

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1003/95.

Friday, this the 5th day of January, 2001.

Coram: Hon'ble Shri B.N.Bahadur, Member (A),
Hon'ble Shri S.L.Jain, Member (J).

1. D.J.Tete,
2. Mahendra Pratap,
3. C.P.Gadhire,
4. M.K.Bellary,
5. R.R.Kulkarni,
6. O.B.Kamble,
7. M.U.Bokephode,
(All are Assistant Commercial
Managers, Central Railway,
Bombay Division,
Bombay.

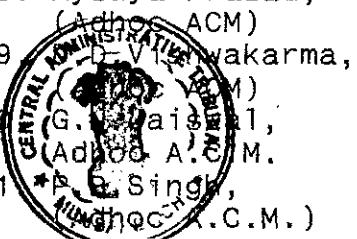
(By Advocate Shri S.P.Kulkarni)

...Applicants.

Vs.

1. Union of India through
Secretary,
Ministry of Railways,
Government of India,
Rail Bhavan, Janpath Marg,
New Delhi 110 001.
2. General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
3. Chief Personnel Officer,
Central Railway,
O/o. The General Manager,
Bombay V.T.,
Bombay - 400 001.
4. Shri G.S.Rajallu,
Adhoc A.C.M.
5. Raj Kumar (SC),
D.C.I.
6. B.L.Pawar (D.C.I.)
7. Jameel Ahmed,
Adhoc A.C.M.,
8. Ayodya Prasad,
(Adhoc ACM)
9. D.V.Wakarma,
(Adhoc V.C.M.)
10. G.Maisel,
(Adhoc A.C.M.)
11. *P.G.Singh,
(Adhoc A.C.M.)
12. H.B. Beg,
(Adhoc A.C.M.)
13. V.T.Nikam,
(D.C.I.)

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14. A.P.Mishra,
Adhoc A.C.M.
15. L.M.Mhoraskole,
D.C.I.
16. A.K.Sharma,
D.C.I.
17. V.K.Londhe,
L.C.A.
18. V.K.Yadav,
D.C.I.
19. S.M.Shetty,
C.L.A.
20. S.D.Upadhyा,
D.C.I.
21. K.V.Pillai,
D.C.I.
22. A.K.Saini,
D.C.I.
23. P.K.Tiwari,
D.C.I.
24. B.L.Nikam,
O.S. - I,
(All through Chief Personnel
Officer, Central Railway,
Bombay V.T.,
Bombay -1.

... Respondents.

(By Advocate Shri R.R.Shetty for
Official Respondents and
Shri R.S.Tulaskar for Private
Respondents No.8,9,10,14,16 & 19).

: O R D E R (ORAL) :

{Per Shri B.N.Bahadur, Member (A)}

This is an application made by Shri D.J.Tete and six others, seeking the relief from this Tribunal, in substance, for a declaration that the selection process of promoting L.G.S. to Assistant Commercial Manager's post, commenced on 19.3.1994, was vitiated due to serious infraction of orders of Railway Board on the subject. Thus, the applicants pray that the Tribunal should hold and declare the result of the examination as illegal and void, and direct the Respondents to commence the process denovo.

2. The case of the applicants', and the basic facts, are that the applicants had appeared at the Selection Process i.e. the written examination etc. for promotion to the post of Assistant Commercial Manager (for short, ACM) in the Bombay Division of the

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Central Railway, commenced in March, 1994. The averments are that there were a number of reasons in view of which the examination can be held as not having properly conducted. The main reason that has been cited is that objective type of questions were not set in the written test in the manner that should have been done in pursuance of Railway Board instructions dt. 17.4.1984. The applicants further aver that oral protests were made at the time of examination. However, the applicants did appear at the examination process, since they contend that this was a question of livelihood. There are some other points because of which the applicants aver that the examination should be treated as not conducted properly; these have been taken at the time of arguments by the Learned Counsel for the applicant, Shri S.P.Kulkarni.

