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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 928 of
T.A. No.

1992

DATE OF DECISION 25.11.1999

K.C.Mishra & Ors.

Petitioner

Mr. Shiv Kumar, Proxy counsel to
Mr. J.K. Kaushik

Advocate for the Petitioner (s)

Versus

Union of India and Ors.

Respondent

Mr. Manish Bhandari

Advocate for the Respondent (s)

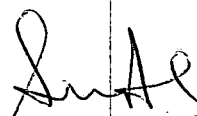
CORAM :

The Hon'ble Mr. S.K. AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P. NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

(N.P. NAWANI)
Adm. Member


(S.K. AGARWAL)
Judl. Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA No.928/92

Date of order: _____

1. K.C.Chaturvedi, presently employed as C.M.I., DRM Office, Kota.
2. O.P.Gupta S/o Shri Sohan Lal, at present employed on the post of C.M.I., DRM Office, Kota.
3. Narendra Nath Bhardwaj S/o Shri Genda Lal, at present employed as CMI, DRM office, Kota.
4. Shankar Lal Chaurasia S/o Shri Durga Lal, at present employed as CMIT (U/C), DRM Office, Kota.
5. Mohammed Hamid Ansari S/o Shri Gul Mohd. at present employed as Sr. Goods, Clerk, Western Railway, Kota.

.. applicants

Versus

1. Union of India through the General Manager, Western Railway, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota.
3. Sr. Divisional Commercial Manager, Western Railway, Kota.
4. Shri Naresh Malhan, Sr. D.O.M., Western Railway, Kota.

.. respondents

Mr. Shiv Kumar, proxy to Mr. J.K.Kaushik, counsel for the applicants

Mr. Manish Bhandari, counsel for the respondents

CORAM:

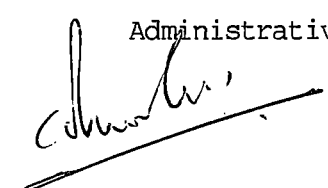
Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Application filed under Section 19 of the Administrative Tribunal Act, the applicants have prayed that the



impugned order dated 8.4.1992 (Ann.A1) and all other subsequent proceedings including order dated 3.5.1992 (Ann.A2) and order dated 20.8.1992 (Ann.A3) may be quashed and respondents may be directed to conduct the selection for the post of CMI afresh.

2. Brief facts as stated by the applicant are that the applicants were appointed as Sr. ACC (applicant No.1) and Sr. G.C. (other four applicants) on different dates between 11.12.1965 and 19.10.1974 and are presently working as CMI on ad hoc basis; that notification dated 15.11.1989 (Ann.A4) was issued for holding a selection for the post of Commercial Inspector (known as CMI) scale Rs. 1400-2300 for empanelling 5 persons. However, vide impugned letter of 8.4.1992 (Ann.A1), the earlier selection notice was cancelled with no reason and applications were invited from various mentioned categories for 9 posts of CMI, of which one post was reserved for S.C candidate. A list of eligible candidates was issued through letter dated 3.5.1992 (Ann.A2) which contained 39 candidates even though as per rules, keeping a ratio 1:3, only 27 candidates should have been kept in the eligibility list for 9 vacancies. All the applicants appeared in the written test and none of the applicants has been declared successful (Ann.A3). No mention has been made about adding the seniority marks for qualifying for the viva-voce. The applicants submitted a representation (Ann.A6), which has evoked no response.

3. Notice of the OA was given to respondents who, through their reply, have contested the averments made in the OA. It was clarified that the selection test was cancelled and fresh notification issued as some more vacancies became available. However, no relaxation in eligibility conditions was made, the employees holding posts of HBC, HGC, HLC in grade Rs. 1400-2300 working on ad hoc basis were also eligible, being in Rs. 1200-2400 scale on substantive basis. Further, since the post of CMI was filled from various categories, rule ^{of} 1:3

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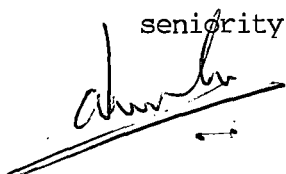
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was not applicable. The rule of adding seniority was also not applicable as the post of CMI is a general cadre post filled from a number of categories which is supported by circulars dated 12/30.9.88 and 10/22.2.1998 (Ann.R1 and R2). It has also been stated on behalf of the respondents that the allegation that copies of written test were got examined by somebody else, not a member of the Selection Board, was absolutely incorrect and applicants should be put to strict proof. Finally, it was stated that the applicants could not qualify the selection test, having failed in written test and not having made any objection at the time of notification of eligibility list and appearing in the written examination, are now debarred from questioning the correctness of such list and the examination process.

