations, the OA. not only lacks merit but also suffers from the infirmity of non joinder of necessary parties and therefore deserves to be dismissed and is accordingly dismissed. No order as to costs.

*S.L.JAIN*  
(S.L.JAIN)

MEMBER (J)

*D.S.BAWEJA*  
(D.S.BAWEJA)

MEMBER (A)

mrj.