

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1034/98

Date of Decision:

7th May 1999
9th May 1999

P.U.Deshmukh & Anr.

Applicant.

Shri D.V.Gangal along with Shri S.V.Marne
Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.R.Shetty

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S.Bawej, Member (A)

- (1) To be referred to the Reporter or not? *Ys.*
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

D.S.Bawej
(D.S.BAWEJA)

MEMBER (A)

Revised
(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG. NO. 6, 4TH FLR, PRESCOT RD, FORT,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO:1034/98.

DATED THE 4th DAY OF MAY, 1999.
7th May

CORAM: Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman.

Hon'ble Shri D.S. Baweja, Member(A).

1. Pandurang Uttamrao Deshmukh
working as
Junior Engineer Grade II,
Under Senior Section,
Engineer(Traction
Distribution),
Central Railway,
Burhanpur
(Bhusawal Division)

Residing at
Ward No.15,
Darbar Lane,
Nandura,
Dist: Buldhana (MS),
443 404.

2. Mahendra Zadu Medhe
working as
Junior Engineer Grade II
Under Senior Section
Engineer(Remote Control
Equipment)
Central Railway,
Bhusawal Division

Residing at
Khadaka Road,
C/o. Hiraman Dhake,
Near Bajaj Bldg.,
Bhusawal.

... Applicants.

By Advocate Shri D.V. Gangal alongwith
Shri S.V. Marne.

v/s.

1. Union of India, through
General Manager,
Central Railway,
Head Quarters Office,
Mumbai CST,
Mumbai - 400 001.

2. Divisional Railway Manager,
Bhusawal Division,
Central Railway,
Bhusawal.

... Respondents.

By Advocate Shri R.R. Shetty.

ORDER

[Per Shri D.S.Baweja, Member(A)]

This OA has been filed jointly by two applicants. A notification dated 29/11/95 was issued by Bhusawal Division of Central Railway for selection to the post of Apprentice Mechanic (Electrical) against 25% rankers quota, belonging to Traction Distribution Branch of Electrical Department. The applicants appeared in the written test and were declared successful as per the result notified vide letter dated 23/3/96. Thereafter, viva voce test was conducted and both the applicants were finally selected and placed on the panel declared on 10/4/96.

2. The applicants were subjected to 24 months of training. After completion of the training, departmental examination was conducted on 3/2/98 and 6/2/98 and the applicants successfully completed the training. They were appointed on the working post as Junior Engineer Grade-II as per order dated 27/3/98. However, subsequently as per letter dated 23/11/98, the names of the applicants were deleted from the panel indicating that they were wrongly called for viva voce test. In this order it is further stated that two employees who were wrongly left over for being called for viva voce were being included in the list of candidates who have passed in the written test in the place of applicants.

Facing reversion, passed vide order dated 23/11/98, the applicants have filed the present original application on 1/12/98 seeking the relief of quashing the order dated 23/11/98 and with a prayer to declare that their placement in panel dated 10/4/96 and subsequent orders of the department / successfully completed the training and posting on the working post are legal and valid orders.

3. The applicants are mainly challenging the impugned order on two grounds in the original application.

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23\3\96. Therefore, via voice cast was confirmed that post
the application were finally accepted and placed on the
order of delivery on 10\4\96.

imbalanced order as was discussed, in the order of magnitude, in the following section.

- i) The first being that there is a violation of Principles of Natural Justice as no show cause notice had been given before issue of impugned order dated 23/11/98.
- ii) The second ground being that currency of the panel notified on 10/4/96 which was two years as per extant rules had already expired when the impugned order was passed and therefore the impugned order interfering with the panel could not be passed.

