

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Original Application No.60/2002. Date of Order : 6-08-06

Gyan Singh s/o Late Shri Pyare Singh, aged about 37 years, presently r/o E-60C Railway Colony, Western Railway of Alwar.

... Applicant.

v e r s u s

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Jaipur.
3. Sh. R. B. Gupta, Chief Vigilance Inspector, C/o SDGM & CBO, Western Railway, Churchgate, Mumbai.

... Respondents.

Mr. Prahlad Singh counsel for the applicant.
Mr. U. D. Sharma counsel for the respondents.

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Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R :
(per Hon'ble Mr. M. L. Chauhan)

The applicant has filed this Original Application thereby praying for the following reliefs :-

"i) by an appropriate order or direction, the impugned panel so notified vide order dated 10.08.2001 (Annexure A/1) may kindly be quashed and set aside.

ii) by an appropriate order or direction, the respondents may kindly be commanded with a direction to grant the benefit of Circular dated 25.01.1976 to the applicant with all consequential benefits in the light of the judgement of the Jaipur Bench as well as the Ahmedabad Bench of the HOn'ble Tribunal.

iii) by an appropriate order or direction, the respondents may kindly be commanded with a direction that the applicant may kindly be appointed on the post of I.O.W. Grade I from the date his juniors have been appointed after inclusion of his name in the list of selected panel.

iv) any other appropriate order or direction,

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which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicant.

v) Cost may also be awarded to the applicant."

2. The facts of the case are that the applicant while working as Inspector of Works (I.O.W., for short) Grade II participated in the selection process for promotion to the post of I.O.W. Grade I initiated vide notification dated 18.08.2000 (Annexure A/5). The written test for the said selection was held on 25.09.2000 and the applicant had also appeared therein. After declaration of the result of the written test, persons who have qualified in the written test were shown as eligible to appear in the Viva-Voce, which was to be held on 02.08.2001. The applicant who had also cleared the written test was shown as eligible to appear in the viva-voce. However, the applicant was not empanelled after the viva-voce test and the junior to the applicant was placed on the panel. According to the applicant he has been working on ad hoc basis since long and there is no complaint or any adverse ACR against him. As such he has been wrongly ignored.

2.1 It is further averred that looking into the seniority of the applicant as well as his qualification in the written examination the applicant was fully hopeful for the selection to the post of I.O.W. Grade I specially after the decision of the Apex Court in the case of R. C. Srivastava vs. Union of India and Railway Board Circular dated 25.01.1976. The respondents were under obligation to select the applicant after being qualified in the written examination for the reason that the Hon'ble Apex Court as well as the Circular of the Railway Board provides that a person having requisite qualification and satisfactory experience on the higher post should not be declared unsuccessful in the selection only on the basis of the interview. It is on these basis the applicant has filed this Original Application praying for the aforesaid reliefs.

3. The main ground of challenge in this OA is that the

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respondents have not considered the Railway Board's Circular dated 25.01.1976 and procedure prescribed in para 219 of IREM in proper perspective specially when the Jaipur Bench of the Hon'ble Tribunal in OA No. 455/1996 decided on 12.03.1998 as well as the Ahmedabad Bench of the Tribunal in OA NO. 386/1999 held that the applicant cannot be declared as fail in the test for professional ability on the basis of viva voce, when the person concerned has already secured more than 60% marks in the examination, as provided in para 219 of IREM.

4. Notice of this application was given to the respondents. The respondents in their reply have stated that the applicant failed to secure prescribed 60% marks in aggregate and as such he could not be included in the panel notified vide order dated 10.08.2001 (Annexure A/1). It is further stated that the applicant is not entitled to the benefit of the decision rendered by the Hon'ble Ahmedabad Bench of the Tribunal and also by this Bench as the applicant was not working on ad hoc basis when the selection was made, which position has already been admitted by the applicant in various para of the OA. Thus according to the respondents the name of the applicant was rightly not included in the panel notified vide order dated 10.08.2001. In order to satisfy whether the applicant is entitled to the benefit of the judgment rendered by the Ahmedabad Bench as well as of this Tribunal whereby it was held that a person cannot be declared as fail in the test for professional ability on the basis of viva-voce when the person concerned already secured more than 60% of marks in written examination as provided in para 219 of IREM, this Tribunal directed the respondents to produce the record thereby showing the marks obtained by the applicant under various headings. Consequently, the respondents produced the relevant record of selection. From the perusal of the record, it is clear that under heading of "professional ability" out of 50 marks i.e. 35 for written and 15 for viva-voce, the applicant has obtained 24.85 marks in written examination and 10 in oral. Thus under the heading "professional ability" consisting of written test and viva-voce, the applicant has obtained more than 60% marks both in written and viva-voce. As such the provision of para