3. The Learned Counsel for the Applicant, Shri S.P.Kulkarni argued the case in detail, first taking us over the facts of the case, and the relevant papers and documents annexed, which were according to him relevant to his contentions. ^{The} first argument made was that as per the instructions contained in the Railway Board's Order dt. 17.4.1984, it was incumbent upon the authorities conducting the examination to have set objective type questions to the extent of 50%; this was not done. In furtherance of this, Learned Counsel Shri Kulkarni also made the point that as per the practice followed, Model Test papers had been circulated and even in these, objective questions were set out as an example.

4. The Learned Counsel then took us over one of the papers quoted at page 62 to contend that there was confusion in the instructions given at the heading of the paper in regard to how many questions are to be admitted from each section etc. It was

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also alleged by the Learned Counsel that the sealed cover was not opened in the Examination Hall strictly in accordance with the procedure. The seal was not shown to the candidates in the Hall.

5. The Respondents have filed a written reply, where they have set out all the facts in the begining. The defence taken is that the Instructions of the Railway Board dt. 17.4.1984 cited by the applicants is not at all applicable for the post of ACM as the said post is in Group 'B', is not the highest grade post in the category, but in fact it is the last grade post in Group 'B'. Further, a plea is taken that the Model Papers are only for guidance of the staff and the manner of setting of the question paper actually is at the discretion of the Examiner. The further portion of the written statement deals with averments made in the OA para-wise. One of the points that has been taken up in the reply relates to the averment made in the O.A. at para 4.2 to the effect that names of certain persons S/Shri P.K.Tiwari, A.K.Saini did not appear in the earlier list of 19.3.1994, but appeared in the later list of 6.2.1995. This point has also been met in para 8 of the written statement.



6. Learned Counsel for the Respondents, Shri R.R.Shetty, apart from depending on the written reply filed by the Respondents, also took the point that the case of the applicants is substantially the ratio in the case of Madan Lal and Others Vs. State of J & K and Others ((1995) 29 ATC 603). It was argued that here ~~was~~ ^{were} some applicants who had appeared in the examination and having failed were ~~not~~ ^{but} coming up with a grievance that were not material.

7. In regard to the point relating to objective type questions, it was also stated that the very circular depended upon

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envisioned that the figure of 50% indicated was only for guidance and did not stipulate that it would be strictly adhered to.

8. Shri R.S.Tulaskar, Counsel for Respondents No.8, 9, 10, 14, 16 & 19, indicated that he supported the stand taken by the Respondents and also made the point that some 110 persons had appeared in the examination and everyone was given equal treatment and it was highly unreasonable for some 6 applicants, who had failed to make a grievance out of their failure.

9. We first take up the point regarding the issue raised about objective type of question not being set in the manner indicated in the Railway Board's Circular dt. 17.4.1984 (Copy of the Circular is available at page 88 of the paper book). Para 2 of the Circular reads as follows:

"The matter has been considered by the Ministry of Railways. It would not be feasible to relax the rules in regard to written examinations (wherever prescribed) for promotion to selection posts. However, it may be possible to combine questions requiring narrative answers with those of an objective type. The advisability of introducing objective type questions has accordingly been considered taking into account the views expressed by some of the Railway Administrations, it has now been decided that wherever a written test is held for promotion to the highest grade selection post in a category, objective type question may be set for about 50% (say, 50 percent) of the total marks for the written test. The remaining questions could continue to be of the (conventional) narrative type. It may be made clear here that the figure of 50% for objective type of questions is intended to be for guidance only, it should not be taken as constituting an inflexible percentage".

Now, it is clear from the reading of the Circular that, by and large, the demand made by the staff for a greater volume of objective type of question has been ~~met~~^{met}. But, it is clear that the Circular also stipulates that the figure of 50% for objective

12. We have also seen the para 8 and 9 of the reply statement which deals with the allegation in regard to the names of two persons having wrongly appeared i.e. S/Shri P.K.Tiwari and A.K.Saini. The reasons for inclusion of these two names has been adequately explained in paras 8 and 9 of the written reply of the respondents.



In view of the above, we are thus convinced that there is no ground for our interference in the matter. Consequently, this application is hereby dismissed. There will be no orders as to costs.

S.L.JAIN
(S.L.JAIN)
MEMBER(J)

B.

Certified True Copy
Date _____

Section Officer
Central Admin. Tribunal,
Bombay Bench.

B.N.Bahadur
(B.N.BAHADUR)
MEMBER(A)