4. The respondents have contested the application through their written statement. The respondents admit the basic facts with regard to the placement of the applicants on the panel, successful completion of training and being appointed on the working post. With regard to issue of the impugned order dated 23/11/98, the respondents have explained that there was a complaint with regard to the panel notified on 3/4/96 and the matter was investigated by the Vigilance Branch. The Vigilance Branch checked the answer papers of the written test and found that both the applicants had not passed the written test but were declared successful on account of some mistake committed by / staff in decoding / the roll numbers. In the process two candidates, namely ~~who had passed~~ s/shri Sambhaji Jagdev Goie and Shaikh Gulam Mohd. / were erroneously declared as failed. In view of this discovery by the Vigilance Department, the selection of the applicants was null and void as passing in the written test as per the selection procedure is necessary before being called for viva voce test. The respondents therefore have taken the action to rectify the mistake by taking action under the provisions of para-228(i) and 228(ii) of Indian Railway Establishment Manual (IREM) Vol. II. 1989.

The respondents further contend that no right could be vested on the applicants on the direct cause that they had not passed in the written test. It is further stated

that the Impugned order had been issued to include the names of the two general candidates who had passed in the written test but were left out due to mistake in decoding the roll numbers. Keeping this background in view, the respondents pray that action taken by the respondents is within the rules and is sustainable in law and therefore the present OA deserves to be dismissed.

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5. The applicants / have filed a rejoinder reply to the written statement controverting the submissions of the respondents and re-affirming their averments made in the OA. have ed
The applicants / further contest the stand of the respondents with regard to reliance placed on/provisions of para-228 for issue of impugned order. The applicants have contended that their case is covered under provisions/219 and 220 of IREM Vol-I and as per the provisions in these paras, the respondents cannot take any action to interfere with the panel, currency of which had already expired. The applicants also plead that even otherwise xxxxxxxxxxxxxxxxxx as per the extant rules, the seniority marks are required to be added for determining the eligibility to be called for viva voce test and based on this also the applicants were rightly called for viva voce test and the applicants cannot be declared to have failed in the written test. The applicants have placed reliance on the circular dated 5/12/84 of the Railway Board. This plea has been subsequently taken up in the OA through an amendment application filed by the applicants.

As indicated earlier, the applicants filed a Miscellaneous application subsequent to rejoinder reply for making an amendment in the original application with regard to their plea that the eligibility for the written test is to be considered by adding notional marks for seniority as per the extant rules. Para-4.8 has been added through an amendment. In this para the applicants have brought out that Railway Board letter dated 28/1/88

subsequent to letter dated 5/12/84 has clarified that marks for seniority are not to be added in respect of ex-cadre posts or in respect of general posts where employees of different departments and categories are considered. The applicants contend that this circular does not apply to the selection of Apprentice Mechanic against the rankers' quota which is required to be filled in from the Artisan staff of the same department. It is further added that the criteria is only "skilled artisan" of the department and it does not imply staff of different department or different categories. In view of this the applicants have pleaded that the circular dated 20/12/96 issued by the Chief Personal Officer is illegal apart from the fact that this circular is not valid otherwise also as it has been issued by Chief Personal Officer and not by General Manager who/the only Competent Authority for framing the rules. The applicants have challenged this circular and have made a prayer to declare that the same is illegal and be quashed accordingly.

6. The respondents have filed reply to the Miscellaneous Application propos/ the amendment in the OA as detailed above and have contested the submissions of the applicant. The respondents have reiterated that the circular dated 28/1/88 squarely applies to selection under reference and seniority marks are not required to be added notionaly for calling the candidates for viva voce test.

7. Heard the oral submission of Shri D.V.Gangal alongwith Shri S.V.Marne, learned counsel for applicant and Shri R.R.Shetty, learned counsel for respondents. The respondents have made available the original records containing the report of the Vigilance department, the proceedings of selection and the answer books of the written test of the applicants. The material brought on/record has ^{the also} been perused.