4. A rejoinder to the reply of the respondents was also filed on behalf of the applicants, in which it was contended that those candidates who were in the grade of Rs. 1400-2300 were holding the posts on regular basis as indicated by the seniority list at Ann.A7, were not an ad hoc basis as contended by the respondents and all the candidates called up for selection were of commercial department and there was no concept like general cadre posts.

5. We have heard the learned counsel for the parties and have carefully perused the records.

6. The case of the applicants is essentially based on three grounds. Firstly, the zone of consideration was increased by including those working in the higher pay scale of Rs. 1400-2300 on a regular basis as supported by the seniority list at Ann.A7. Thus the eligibility list was disadvantageous to them and being against the rules had vitiated the entire selection. Secondly, the marks for seniority were not added as required under para 219 of the Indian



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Railway Establishment Manual (for short, IREM). Had this been done, the applicants might have qualified for viva-voce. Thirdly, copies of the written test were understood to have been got examined by somebody else, who was not a member of the Selection Board.

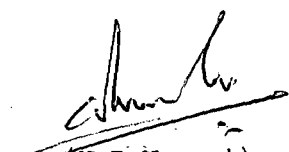
7. The learned counsel for the respondents contesting the grounds argued ~~xxxxx~~ that ^{it was} as regards inclusion of those having a pay scale of Rs. 1400-2300, was due to the fact that they were enjoying this scale not on substantive basis but only on ad hoc basis. Their inclusion was clearly mentioned even in the first notice for the examination. Their names having been included in the seniority list at Ann.A7 was not material as the said seniority list was on officiation basis. As regards the second ground, it was contended that para 219 of IREM was not applicable in the present case since the post of CMI was being filled up from various categories and no marks for seniority could have been computed when candidates were coming from various streams with their own seniority. Third ground should not be acceptable at all since it was an insinuation, not supported by any proof. It was finally argued on behalf of the respondents that the applicants had an opportunity to lodge protest against alleged inclusion of those enjoying the higher pay scale of Rs. 1400-2300 as far back as 8.4.1992 when Ann.A1 was issued and carried in its body that certain employees working in the pay scale of Rs. 1400-2300 on ad hoc basis were also entitled to apply. Instead, the applicants willingly applied, participated in the written examination and only after failing to clear it, raised this objection.

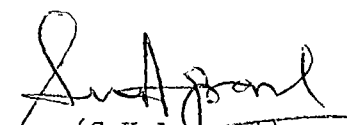
8. We have given our careful consideration to the pleadings/arguments. It is an admitted fact that the promotion examination consisted of two stage, and none of the applicants could clear the first stage i.e. the written test; their right of

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consideration, therefore, got extinguished with such failure. Having not availed of the opportunity of lodging a protest about inclusion of certain candidates having a higher pay scale of Rs. 1400-2300 and having an eligibility list of 39 for 9 posts and appearing in the written examination of their own sweet will, the applicants cannot now question the eligibility list. A perusal of the impugned letter dated 8.4.1992 (Ann.A/1) will show that not only the commercial clerks, Sr. ACC/Sr. ALC/ Sr. AGC and Claim Tracer were eligible to apply but "It is also advised that Commercial Clerks/HBC/HLC/HGC in the Grade of Rs. 1400-2300 (RP) and employees who are working as CMI, scale Rs. 1400-2300 (RP) on ad hoc basis are also eligible". It has also been clarified by the learned counsel for the respondents that since the promotion examination had candidates coming from various streams, marks for seniority could not have been computed and notwithstanding Ann.A7, we see no reasons to question the clarification given by the respondents, especially when we look at the various categories of employees listed in Ann.A-1. We also reject the allegation made by the applicant and worded "he had come to know through reliable sources that copies of the written test have been got examined from Shri S.D. Meena, DOS, Kota on behalf of member of the Selection Board Shri Naresh Malhan, Sr. D.O.S. Kota and Shri S.D.Meena, D.O.S. Kota was not the member of the Selection Board. The applicants have further come to know that Shri Naresh Malhan has signed in the column for examiner on the cover of the answer sheets. Further even pressure was exerted on Shri S.D.Meena to pass maximum SC/ST Candidates for extraneous reasons", being completely unsubstantiated.

9. In the result, the Original Application does not succeed and is accordingly dismissed with no order as to costs.


(N.P. Nawani)
Adm. Member


(S.K. Agarwal)
Judl Member