

12. M.A.Samad
 13. P.G.Naik
 14. K.K.Goyal
 15. I.K.Shaikh
 16. A.K.Shinde
 17. S.C.Varma
 18. T.Marian
 19. Syed Hidayatulla
 20. A.L.Pinto
 21. S.B.Patil
 22. R.P.Shrivastava
 23. R.K.Khare
 24. A.T.C.Mohan
 25. S.E.Sawkare,
 26. M.R.Pardeshi,
 27. G.R.Pongalue
- Respondents
C/o Divisional Railway Manager
Central Railway,
Bhusawal Division,
Bhusawal.
(Respondents by Shri S.C.Dhawan, Advocate)

O R D E R

[Per: Shanker Raju, Member (J)]:

In this Application the Central Railway Mazdoor Sangh (hereinafter referred as "CRMS") through its Secretary and another have challenged the panel issued by the respondents after selection to the post of Chief Ticket Inspector (CTI) in the grade of Rs.2000 - 3200/-. The Applicant in this O.A. has sought for setting aside of the Panel and also direction to hold the selection as well as filling up of 5 posts kept in abeyance

for SC/ST candidates as well as grant of proforma fixation of pay to the eligible employees from the date of occurrence of vacancies.

2. The Applicant has assailed the selection process on various grounds including incorrect assessment of vacancies and objected to restructuring of Cadre which does not amount to promotion and only upgradation with the result the post should not be kept in abeyance. The Applicant has also stated that due to erroneous questions in the written test which were beyond the syllabus and were not relevant as there was no answer for the question with the results the applicant has lost 26 marks^Y which would have otherwise made them eligible for a call to viva voce etc. The Applicant has also assailed the selection on the ground that two of the incumbents whose names figured in the panel one has not passed the written test but called for viva voce and another against whom a major penalty charge sheet filed was pending was considered. The Applicant has further contended that he made a representation which was disposed of on extraneous considerations. The Applicant has maintained that on account of erroneous assessment of vacancies many seniors have been suffered grave injustice due to loss of marks. It is also contended that unless and until the previous selection is not exhausted a fresh selection cannot be held and the employees who failed in subsequent selection may find place in previous panel. It is also contended had 5 posts would not have been kept in abeyance and empanelled 3 senior employees of general category would have

certainly find place in the panel. It is also contended that as the applicant is challenging the irregularity of procedure in the selection process, the O.A. can be maintained and adjudicated upon.

3. Official respondents in their reply have rebutted all the contentions of the Applicants and taken a preliminary objection as to the maintainability of the O.A. by stating that once the Applicants had participated in the selection processⁱⁿ pursuant to Notification dated 13.12.1994 despite knowing irregularity before taking participation, having failed to pass and empanelled are stopped from challenging the same subsequently. Another preliminary objection which has been taken by the Respondents is that the Union has no interests in the grievance and is not entitled to file the same as only two of its members are the only aggrieved persons and it is not the case where number of persons have been aggrieved as such the application in the present form would not be maintainable.

4. It is contended that as the Secretary of the Union has failed to get in the panel is not entitled to maintain this O.A. in the name of the Union, which is not an aggrieved party. On merits it is contended that the previous Notification was cancelled and on fresh Notification the selection process was initiated subsequently. As regards the assessment of vacancies are concerned, 26 posts consisting of 2 General Candidates and 4 SC and 1 ST candidates were included, one post has been reserved for one employee whose result was kept in sealed cover. It is also contended that filling up of said vacancy was according to

the assessment and no employee has any indefeasable right to be appointed against a post. It is contended that the representation of the Application had been answered by a speaking order. Only 21 vacancies were assessed on 12.12.1994 and as per Board letter dated 25.10.1994 regarding restructuring posts 22.5% of the vacancies i.e. 5 posts were directed not to be filled up to be filled up in a non selection process. The posts were to be filled in compliance to the orders of this Hon'ble Tribunal till further orders as the proposal to file an SLP was made and vacancies were taken as 19 and 7 anticipated vacancies for one year i.e. from 12.12.1994 to 11.12.1995 were also added. As such the assessment of vacancies was in perfect order and was correct. It is further contended that the employees have already been apprised of the fact that in case there is no answer to the question asked they can write "none of the above" and the questions were not beyond the syllabus and were pertaining to the duties which the applicants had been performing. It is also contended that the selection in question is for the highest grade in the cadre of Chief Ticket Inspector and the questions were not harsh or difficult to be answered by the incumbent who had been performing certain duties and were well conversant with all the procedures from where the question had been formulated. It is also contended that the Applicant had qualified the written test. As regards the case of Athwale as there was mistake in the totalling of marks and that on correct totalling Shri Athawale was entitled to be called for viva voce test. As regards the issue regarding Shri K.K.Goyal is concerned the punishment

awarded was challenged before the Tribunal in O.A. No. 891/88 and the Tribunal passed its order on 14.12.1993 setting aside the orders of the punishment. Since he was facing a proceedings he was to be placed under sealed cover even if the same has not been done, the same would not have caused any prejudice to the Applicant as even if he has involved in a disciplinary proceedings one has a right for consideration. As regards 5 posts kept in abeyance it is contended that this has been done on the basis of Railway Board letter dated 27.1.1993 which has not been challenged by the applicant in the present O.A.