8. The basic facts with regard to selection of the applicants as Apprentice Mechanics against 25% quota are not in dispute. Both the applicants were placed on the panel declared on 10.4.1996. After successful completion of two years training, they were posted on the working post as Junior Engineer Grade II as per order dated 27.3.1998. Subsequent to this, as per the impugned order dated 23.11.1998, the names of the applicants have been directed to be deleted from the panel on the ground that their names were wrongly included in the panel as they were not eligible to be called for viva-voce test. In place of the applicants, two names of other candidates, namely, Shri Sambhaji Jagdev Gole and Shri Shaikh Gulam Mohd. have been added in the list of those candidates who qualified in the written test as they were wrongly not declared successful in the written test due to some mistake in decoding in the Roll Numbers. As per this order, the applicants were also reverted to the original post as indicated above. The applicants have filed the present OA. against the impugned order dated 23.11.1998. Since as per the impugned order, it is noted that the applicants' names had been ordered to be deleted from the panel on the ground that they had not passed the written test, the respondents were directed to produce the original answer papers of the applicants. The answer-papers have been made available by the respondents and on same, going through the it is noted that Applicant No. 1 Shri Pandurang Uttamrao Deshmukh had secured 54 marks out of 100 marks while Applicant No. 2 Shri Mahendra Zadu Medhe had secured 30 marks out of 100 marks. As per the

respondents, the prescribed qualifying marks for being successful in the written test was 60%. Since as per the original marks sheets, both the applicants have not secured 60% marks, it is obvious that the applicants were not eligible to be called for viva-voce test. The respondents have explained that the mistake of declaring the applicants successful in the written test had been committed on account of some errors made by the staff in decoding the Roll Numbers. Keeping in view the marks obtained by both the applicants on scrutiny of answer-sheets, we have no hesitation to accept the contention of the respondents that the applicants had been declared successful in the written test due to an error. As per the pleadings made in the OA, through the amendment application as brought on record, the applicants have challenged the contention of the respondents that even if the applicants have not secured 60% marks in the written test, they were entitled to be called for viva-voce test by adding the notional marks for seniority as per the extant rules. This aspect will be deliberated subsequently. The main issue which requires consideration is whether the action of the respondents in deleting the names of the applicants from the panel is legally sustainable. The applicants have contended that the respondents' action is not legally sustainable. The applicants have advanced mainly two grounds to oppose the action of the respondents. The first ground is that the respondents have taken action to delete the names of applicants without indicating any reasons in the impugned order dated 23.11.1998 and also not giving

any show cause notice to give opportunity to the applicants to present their case and thus the action of the respondents is violative of principles of natural justice. The second ground advanced is that as per provision of Para 220 of Indian Railway Establishment Manual (IREM), the currency of the panel is two years and therefore the panel notified on 10.4.1996 had already expired and no action could be taken by the respondents to cancel the panel which was no longer existing. The respondents on the other side have contended that since the applicants have not qualified in the written test, their placement on panel due to an error is void ab-initio and therefore the applicants do not get from the panel, any vested right to be appointed. The respondents therefore plead that the action taken by them in deleting the names of the applicants from the panel is as per the extant rules and legally tenable. We have carefully considered the rival contentions and not able to persuade ourselves to subscribe to the stand of the applicants. On perusal of the answer papers of the applicants, it is beyond doubt that both the applicants have not secured 60% marks and were therefore not entitled to be declared successful. Since the applicants had not passed in the written test, they were not entitled to appear in the viva-voce test and therefore we accept the contention of the respondents that the placement of the applicants on the panel was void ab-initio. Since applicants were not entitled to be placed on panel and wrong action of the respondents resulted in declaring them successful in the examination, no vested right can accrue to the applicants