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219 of IREM and the judgement rendered by the Jaipur Bench and Ahmedabad Bench of the CAT is not attractive in the instant case. However, under other headings which consist of (i) personality, address, leadership, academic/technical qualifications there was 20 marks. (ii) record of service 15 marks and (iii) for seniority there was 15 marks, the applicant obtained 12, 8 and 4 marks respectively. Thus, in aggregate out of 100 marks, the applicant obtained 58.85 marks, as such, the applicant has not obtained 60% marks in aggregate which was a condition precedent for the purpose of inclusion in the panel notified vide order dated 10.08.2001. As such the name of the person junior to the applicant came to be included in the said list as they have secured 60% marks in aggregate both in written as well as in the viva-voce test.

5. Faced with this situation, learned counsel for the applicant confined his arguments only to the extend that the marks of seniority has not been correctly computed and according to the prescribed procedure the applicant would have been entitled to get about 6.5 marks as against 4 marks awarded to him. In case the applicant is awarded 6.5 marks, in that eventuality, he would have secured prescribed 60% marks in aggregate and his name would have find mention in the panel notified vide order dated 10.08.2001. In order to clarify this position, the parties were directed to file additional affidavit thereby explaining under what circumstances the applicant was awarded 4 marks out of 15 under the heading "seniority". Learned counsel for the applicant has placed reliance on para 11.4.2.4 under the caption "seniority" as contained in Railway Board Circular dated 20.10.1999, whereby it has been provided that the senior most candidate called for viva should be awarded the maximum marks of 15 and the junior most the minimum of 5 marks for the remaining candidates should be proportionate for following this pattern. According to learned counsel for the applicant since the junior most officer R. B. Gupta whose name find mentioned in impugned panel dated 10.08.2001 (Annexure A/1) has put in one year of service in the grade, he was entitled to 5 marks whereas the applicant who has put in 4 years of service in the grade was entitled to 6.5 marks by

following proportionate pattern.

6. In order to meet the contention putforth by the applicant, the respondents have filed additional reply dated 26.02.2004. In the additional reply, the circular dated 20.10.1999 and Para 11.4.2.4.1. on which reliance has been placed by the learned counsel for the applicant has also been relied by the respondents in support of their case. According to respondents Para 11.4.2.4.1 of the aforesaid circular has to be read alongwith the note appended therein. According to respondents it is the note which is attracted in the instant case and relying on that note it has been further stated that the Railway Board vide letter dated 18.09.1969 had formulated the procedure for calculation of marks of seniority and the said procedure was being followed by the Railways for allotment of marks to all the candidates and the said procedure was also followed in the case of the applicant. A copy of the said Railway Board letter dated 18.09.1969 as circulated by Headquarter Office vide letter dated 06.10.1969 has been annexed as Annexure R/9 to the additional reply. The respondents have also placed a copy of the calculation sheet indicating the marks for seniority allotted to various candidates including the applicant as Annexure R/10. The attention of this Tribunal was also invited to Note NO.2 below the said Calculation Sheet wherein it has been specifically indicated that the formula adopted for preparation of the Sheet was as per the Railway Board's Circular dated 18.09.1969 (Annexure R/9). Thus according to the respondents there is no infirmity in the calculation sheet wherein 4 marks to the applicant has been allotted under the heading "seniority".

7. We have considered the submissions made by learned counsel for the parties. In order to resolve the matter in controversy it will be useful to quote Parar 11.4.2.4. of Railway Board's Circular dated 20.10.99, which is in the following terms :-

"11.4.2.4 SENIORITY

11.4.2.4.1 The senior most candidate called for viva should be awarded the maximum marks of 15 and the junior most the minimum of 5 marks for the remaining candidates should be proportionate for following this pattern.