5. The Applicant has not controverted the submission of the respondents by filing rejoinder.

6. We have carefully considered the rival contentions of the parties and perused the material on record. The objection of the Respondent that the Applicant has no locus standi on behalf of the Union is to our mind is sound and legally sustainable. We find from the record that the Union has filed this case through its Secretary and one another who had appeared in the examination but having failed to be empanelled challenged the same. We find that a policy decision has not been challenged in the O.A. and only the selection affecting particular persons has been assailed. Only aggrieved person can file an O.A. and as the Union is not an aggrieved person and as such the O.A. is liable to be rejected for misjoinder of parties. The name of the Union although is mentioned but the O.A. has been filed for the benefit of one or two, particularly, the office bearers.

7. The O.A. is also liable to be rejected on the ground that the Applicant having once participated and failed to qualify in selection later on estopped from challenging the same. In the instant case as regard the incorrect assessment of vacancy, the applicants knew the position at the time of notification has chosen not to protest the same and kept quiet and took a chance to appear in the selection process. Having failed to qualify he has assailed the same. This corollary applies *mutatis mutandis* to contention of the Applicant where he has assailed the selection process on the ground that 5 vacant posts have been kept in abeyance under the upgradation and restructuring of 1993 empanelment. The Applicant had been aware of this at the time of Notification but had not protested the same and participated in the selection. The Hon'ble Apex Court in *Union of India vs. M. Chandra JT 1998 Vol.(1) SC 295* as well as the ratio of decision laid in *Madanlal vs. State of J&K 1995 (29) ATC 603* clearly lays down that if a person failed to get through the selection cannot challenge the same subsequently. We agree with the contention of the learned Counsel for the Respondents on this score and hold that the O.A. is not maintainable and is liable to be rejected.

8. We have also in the interests of justice gone into the various alleged irregularities highlighted by the Applicant in the selection process for the posts of of CTI. We find that there had been no incorrect assessment of vacancies as the previous selection was cancelled which has resulted in reduction in anticipated vacancies but yet vacancies assessed in the last notification dated 13.12.1994 are correct. As regards the plea

of the applicant that had these 5 posts have not been kept in abeyance at least 3 candidates would have been empanelled is concerned, we find that the Respondents on the basis of letter issued by Railway Board on 27.1.1993 had taken a decision to get 5 posts for SC/ST in abeyance for a non selection process. The Applicant has not challenged this letter in this O.A.

Having failed to challenge the same the applicant cannot assail the action of the Respondents by keeping 5 posts in abeyance for SC/ST which was done in the course of administrative exigencies.

9. As regards the claim of the Applicant that irrelevant questions were incorporated in the question paper is concerned we find that out of 59 candidates appeared in the written test 50 had given correct answers and out of 9 employees who wrote wrong answers found qualified in the written test and only 3 persons were actually affected and the applicants have also qualified the written examination. Apart from it even if two marks are added of these irrelevant questions the candidates who were below desired standards would not have become eligible for viva voce test. As regards the question framed in the question paper firstly there was no prescribed syllabus and secondly the questions were not nor irrelevant. The applicants who have been performing various duties these questions pertain to those same duties, and the applicants should have been aware of the same. Nothing new or extraneous was put to them.

10. As regards the discrimination and the applicants should malafide alleged by the applicant on the ground that one Athwalae despite being failed in the Written Examination was allowed to be

appear in viva-voce is concerned on totalling of his marks he was found suitable for viva-voce.

11. Though we find in the case of Goyal when the consideration was done he was facing S.F.5 but subsequently was set aside by the Tribunal. The Respondents stated that SF5 does not preclude consideration. Although no sealed cover was resorted to but the applicants have not suffered any prejudice and as requisite marks were not obtained by the applicants they cannot challenge the same. Apart from it we find that this minor irregularity would not have vitiated the whole process. The contention of the private respondents that applicants though passed Written test have failed in viva voce and have not put a strong challenge, and no prejudice has been caused is found to be correct. The contention of the Applicant on upgradation and restructuring the posts remaining in tact warranting no reservation and keeping the posts in abeyance. As far upgradation of posts is concerned we find that the applicants have not assailed the order whereby this upgradation has taken place and as such their claim is not legally tenable. Apart from it we had been apprised that no post that has remained vacant after the panel was declared. One of the objections taken by the respondents is regarding plural remedies sought by the applicants, we find that the applicant has assailed the panel and has sought directions to hold fresh selections and also to fill up 5 posts, which no doubt amounts to seeking multiple reliefs and is barred under Rule 10 CAT Procedural Rules 1987. Having regard to the discussion made and reasons recorded we find the applicants have failed to

sustain their challenge to the selection process for formation of panel of CTI. The application is bereft of merits and the same dismissed.

12. We do not order any costs.

S. Raju

(Shanker Raju)
Member (J)

Shanta

(Smt. Shanta Shastry)
Member (A)

sj*