even if they have completed their training and appointed on working post after successful completion of the training. In view of this fact situation, we have no hesitation to hold that the action of the respondents is legally tenable. The arguments advanced by the applicants in challenging the issue of the impugned order have no merits. The applicants have contended that since the currency of the panel had already expired, there was no panel existing which could be cancelled as per the impugned order. We have carefully gone through the provisions of Paras 219 (1) and 220 (a). It is noted in Para 219 (1) that the power for amendment or cancellation of panel is vested with the competent authority in case ~~of~~ procedural irregularities or other defects are noticed. Para 220 (a) lays down the currency of the panel as two years from the date of approval by the competent authority. The provisions in Para 219 (1) do not place ~~any~~ any restriction on the cancellation or amendment of the panel by the competent authority and no time limit appears to have been laid down. It is nowhere mentioned that the amendment or cancellation of the panel could be done only within the currency of the panel as stipulated in Para 220(a). Keeping the provisions of Para 219 (1) read with Para 220(a) in view, we are not impressed by the argument of the applicants that the cancellation or amendment of the panel could not be done by the competent authority after the currency of the panel. If any irregularity is noticed at any time and the same makes the placement on any candidate panel as void ab-initio, the competent authority can

take action to modify the panel as required so that irregular placement on panel is corrected and the candidates who were entitled for placement on panel are given their due right. The second argument of the applicants is that the impugned order does not indicate any reasons and no show cause notice had been given to the applicants to put forward their case before deletion of their names from the panel. On careful perusal of the impugned order, we are unable to accept the argument of the applicants. The reasons for the deletion of the names of the applicants from the panel have been indicated. Though it is agreed that the respondents have not clearly spelt out that the applicants had not secured 60% marks still in the written test but the reasons for the deletion of the names is quite l explicit from the order. In any way, if the order is passed/cancelling the same or deletion of the names from the panel, it is necessary that the reasons are to be recorded by the competent authority though the detailed reasons may not be indicated in the order. In this connection, we refer to the order of the Hon'ble Supreme Court in the case of Hanuman Prasad & Ors. vs. Union of India & Anr. 1997 SCC (L&S) 364. In this judgement in Para 2 while referring to the earlier judgement of the Hon'ble Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S. Gandhi (1991) 2 SCC 716, it is held that if the order cancelling the names came to be passed, the record should indicate the reasons, though order may not contain the reasons. In the present case, we have gone through the file dealing with the selection and it is noted that the matter has been investigated by the Vigilence

Department based on the complaint. After going through the Vigilence report, the competent authority passed an appropriate order for deleting the names of the applicants from the panel and including the names of the other two candidates who had secured 60% marks but left over to be declared successful in the written test on account of error committed by the staff in decoding of the Roll Numbers. We are, therefore, satisfied that the deletion of the names of the applicants had been done after following the due process and recording the reasons and no illegality has been committed in passing the impugned order. As regards the issue of the show cause notice, in our opinion, the issue of such a notice was not necessary since the placement of the applicants on panel is void ab-initio since they had not qualified in the written test. Even if for a moment the contention of the applicants is accepted that non issue of show cause notice was violative of the principles of natural justice, the matter could be remanded to the competent authority to issue a show cause notice and then take action as per the extant rules with regard to the deletion of the names of the applicants from the panel by passing a speaking order. Such a direction is not called for in this case as the applicants could not offer any ^{refute} defence to ~~deny~~ the marks obtained in the written test. The action of the respondents is based on the factual position as emerging from the answer sheets of the applicants as per which the applicants had not secured the required qualified ^{marks} marks and had been wrongly included in the list of candidates who had passed the

written test. Keeping these observations in focus, we do not find any force or substance in this ground of the applicant.

