

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1138/1995

DATE OF DECISION: 19/7/2001

Mukhtyar Singh Jaswant Singh Applicant

Shri L.M.Nerlekar Advocate for
Applicant.

Versus

Union of India Respondents.

Shri V.S.Masurkar Advocate for
Respondents.

Coram:
Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Smt. Shanta Shastry, Member(A).

1. To be referred to the Reporter ~~or not?~~ *y*
2. Whether it needs to be circulated to other Benches of the Tribunal? *+*
3. Library.

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Vice Chairman

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
OA NO.1138/1995

Mumbai this the 19th day of July, 2001

CORAM:HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE CHAIRMAN(J)
HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

Mukhtyar Singh Jaswant Singh
Chargeman 'A',
under Divisional Elec. Engineer(D),
Central Railway - Kalyan,
residing at R.B/III/238/71,
Wamanchawl - Thakurli (West) ... Applicant

By Advocate Shri L.M.Nerlekar

V/s.

Union of India
Through General Manager,
Central Railway, Bombay VT. ... Respondents

By Advocate Shri V.S.Masurkar

(ORDER)(ORAL)

(Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)

1. In this application, the applicant is challenging the formation of the panel by the respondents for the post of Assistant Electrical Engineer (AEE) Group 'B' - LDC.

2. The brief relevant facts of the case are that admittedly in pursuance of the respondents' notification dated 24/25-6-95 he had appeared for the written test for formation of the aforesaid panel. In this application, one of the main grounds taken by him is that the papers set for the examination were contrary to the relevant Rules and Regulations. Another ground taken by Shri L.M.Nerlekar, learned counsel was that the applicant had himself seen the marks wherein he had been declared successful in

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the written test in which he had appeared and, therefore, he was surprised when his name was omitted from the list of candidates called for the Viva Voce test. In this case he has relied on the judgements of the Mumbai Bench in OA Nos.570/95 decided on 18/7/2000 and OA 4/93 (together with connected OA 39/93) decided on 2/5/2001, in which the present applicant was also an applicant. He has submitted that in the circumstances, the relevant records may be called for to ascertain the position regarding the contention of the applicant that he had been declared passed in the examination but later on was omitted from the list of candidates called for Viva Voce test.

3. We have seen the reply filed by the respondents as well as heard Shri V.S.Masurkar, learned counsel. According to the respondents, the applicant had appeared for the written test for promotion to Group 'B' post as AEE and he had not qualified in the written test. As such, he had not been called for the subsequent Viva Voce test. Therefore they have contended that as the applicant had appeared for the written test and has been duly considered, he has no right to challenge the procedure, especially after he has failed in the written test. Learned counsel has also emphatically submitted that the applicant was never shown the marks obtained by him in the written test and has refuted the allegations made by the applicant that he had been declared passed which was later changed. He has also drawn our attention to the fact that 768 candidates were called for the written examination out of which 428 candidates appeared. Out of these 428 candidates, only 19 candidates qualified in the written test who were called for the Viva Voce test on 26/9/95. Learned

counsel has submitted that the procedure adopted by the respondents is in accordance with the relevant Rules and Instructions for promotion to Group 'B' post - AEE. He has submitted that the applicant cannot rely on other Rules applicable for promotion to Group 'C' posts. He has also submitted that even though the reply on behalf of respondents has been submitted as far back as 31/10/95, the applicant has failed to file any rejoinder rebutting the position stated by them till date. He has, therefore, contended that the applicant having appeared in the written examination cannot now challenge the same on the grounds taken by him. He has also taken an objection regarding production of the relevant documents, stating that the records of failed candidates in the written test held in June, 1995, may not be readily available with the respondents and have to be traced out. He has also pointed out that the applicant himself had not sought or obtained any interim order from the Tribunal for production of the relevant documents which he ought to have done earlier.

4. We have carefully considered the pleadings and submissions made by the learned counsel for the parties.

5. It is evident from the averments made by the applicant in the OA that he had appeared in the written examination held by the respondents, in pursuance of their notification dated 24/25-6-95 for drawing up the panel for the post of AEE, Group 'B' - LDC. In the circumstances of the case, the applicant cannot now raise an objection that the respondents have violated the relevant guidelines and procedure after he has become aware that he is unsuccessful in the written examination. It has been

held by the Supreme Court that after the applicant had chosen to take the examination and had later been declared failed, he is estopped from challenging the result of the examination later. (see Madanlal & Ors V/s. State of Jammu & Kashmir & Ors (1995)29 ATC 603) Union of India and Ors. V/s. C.Chandrashekhar (JT 1998(1)SC 295)). The Hon'ble Supreme Court has held that with regard to Departmental candidates who had appeared in the Selection examination for promotions, all the candidates were made aware of the procedure for promotion before they sat for the written test. The Apex Court, therefore, held that the claim of the candidates of arbitrariness in the procedure adopted by the respondents in the promotion examination cannot be accepted. We respectfully follow the judgements of the Supreme Court which are fully applicable to the facts in the present case.

6. In this case, the applicant had admittedly appeared in the written test and he cannot, therefore now challenge the procedure adopted by the respondents. In any case, what the applicant has questioned is the fact, that according to him the respondents were obliged to allow 50% to objective questions but no objective questions were set in the question paper. This has been denied by the respondents who have submitted that the particular rules which the applicant is relying upon are not applicable to selection for Group 'B' posts in the Limited Departmental Competitive Examination. The applicant has not successfully controverted these submissions by producing any documents on record to support his contention. The letter dated 17/4/84 relied upon by the learned counsel for applicant clearly states that it is meant for guidance and should not be taken as

an inflexible percentage for the marks to be allotted for the objective type of questions. In the facts and circumstances, we find no merit in the contentions of the applicant that the respondents have held the aforesaid examination contrary to the relevant Rules or guidelines.

7. The other main contention taken by learned counsel for applicant was that we should call for the records to verify the submissions made by applicant. In view of the fact that the applicant has not refuted the submissions made by the respondents, we do not consider it necessary to do so at this stage. It is also relevant to note that in the examination in question, more than 400 candidates had appeared in the written test, out of which 19 candidates had qualified who were later called for Viva Voce test which was held on 26/9/95. Out of these 19 candidates, the respondents have stated that 9 candidates have finally qualified, the panel decided and orders have been issued on 4/10/95. All these successful candidates have since been posted as Assistant Electric Engineers as per the posting orders which have been issued by the respondents on 4/10/95. In the circumstances of the case, we are unable to agree with the contentions of the learned counsel for the applicant, that the written examination held by the respondents in pursuance of the notification dated 24/25-6-96 should be quashed and set aside.

8. Learned counsel for the applicant has very strenuously urged that having regard to the facts and circumstances of the case and the observations made by the Tribunal (Mumbai Bench) in the aforesaid two applications, filed by the applicants, a

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presumption arises that the respondents have not acted fairly with the applicant and a negative view has been taken against him. The observations pertain to the relevant facts and circumstances of those case, and are not applicable to the facts in the present case. In this case, no such conclusion can be arrived at to hold that the respondents had adopted a wrong procedure or held that the examination in an arbitrary or hostile manner against the applicant to warrant any interference in the matter.

9. In the result, for the reasons given above, we find no merit in the application. The O.A is accordingly dismissed. No order as to costs.

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(SMT.SHANTA SHAstry)
MEMBER(A)

abp

Lakshmi Swaminathan

(SMT.LAKSHMI SWAMINATHAN)
VICE CHAIRMAN