

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 31/5/2001

OA 248/98

J.P.Shakya, Foreman (T.T), redesignated as Section Engineer-T.M. O/o Sr.Section Engineer (T.M.), Sawai Madhopur.

... Applicant

Versus

1. Union of India through General Manager (E), W/Rly, Churchgate, Mumbai.
2. Chief Track Engineer (Track Machines), W/Rly, Churchgate, Mumbai.
3. Sr.Section Engineer (T.M.), W/Rly, Sawai Madhopur, Kota Division.

... Respondents

CORAM:

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

HON'BLE MR.J.K.KAUSHIK, JUDL.MEMBER

For the Applicant ... Mr.P.V.Calla

For the Respondents ... Mr.U.D.Sharma

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

The applicant belongs to Track Machines Wing of the Railway. While working as Charge man Grade-A in the scale of Rs.1600-2660 he was promoted to the post of Foreman scale Rs.2000-3200 in April, 1996, on ad hoc basis. The post of Foreman scale Rs.2000-3200 is filled up on regular basis by the process of selection. Such a selection was conducted in pursuance of the notification dated 7.2.97 for 31 vacancies. The written test was conducted on 26.4.97 and 12 candidates were found eligible to appear in the interview as per result of the written test declared on 27.6.97 (Ann.A/5). The final result of the selection was declared vide order dated 25.6.98 and four candidates were placed on the panel. These four candidates were promoted on the post of Foreman (T.T.) scale Rs.2000-3200, as revised to Rs.6500-10500. Vide order dated 25.6.98 name of the applicant does not find mention in the final panel. By filing this OA the applicant has assailed the selection process by raising certain grounds and has prayed for a direction to the respondents to declare him as having been selected and empanelled.

2. The main ground on which the claim for relief has been based by the applicant is that at the time the selection was initiated, he was already officiating on ad hoc basis as Foreman (T.T.) in the scale of Rs.2000-3200. His contention is that having passed in the written examination and having been called for the interview, he could not have been declared unsuitable on the basis of the interview alone. For this stand, the applicant has relied on Para 2.2 of the Railway Board's letter dated 25.1.76. Another plea of the applicant is that the question paper which was set up for the selection was not as per the instructions on the subject inasmuch as the guidelines provided that about 50% of the question paper should be objective type and rest of it could be narrative. A copy of the question paper has also been annexed to the OA as Ann.A/4 to establish this contention. The applicant has also made an averment that syllabus was neither supplied nor was it notified before initiating the selection process.

3. While admitting that the applicant was officiating in the scale of Rs.2000-3200 at the time the selection was processed, the respondents have urged that mere officiating on ad hoc basis does not create a right as every eligible candidate has to go through the due process of selection. By referring to the result of the written examination and calling the candidates for interview, the respondents have clarified that five of the candidates were called for the interview on the basis of notional marks of seniority. In other words, they had not obtained the qualifying marks in the written test and by adding the notional marks of seniority they were found eligible to be called for interview. In this background, the respondents contend, the benefit of Para 2.2 of the Railway Board's letter dated 25.1.76 is not available to such candidates. For non-supply of the copy of syllabus, it has been submitted by the respondents that from the date of notification to the date of examination sufficient time was available to the applicant to ask for a copy of the syllabus, if he was so keen. He did not do so and willingly participated in the selection. He is now estopped from raising objection on this ground. For the same reason, the respondents have rebutted the ground raised by the applicant that 50% of the question paper was not objective type. On this, they have further stressed while referring to the Master Circular dated 31.7.91 that this is merely a guideline as has been clarified in the circular itself. Having participated in the examination and having not made any dispute on this account, the

applicant cannot make this as a basis to challenge the result of the selection in this OA. Over all, the case of the respondents is that the applicant had actually not qualified by his merit in the written examination and was given the benefit of addition of notional marks on account of his seniority and was thus called for appearing in the interview. The selection board having made assessment in respect of the applicant did not find him suitable. In this background, the respondents contend, the applicant has no cause of grievance. The fact that his juniors have been brought on the panel cannot be a reason to agitate the matter as juniors have been found more meritorious and suitable.