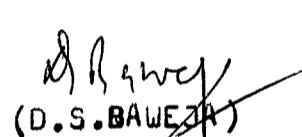
9. As indicated earlier, the applicants through amendment application have taken alternative plea that the applicants would be eligible to be called for viva-voce test by adding the notional seniority marks as per the Railway Board Circular dated 5.4.1984. It is noted that the respondents have not made any averments to this effect in the written statement. This plea had been taken by the applicants in the rejoinder reply and thereafter the amendment application has been filed. The applicants have made this averment on the presumption that even by adding the notional seniority marks, the applicants were eligible to be called for viva voce test. The applicants have also challenged the order dated 20.12.1996 issued by the Chief Personnel Officer based on the Railway Board's letter dated 28.1.1988 wherein the clarification has been furnished that notional seniority marks are not to be added for considering the eligibility for viva-voce test for the selection of Chargeman 'B' (Apprentice Mechanics) against 25% rankers quota. The counsel for the applicant devoted a considerable time of his arguments on this issue. He argued that the Railway Board's letter dated 28.1.1988 has clarified that notional seniority marks for considering eligibility for calling for viva-voce test as per order dated 5.4.1984 will not be applicable to Ex-cadre post or general posts

like welfare post or Law Assistant where employees of different departments and categories are considered. He further argued that the order dated 20.12.1996 issued by Chief Personnel Officer based on the Railway Board order dated 28.1.1988 is not valid as in respect of the selection to the post of Apprentice Mechanics against 25% rankers quota, as the skilled staff from ^{only} the same department are eligible to apply. He also contended that the criteria is to be in skilled category and not the different grades in the skilled category and therefore the seniority in the skilled category is only to be taken as a reference and seniority marks are required to be added in terms of Railway Board letter dated 5.4.1984. The respondents, on the other hand, have strongly contested the argument of the applicants and submitted that the candidates against the rankers' quota are belonging to different categories in the various grades of the skilled staff and therefore the provisions of the Railway Board's order dated 28.1.1988 are applicable and the order dated 22.12.1996 issued by the Chief Personnel Officer is as per the extant rules. After considering the facts and circumstances of the present case, we find that the alternative plea taken by the applicant is not sustainable. The selection was ordered as per letter dated 29.11.1995 and brought on record at Annexure-'A-4'. It is mentioned in this letter that selection is based on the instructions issued by the Chief Personnel Officer as per letter dated 13.2.89. This letter dated 13.2.1989 has been brought on record by the respondents as Annexure-'R-1' with the written statement. On perusal of this letter, it is noted that

detailed instructions with regard to recruitment of Apprentice Mechanics against the rankers' quota have been laid down. In Para 5(4) it is laid down that the qualifying marks for the written examination are to be 60%. The applicants have appeared in the selection per test as/the notification dated 29.11.1995 and therefore will be governed by the rules as stipulated in this notification. The applicants cannot turn around subsequently after appearing in the selection and challenge that the notification was not as per the extant rules. If the applicants had any grievance with regard to qualifying marks, the same could have been taken up at the appropriate time. The present selection had been finalised by taking 60% marks as qualifying marks and based on that a panel had been prepared. No interference could be done now on the plea that the notional seniority marks were required to be added for determining eligibility for the viva-voce test. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of Union of India & Anr. vs. N.Chandrasekharan & Ors. 1998 SCC (L&S) 916, wherein it is held in Para 13 that once the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee, they cannot turn around subsequently after not being selected by challenging that the procedure for promotion was defective. In the present case, the applicants are challenging now that the applicants were entitled to be declared successful in the written examination and called for interview by adding the notional seniority marks. This issue cannot be gone into now after the

selection has been finalised as per the notification dated 29.11.1995. Further, it is noted that the letter dated 20.12.1996 which is under challenge and sought to be quashed has been issued after the panel was notified and therefore the letter is not connected with the selection under challenge. Keeping these facts in view, we are unable to find any merit in the alternative plea taken by the applicant accordingly it does not deserve consideration.

10. In the result of the above, we are not able to find any merit in the OA, and the same deserves to be dismissed and is accordingly dismissed. The interim order passed on 4.12.1998 directing the respondents not to revert the applicants from the present post of Junior Engineer Grade II is accordingly vacated. No order as to costs.


(D.S. BAWEJ)

MEMBER (A)


(R.G. VAIDYANATHA)
7.5.99

VICE CHAIRMAN

abp/mrj.