NOTE : The minimum marks to be awarded to the junior most candidate may vary from Railway to Railway as per the local instructions. It is not the intention to disturb the same.

11.4.2.4.2 Marks under this heading will be awarded only to those who have been called for the viva-voce. Marks for seniority will be awarded afresh and the notional marks awarded earlier for calling candidates for viva-voce will not be taken cognizance of."

8. According to learned counsel for the applicant the marks for seniority has to be awarded as per Para 11.4.2.4.1 whereas according to respondents it is the Note below the aforesaid para which is attracted in the instant case. The respondents have also relied on the circular dated 18.09.1969 (Annexure R/9) issued by the Railway Board. From Para 1 of this Circular it is clear that the procedure for filling up the selection post-Non-gazetted was circulated and the factors which were to be taken into account were revised as under :-

	<u>Max. Marks</u>	<u>Qualifying Mar</u>
i) Professional ability	50	30
<u>ii) Personality, address, leadership and academic/technical qualification</u>	20	-
iii) Record of Service	15	-
iv) Seniority	15	-

Selected employees obtaining more than 80% marks will be classed as "outstanding".

9. It is further stipulated in Para 2 of this circular that the panel to be formed after the issuance of this letter should be strictly in accordance with these instructions. Below Para 4 there is a Note explaining how to calculate the marks for seniority, which is in the following terms.

"Note explaining how to calculate marks for

seniority.

In allotting marks for seniority to staff appearing before Selection Board, the total length of service, officiating and substantive in the grade or either as the case be of all the employees appearing before the Selection Boards is worked out. In this connection, the following procedure has been evolved in working out the marks :-

(a) If the selection is confined to employees in one grade, the marks to be given to each employee are determined by the formula $X/A \times 15$ where -

i) X - denotes the length of total service in the grade of the employee in question.

ii) A- denotes the length of total service in the grade of the senior most employee appearing before the Selection Board.

Example :- Assuming the total length of service in the grade of the senior most employee appearing before the Selection Board is 15 years, to work out his own marks by the aforesaid formula.

$X/A \times 15$, when $x=15$, $A=15$.

$X/A \times 15 = 15/15 \times 15 = 15$ marks."

Another employee in the same grade with, say, 8 years of total service will have the following marks :-

x = 8 years.

A = 15 years.

$X/A = 8/15 \times 15 = 8$ marks.

10. The respondents have also annexed the Calculation Sheet showing the marks allotted under the heading "seniority" Annexure R/10. According to this sheet the applicant who has put in 4 years of service has been awarded 4 marks which has been calculated in the following manner.

Sl. No.	Name of Candidate	Length of service(*)	Formula for calculation of seniority marks	Marks allotted	Remarks
1.	V. K. Kutal	15	$15/15 \times 15$	15	
2.					
3.					
4.	Gyan Singh Choudhary	4	$4/15 \times 15$	4	
5.					
6.					

This Calculation Sheet has been signed by the Selection Board. Below this Calculation Sheet there is Note which is in the following terms :-

"NB 1. (*) Length of service and

2. (@) formula adopted for preparation of this sheet should be as per Rly. Bd's circular No. E(NG) 169 PMI/126 dt. 18.9.69 circulated under this office letter No. EP/1025/0 dt. 17.10.69 & GM (E) CCG's letter No. EP/1025/2 dt. 4.11.69 circulated under this office letter of even no. dt. 18.11.69."

11. In case it is to be held that the Note below Para 11.4.2.4.1 is attracted and pursuant to the said Note, the instruction issued by the Railway Board dated 18.09.1969 prescribing the procedure how the marks of seniority has to be calculated has been rightly followed, in that eventuality, the applicant has been rightly awarded 4 marks out of 15 under the heading "seniority". But in case Para 11.4.2.4.1 of the Circular dated 20.10.1999 is attracted as contended by learned counsel for the applicant then the applicant is entitled to more than 5 marks and in that eventuality the applicant would have obtained 60% marks in aggregate and his name would have been included in the panel dated 10.08.2001 instead of Shri R. B. Gupta, who was admittedly junior to the applicant.

