

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.281/94

Date of order: 29/8/2000

Natthi, S/o Sukkha, Clerk, of present posted as PWI-CTR, Gangapur City, at Hindaun City, W.Rly, Gangapur City.

...Applicant.

Vs.

1. Union of India through the General Manager, W.Railway, Church Gate, Mumbai.
2. Sr.Divisional Engineer (Estt) W.Rly, Kota Divn, Kota.
3. Senior DPO, Western Railway, Kota Divn, Kota.

...Respondents.

Mr.S.C.Sethi - Counsel for applicant.

Mr.M.Rafiq - Counsel for respondents.

CORAM:

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

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

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 19085, the applicant makes the following prayers:

i) The result communicated vide order at Annx.Al may be declared as illegal, inoperative and honest;

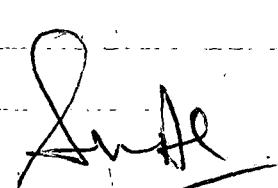
ii) to direct the respondents not to act upon the result at Annx.Al;

iii) to direct the respondents to incorporate the name of the applicant in the seniority list of Junior Clerks treating the applicant have been regularly promoted.

2. Facts of the case as stated by the applicant are that he belongs to SC community and is working as Junior Clerk (Rs.950-1500) at Hindaun City under PWI-CTR, Gangapur City. It is stated that selection for promotion to the post of Telly Clerk was held on 8.5.83 and 5.6.83 and the applicant also appeared in the said selection and result was declared on 3.7.84 and the applicant was declared successful. It was also mentioned in the result that oral test will be held on 31.8.84 and

on 1.9.84 in Divisional Office Kota. But before declaration of the result, the applicant was sent to Iraq on deputation and no arrangement was made to send the applicant to Kota for oral test. It is stated that on return from Iraq the applicant requested the respondents to promote the applicant on the post of Junior Clerk but he was promoted w.e.f. 28.8.91. The Sr.DEN, Kota circulated seniority list and the applicant did not find his name in the seniority list against which he filed representation and thereafter filed O.A No.145/93 which was decided on 24.1.94 in which directions were given to the respondents to allow the applicant for oral test and further directions were also given that if the applicant is successful, he is entitled to all consequential benefits. It is stated that in pursuance of those directions the oral test was not held within three months but it was held on 13.5.94 which according to the applicant was not a test but a Drama. It is stated that respondent No.3 only put the question "Aapne Railway ke Khilaf CAT Me Mukatma keeyaa hai?" to which the applicant replied "yes". Thereafter respondent No.3 told the applicant "Jaaiye". No other question was put to the applicant. It is also stated that the Selection Board was not constituted by the competent authority, no officer of SC/ST community was nominated. Respondent No.3 vide letter dated 10.6.94, communicated to the applicant that he is not qualified in the selection. It is stated that the applicant was declared as not qualified in the promotion test because he filed a case in the CAT and in fact no oral test was conducted. It is further stated that the applicant had worked on the higher grade post of Junior Clerk for a considerable period, therefore, he should not be reverted on the post of Gangman. The applicant, therefore, filed the O.A for the relief as mentioned above.

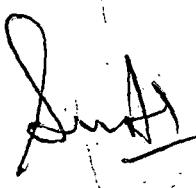
3. Reply was filed. It is stated in the reply that the applicant was sent to Iraq as per his willingness and the applicant knew the fact that in case he qualifies the written test in which he has already appeared, he is required to appear before the Selection Board for oral test. It is stated that the applicant was allowed to work on higher grade/post



purely on ad hoc basis on a stop-gap arrangement and he was not a regularly selected candidate, therefore, the applicant has no claim on the post. It is also stated that the applicant did not qualify the test conducted by the department, therefore, his name was not shown in the seniority list. The oral test was conducted in compliance of the directions given by this Tribunal in O.A No.145/93 and the applicant has levelled false allegation to mislead the Tribunal. It is further stated that one officer of SC community was in the Selection Board, hence there was no illegality or infirmity in the constitution of the Selection Board. The applicant has not qualified the selection test, therefore, he is estopped to challenge the O.A and he is liable to be reverted on his original post of Gangman. Therefore, the applicant has no case for interference by this Tribunal and this O.A is devoid of any merit and liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record and the selection board proceedings which was held on 13.5.94.

