

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.Nos. 76/97 & 77/97

Dated this the 22<sup>nd</sup> day of January 2002.

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

Hon'ble Shri G.C.Srivastava, Member (A)

1. Rajesh Balu Gowli, (Applicant in OA.76/97)
2. Bhimrao Kondiba Lokhande (Applicant in OA.77/97)

Both are working as Khalasi  
Helper at the Chief Workshop  
Manager, Signal and Telecommuni-  
cation Workshop, Central Railway,  
Byculla, Bombay.

...Applicant

By Advocate Shri G.J.Mohan Rao

vs.

1. Union of India through  
the General Manager,  
Central Railway,  
Mumbai CST, Mumbai.
2. Chief Signal and  
Telecommunication  
Engineer, HQ Office,  
Central Railway,  
Mumbai CST, Mumbai.
3. The Chief Works Manager,  
S&T Workshop, Central Railway,  
Byculla, Bombay.
4. The Chief Personnel Officer,  
Central Railway,  
Mumbai CST, Mumbai.
5. C.R.Deolalkar
6. D.P.Rane
7. C.B.Gaikwad
8. P.S. Kocharekar
9. R.N.Hate
10. Smt.M.M.Pawar
11. A.B.Bamme

...Respondents

R-5 to 11 are Junior Clerks  
working under R-3 & 4.

By Advocate Shri S.C.Dhawan  
for Respondents No.1 to 4.

O R D E R

{Per : Shri S.L.Jain, Member (J)}

These are the applications (OA.NOs.76/97 & 77/97) seeking the reliefs to quash and set aside the selection panel dated 9.4.1996 (Ex. 'E') with a direction to the respondents that a fresh list of selection for the appointment of Junior Clerk-cum-Typist as per seniority-cum-fitness including the applicants name in the panel of Scheduled Caste candidates be prepared with the declaration that action of fixing 50% marks for ~~viva voce~~ is illegal and bad in law.

2. The applicants in OA.NO.76/97 & 77/97, who are S.C., joined the service of the Central Railway on 1.8.1988 on compassionate ground as Watchman-cum-Sweeper, were working as such/helper in the Signal & Telecommunication Workshop at Byculla and casual labour on 3.6.1976 respectively. The applicant in OA.No.77/97 was granted monthly rates casual labour on 31.8.1983 for the post of Gangman in PWI Department, recruited for the post of Khalasi on 20.5.1988 against the 10 % annual quota of the existing vacancies in the Signal and Telecommunication Workshop, Central Railway, Byculla.

3. The Respondents No. 2 to 4 issued notification dated 7.10.1995 for departmental examination for promotion of Group 'D' employees to Group 'C' against 33-1/3% quota in pursuance of railway Board letter No. E (NG) I/75/CEP/28 dated 27/30.9.75 against 8 vacancies- 4 General, 3 S.C. and 1 S.T. The applicants

being eligible applied for the said selection, appeared in the written test held by the respondents on 10.1.1996, qualified the same, placed at S.No.22 & 23 (Applicant in OA.NO.77/97 and 76/97) respectively. They were called for viva voce on 8.3.1996, appeared for the same but could not find the place in the panel. The applicants represented their grievance vide representation dated 23.4.1996 separately which was not attended by the respondents.

4. The grievance of the applicants is that the criteria for selection is seniority, which cannot be changed to seniority-cum-suitability. The respondents have erred while preparing the list after written test and the applicants are not placed as per their seniority which has resulted in non selection of the applicants. The allotment of 50% marks for viva voce test is arbitrary and illegal. The principle of seniority cum fitness ought to have been followed. The selection of the respondents who are juniors to the applicants is illegal one, as they are wrongly shown senior to the applicants. Hence, these OAs. for the above said reliefs.

5. The claim of the applicants is being resisted by the respondents alleging that the OAs. are misconcieved, not maintainable and does not disclose any cause of action. The employees who apply from the various departments are called for the written examination on the basis of integrated combined

seniority, all those who qualify in the written test and the oral test, qualifying marks being prescribed as per rules, are arranged in the order of seniority for empanelment and promotion. The list of eligible employees on the basis of combined integrated seniority was published by the respondents vide letter dated 10.1.1996. Thereafter, the written examination was held on 3.2.1996. The procedure adopted in the selection is as per notification. After written examination and viva voce on 10.1.1996 and 8.3.1996 respectively, the panel was published on 8.4.1996 and thereafter posting orders were issued on 9.4.1996. The applicants failed to raise any objection between 10.1.1996 till 9.4.1996, hence they are estopped to challenge the selection.

6. The learned counsel for the respondents relied on :-

- (i) (1995) 29 ATC 603, Madanlal & Ors. vs. State of J&K & Ors.
- (ii) 1997 (2) SC SLJ 157, Universities of Cochin vs. N.S. Kanjoonjamma & Ors. with V. Vasudevan vs. University of Cochin & Ors.
- (iii) 1998 SCC (L&S) 916, Union of India & Anr. vs. N. Chandrasekharan & Ors.

and argued that based on the principle of estoppel, the applicants are not entitled to challenge the impugned selection. On perusal of the case of Madanlal referred above, principle of estoppel was applied in case of unfairness of interview or

default in constitution of selection committee, in case of University of Cochin, it was applied regarding the challenge to the procedure and in case of N. Chandrasekharan & Ors. when selection procedure is made known before selection.

7. The learned counsel for the applicants relied on para last but one of the notification which is as under :-

"Oral test of successful candidates in the written test will be arranged to adjudge other factors of suitability. All those who qualify in written and oral test will be arranged in the order of their seniority for promotion against the yearly vacancies available from them in Group 'C' category."

On the basis of the said para, it is being argued that only after written and oral test, those who qualify in the same, i.e. in both will be arranged in the order of their seniority for promotion against the yearly vacancies available for them in Group 'C' category.

8. Even as per averment of the respondents, the candidates for written examination were called on the basis of integrated combined seniority. Such was not the provision made in the notification. This being an irregularity, the applicants are entitled to challenge the same as the principle of estoppel does not disentitle them to challenge the same - the reason being the procedure adopted by the respondents was a procedure not made

known to the applicants/candidates before selection. Appearance of the applicant for oral test does not debar them to challenge the same. The calling of the candidates for written test and oral test on the basis of integrated seniority list does not prejudice the applicants' case but placing the successful candidates on the basis of the said list certainly prejudices their cases.

9. In view of the above finding, the list of successful candidates - Ex.-'C', dated 24.2.1996 (in both the OAs.) is not in accordance with the declared procedure and the order passed, on the said basis, dated 9.4.1996, as such, is liable to be quashed and set aside and is quashed and set aside. The respondents are directed to prepare the list of successful candidates both in written and oral test in accordance with last but one para of notification dated 27.10.1995. However, it is made clear that the officials promoted in view of order dated 9.4.1996 shall continue to work till the exercise as stated above is not completed by the respondents, which shall be completed within three months from the date of receipt of the copy of the order. Thereafter, the decision taken by the respondents on the said basis shall be operative. If any grievance still survives, the applicants shall be at liberty to challenge the same in accordance with law. No order as to costs.

(G.C.SRIVASTAVA)

MEMBER (A)

mrj.

(S.L.JAIN)

MEMBER (J)