4. Heard the learned counsel for the parties and perused the material available on record. The learned counsel, Shri P.V. Calla, at the outset mentioned that the controversy whether ad hoc appointee can be declared unsuitable, based on the interview, has been engaging attention of the Hon'ble High Court of Rajasthan in a Writ Petition. ^{and} Because of that reason, he urged that hearing in such & similar cases could be deferred. We have not found this plea of the learned counsel acceptable as consideration of the matters in writ petitions, till a final decision has been arrived at in the High Court, cannot become a ground for the Tribunal for not deciding the cases coming before it. Needless to mention that when a legal position is finally settled by the High Court or by the Apex Court, the same will be duly taken note of with all respect and followed taking into view the facts and circumstances of the cases coming before the Tribunal.

5. On merits, Shri Calla reiterated the stand of the applicant as stated in the OA. Apart from laying emphasis on the fact that the applicant could not have been declared unsuitable after having been called for the interview in pursuance of the result of the written test, he laid great stress on this aspect of the case that the question paper was not properly framed and only 20% marks were assigned to the objection portion. He strongly argued that the mere fact of the applicant having participated in the selection cannot take away his right of objecting to the procedure followed in the selection and in such a situation when the policy of the department itself has been ignored by the respondents, no estoppel can apply. Shri Calla also referred to the decision of the Apex Court in the case of R.C. Srivastava v. UOI, decided by the Apex Court on 3.11.95 and stated

that the ratio of that case squarely applicable to the case of the applicant.

6. Shri U.D.Sharma, learned counsel for the respondents, brought to our notice judgement of this Tribunal dated 31.8.2001 in OA 120/2001, 121/2001 & 202/2000, where similar controversy had come up for consideration of the Bench. According to the learned counsel, in view of the principle laid down in that judgement, the applicant has no case and his prayer is liable to be dismissed. On the issue that instructions regarding objective type of question paper were not followed by the respondents, the learned counsel for the respondents contended that after having willingly participated in the selection and not raising a dispute immediately after the selection, the applicant is estopped from making this as a ground for claiming relief.

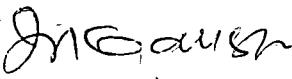
7. We have carefully gone through the facts of the case and the question which has come up for our consideration. We have also gone through the judgement dated 31.8.2001, on which reliance has been placed by the learned counsel for the respondents. In that case the applicability of the ratio of the Apex Court's decision in R.C.Srivastava's case as also the provisions of Para 2.2 of Railway Board's letter dated 25.1.76 have been comprehensively discussed. The case of the applicant is squarely covered in the position stated in para-12 of that judgement. The same is reproduced below :

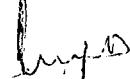
"12. Under the existing scheme as per Para 219(g)(ii), the candidates who do not obtain 60% marks in the written test can also be called to appear in the interview provided their marks in the written test and the marks for notional seniority make a total of 60% or more. The question would arise whether such of the candidates who are called to appear in the interview by virtue of notional seniority marks can also seek benefit of the Record Note of the letter dated 25.1.76. The answer without hesitation is 'no', and this is also in conformity with the view taken by Hon'ble the Supreme Court where in the order it has been stated that the applicant was entitled to the benefit of the said circular because he had secured more than 60% marks in the written test. Obviously, the candidate who does not obtain minimum of 60% marks in the written test cannot avail of the benefit of the directions in the circular

dated 25.1.76."

In the view, which we have taken, the applicant cannot claim the benefit of the judgement of the Apex Court in R.C. Srivastava's case and the provisions of Para 2.2 of Railway Board's letter dated 25.1.76. In so far as the other ground, on which lot of emphasis was laid by the learned counsel for the applicant, that the question paper was not objective type, we have seen the Master Circular. The instructions are only guidelines and they cannot be considered as having the force of statutory rules. The applicant has participated in the selection process and upto the date he found that he has not been declared suitable, he did not raise any controversy. We do not find the ground raised by him now as acceptable. The OA is devoid of any merit and is liable to be dismissed.

8. We, therefore, dismiss this OA as having no merit. No costs.


(J.K. KAUSHIK)
MEMBER (J)


(A.P. NAGRATH)
MEMBER (A)