12. Thus, the sole question which requires our consideration is whether it is Para 11.4.2.4.1 of Railway Board Letter dated 20.10.1999 which is attracted in the instant case for the purpose of awarding marks under the heading "seniority" or it is the Note below ^{with the said para} read with Instruction dated 18.09.1969, which is attracted in the instant case.

13. Learned counsel for the applicant while drawing our attention to the Note appended below Para 11.4.2.4.1 contended that the provisions of this Note is applicable where the local instruction has been issued regarding awarding of minimum marks of seniority to the junior most candidate. According to learned counsel for the applicant

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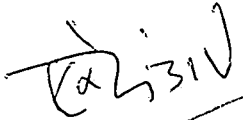
no such local instruction has been issued by the Head Quarter Office of Western Railway, as such, the Railway Board Circular dated 18.09.1969 cannot be read as local instruction issued by the Divisional Office, Jaipur, for which the selection was made.

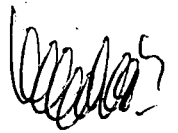
14. We have given thoughtful consideration to the submission made by the learned counsel for the applicant. We do not agree with the view submitted by the learned counsel for the applicant. The relevant portion of Para 11.4.2.4. which determines how the seniority has to be calculated has been reproduced in the earlier part of the order. Note below Para 11.4.2.4.1 stipulates that "the minimum marks to be awarded to the junior candidate may vary from Railway to Railway as per the local instructions. It is not the intention to disturb the same". Thus, from this Note it is clear that the provision contained in Para 11.4.2.4.1 that in all cases junior most candidate as to be awarded minimum of 5 marks and regarding remaining candidates marks could be proportionate for following the pattern stipulated therein, can be departed where the Railway Division/Zone has adopted the procedure contrary to the procedure stipulated in Para 11.4.2.4.1. The Note has specifically made it clear that it is not the intention of this Para to disturb the procedure adopted by the Railway as was prevalent prior to issue of these instructions dated 20.10.1999 whereby the fresh guidelines, how the selection has to be made including determination of seniority, was circulated. Further we also do not agree with the contention raised by the learned counsel for the applicant that the word "local instruction" has to be given narrow meaning and it has to be confined only to the instructions issued by the local division/zone and not to the instructions issued by the Railway Board. As already noticed above, the copy of Railway Board letter dated 18.09.1969 was adopted by the Western Railway vide Head Quarter Office letter dated 16.10.1969 Annexure R/9 and from the perusal of Para 3 of this letter, it is clear that the allotment of marks for seniority shall be calculated as per self contained note as circulated vide Railway Board letter dated 18.09.1969.

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15. That apart, from the perusal of Annexure R/10 which is a Calculation Sheet of seniority marks, it is clear from Note 2 that formula adopted for preparation of this sheet should be as per Railway Board's Circular No.E(NG) 169 PMI/126 dt. 18.9.69 circulated under this Office Letter No.EP/1025/0 dt. 17.10.69 & GM (E) CCG's letter No. EP/1025/2 dt. 4.11.69 circulated under this office letter of even no. dt. 18.11.69. Thus from this Note it is clear that the Railway Board Circular dated 18.09.1969 has been adopted and circulated by the local office vide letter as stated above. Thus for all indents and purposes it can be concluded that the formula adopted for preparation of calculation sheet indicating the marks for seniority as per Railway Board's Circular dated 18.09.1969, which circular has been adopted by the local office meets the requirement of local instructions as stipulated in Note below Parar 11.4.2.4.1 of circular dated 20.10.1999. Since the selection was made on the basis of the prevalent instructions, thus it was not the intention to disturb the same as has been specifically stated in the Note below Para 11.4.2.4.1. Thus, according to us, Para 11.4.2.4.1 of the Circular dated 20.10.1999 is not attracted in the instant case.

16. Accordingly, we see no infirmity in awarding 4 marks to the applicant as against 15 marks under heading "seniority". Since the applicant has failed to obtained 60% of aggregate marks, as such, his name could not have find mentioned in the panel dated 10.08.2001. Accordingly the OA is dismissed with no order as to costs.


(A. K. BHANDARI)
MEMBER (A)


(M. L. CHAUHAN)
MEMBER (J)