

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Original Application No.637/95

Dated: 12.04.2000

Pradip Kumar Singh & Ors

Applicants

Mr. G.S.Walia

Advocate for
Applicants.

Versus

Union of India through
the DRM, C.Rly., Bhusawal.

Respondent(s)

Mr. V.S.Masurkar

Advocate for
Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member (A).

- (1) To be referred to the Reporter or not? *ye*
(2) Whether it needs to be circulated to *to* other Benches of the Tribunal? *no*
(3) Library? *ye*

R.G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.637/95

Wednesday, this the 12th day of April, 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member (A).

1. Pradeep Kumar Singh,
 2. Shiv Kumar Sharma,
 3. Jagdish Chandra,
- All are Drivers of
Goods Train, Central
Railway, Bhusawal Division,
Bhusawal.

(By Advocate Mr.G.S.Walia)

...Applicant.

Vs.

Union of India
Through Divisional Railway
Manager (Personnel),
Central Railway,
Bhusawal.
(By Advocate Mr.V.S.Masurkar)

...Respondent.

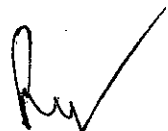
O R D E R (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by the applicants challenging their non-selection for promotion and also the promotion of candidates in the panel dt. 23.6.1995. Respondents have filed reply opposing the application. We have heard Mr.G.S.Walia, the learned counsel for the applicant and Mr.V.S.Masurkar, the learned counsel for the respondents.

2. The applicants who were working as Goods Train Drivers had applied for promotion to the post of Passenger Drivers. Number of candidates had responded to the selection process. After conducting interview, the department selected 52 candidates as per panel dt. 23.6.1995. The names of the applicants are not

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shown in the panel. Therefore, the applicants have come up with this OA alleging that they have not been wrongly considered for promotion by the Department. It is further alleged that there is irregularity and illegality in selection of all the 52 candidates in the panel. It is further alleged that no written test was held, though it was mandatory for the purpose of promotion. On these grounds, the applicants have come up with this OA pressing for quashing the panel, for direction to respondents to promote them and for consequential reliefs.

3. The respondents in their reply have asserted that the written test was not necessary as per the circular issued by the concerned authority and on the basis of interview and on merits 52 candidates were selected and the applicants failed in the interview.

4. The learned counsel for the applicant contended that in the absence of written test selection of candidates for promotion was illegal and therefore, the whole selection process is liable to be quashed. The learned counsel for the respondents has contended that written test was relaxed for the purpose of this selection. He further submitted that the applicants having participated in the selection process cannot be allowed to challenge the selection process after they have failed in the selection process. His further submission is that when 52 candidates have been empanelled and all of them are promoted and they are working in the promotional post, the panel cannot be quashed without hearing those persons and those persons are not impleaded as party respondents in this case.

5. Without going to the question whether written test was mandatory or not, the applicant, having participated in the

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selection process cannot be allowed to challenge the same only because they have failed in the interview. As pointed out by the Apex Court in Madan Lal & Ors. Vs. The State of Jammu & Kashmir & Ors. (JT 1995 (2) S.C. 291), when a candidate has participated in the selection process cannot be allowed to challenge the same when he fails in the selection process.

On the other hand, learned counsel for the applicant invited our attention to Raj Kumar and Ors. Vs. Shakti Raj and Ors. (1997 SCC (L&S) 1029), which is of course, by a Larger Bench of three Judges. Though the Bench has noticed Madan Lal's case, it did not dissent from the ^{view} ~~rule~~ taken there or overrule that Judgment, but the Bench in this case noticed certain irregularities which had taken place after the results of the selection were announced and therefore pointed out that there was patent illegality and hence in the peculiar facts and circumstances of that case, the proceedings must be quashed. Therefore, in our view, this decision will not help the applicants since in the present case the selection does not suffer from any patent illegality.

Even granting for a moment there is something wrong in the selection process, we cannot quash the panel of 52 candidates without hearing them. Principles of natural justice require that the affected party must be heard before any adverse order is passed. When 52 candidates have been selected and now they are working in the promotional post for the last 5 years we cannot straight away quash their appointments and promotions without hearing them. Though the applicant has amended the OA, he has not impleaded any of the selected candidates. Hence, even on this ground, the applicants' challenge to the selection panel

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cannot be accepted.

6. Now, coming to the question of non-selection of the applicants, no reasons are given to justify this ground. Therefore, we have to see the selection proceedings and find out whether applicants have been considered and they have not been selected as per rules. We have perused the original selection proceedings produced before us by the learned counsel for the respondents. The DPC ^{constituted} of Senior Divisional Electrical Engineer, Senior D.M.E. and Senior D.P.O. The committee has considered 159 candidates and ultimately selected 52 candidates. The first applicant's name appears at Sl.No.53, the Committee has given marks under different headings like Professional Ability, Personal Leadership, Seniority and Record of Service. For viva voce the marks allotted are 50. The first applicant has been given marks under different headings and he has secured total marks of 55 which is less than the minimum requirement of 60 marks and thereby it is shown that he is unsuitable. Similarly, the second applicant's name is at Sl.No.71. He has also been given marks ^{under} at different headings and total marks comes to 55 and thereby he is declared as unsuitable. Applicant No.3's name is shown at Sl.No.72, the total marks secured is 56 and hence found unsuitable. Therefore, we find that the applicants have been considered and marks have been given under different heads, but in view of their performance they have not been selected as per rules. No relief can be given to the applicants

We are satisfied that there is no illegality or irregularity in the selection process.



7. In the result, the application fails and it is hereby dismissed. No order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.