5. The main grievance of the applicant in this O.A has been that the viva voce test held on 13.5.94 was not a proper test but a Drama only and the Selection Board was not properly constituted. The contention of the learned counsel for the applicant has been that respondent No.3 only put one question to the applicant "Aapne Railway ke khilaf CAT Me Mukatma keyya Hai" which was replied by the applicant "yes" and no other question was put to the applicant, therefore, viva voce test held for this purpose was not a proper test. In the reply, the respondents have denied all the allegations put by the applicant and stated categorically that all these allegations are false. No Rules/instructions have been referred/produced by the counsel for the applicant so as to lay down the scope of viva voce i.e. what can be asked and what cannot be asked by the Members of the Selection Board for such selection. Moreover no record can be maintained by the Board as to what questions were put to the candidate. The respondents have denied all the allegations of the



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applicant and this Tribunal is unable to make any roving enquiry on the subject in question. Therefore, the viva voce test conducted on 13.5.94 cannot be held as illegal and inoperative as contended by the applicant. As regards constitution of Selection Board is concerned, in the reply sufficient explanation has been given by the respondents and it has been categorically stated that there was one Member from SC community in the Selection Board to lookafter the interest of the reserved community. No allegation of bias/malafides are alleged against any member of the Selection Board. Therefore, merely the applicant did not qualify the selection test is no ground to challenge the same on the ground that the Selection Board was not properly constituted. Not only this but if the constitution of the Selection Board is found not in accordance with the Rules/instructions, it is merely an irregularity and not illegality which cannot become a ground for vitiating the whole selection proceedings.

6. On a perusal of the proceedings of selection held on 13.5.94, it becomes abundantly clear that the applicant secured the following marks:

Written test 35%	Interview 15%	Leadership/ Tech.Qual. 20%	Record of Service 15%	Seniority 15%	Total
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14	4	12	10	3	43
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7. On the perusal of the marks awarded to the applicant also, it cannot be said that there was any prejudice/malafides against the applicant while conducting the oral test. We, therefore, find any infirmity in conducting the oral test.

8. The law on the subject is also well settled. In University of Cochin Vs. N.S.Kanjoon Jamma & Ors, AIR 1977 SC 2083 wherein it was held by Hon'ble Supreme Court that the petitioner who had taken part in the process of selection is estopped from challenging the criteria adopted by the respondent Bank.

9. In Unemployed Union of Kalkote Vs. State of J&K, 1998(2) SCT 685, it was observed in para 19 as under:



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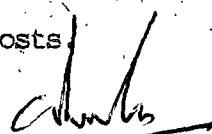
"All the petitioners took part in the selection process. They completed alongwith others; they were not high up in the merit list. If this be the position they cannot turn around and contend that the process of selection is bad. Where a candidate takes part in the process of selection i.e. takes a chance of favourable decision in his favour, he cannot turn around and challenge the process of selection (See G.Sarana Vs. Lucknow University, AIR 1976 SC 2428). Justice M.M.Punchi (Now Chief Justice of Supreme Court of India) in Balbir Singh Vs. State of Punjab 1983(1) SLR 109, observed that competing candidate who remain unsuccessful are estopped from challenging the process of selection. Another Division Bench of the Punjab & Haryana High Court in Rajeshwar Singh Vs. State 1991(1) SLR 680, reached the same conclusion. For this reason also the petitions must fail."

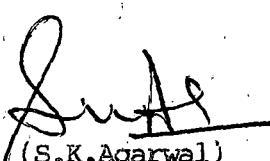
10. The same view was expressed in the recent decision reported in Union of India & Anr. Vs. N.Chandrasekharan & Ors, 1998(3) SCC 694 as under:

"It is not in dispute that all 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. Therefore, they cannot turn around and contend later when they found they were not selected by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report."

11. On the basis of the above settled legal position and facts and circumstances of this case, we are of the considered opinion that the applicant has no case for interference by this Tribunal and this O.A is devoid of any merit liable to be dismissed.

12. We, therefore dismiss the O.A having no merit with no order as to costs.


(N.D. Rawani)
Member (A).


(S.K. Agarwal)
Member (J)