

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 425/2003.

Jaipur, this the 30th day of January, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhatt, Administrative Member.

Kuldeep Yadav
S/o Shri Umrao Singh,
Aged about 36 years,
R/o 12, Shastri Nagar,
Ajmer.

... Applicant.

None is present for the applicant.

Vs.

1. Union of India
Through General manager,
Northern Western Railway,
Jaipur.
2. Senior Divisional Commercial Manager (Establishment)
Northern Western Railway,
Jaipur Division,
Jaipur.
3. Divisional Railway Manager,
Northern Western Railway,
Jaipur Division,
Jaipur.

... Respondents.

By Advocate : Shri S. S. Hassan.

: O R D E R (ORAL) :

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

- i) That the impugned order dated 04/09/2003 (Annexure A/1) result of written test may please be declared illegal, arbitrary and the same may be quashed with all consequential

benefits and further the respondents may be directed to produce the complete selection proceedings which was held in pursuance to notification dated 01/04/2003 (Annexure A/4) including the copy of written test of applicant which will reveal the malice and manipulation of respondents in the interest of justice and further the respondents may be directed to consider the case of applicant for promotion to Head TTE in pay scale Rs.5000-8000 with all consequential benefits.

- ii) Any other order/directions/reliefs may be passed in favour of applicant which may be deemed fit just and proper under facts and circumstances of this case.
- iii) That the cost of this application may be awarded."

2. Briefly stated, the facts of the case are that the applicant is holding the post of TTE on substantive basis and has been further promoted to the post of Head TTE in the scale of Rs.5000-8000 on ad hoc basis vide order dated 10.01.2002 (Annexure A/2). A notification was issued by the respondents for conducting selection to the post of Head TTE/Conductor, Head TCE vide letter dated 1.04.2003 (Annexure A/4). There were in all 38 vacancies out of which 5 vacancies were meant for Scheduled Caste category and two for Scheduled Tribe category. The selection was required to be conducted on the basis of written test as well as oral interview. Accordingly, the selection list of the persons who were eligible to undergo the selection for the aforesaid post for the purpose of conducting written test was prepared in which the name of applicant was also included. The list of all

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the persons who qualify the written test and become eligible for promotion were displayed vide order dated 4.09.2003 (Annexure A/1), however, the name of the applicant did not find mention in the said list. Feeling aggrieved by the said notification, the applicant filed the present OA before this Tribunal whereby the only contention raised by the applicant was that the applicant is eligible for the purpose of interview in terms of Proviso 219 (g) (ii) of IREM which provides that 60% of the total marks prescribed for written examination and for seniority will also be the basis for calling candidates for viva-voce test instead of 60% for the written examination. It was argued that despite meeting this qualification, the applicant has not been called for the interview which has been fixed on 19.9.2003. This Tribunal while issuing notice to the respondents on 18.09.2003 also granted ~~ex-parte~~ interim stay to the extant that in case the applicant has secured 60% of the marks prescribed for written examination and seniority in terms of proviso 219 (g) (ii) of IREM, he shall be interviewed by the competent authority and the result will be placed in sealed cover.

3. When the matter was listed on 6.11.2003, this Tribunal vacated the interim stay as in the interim reply filed by the respondents, it was stated that the applicant has not secured 60% marks prescribed for

written examination and seniority in terms of Proviso 219 (g) (ii) of IREM and as such he was not eligible to call for interview. On the same date, this Tribunal also considered MA No.499/2003 moved by the applicant for amendment in the pleading whereby the applicant has taken additional pleas. However, in the interest of justice that application was allowed and the applicant was directed to file amended OA within a period of one week and further opportunity of four weeks was granted to the respondents to file reply to the amended OA. When the matter was listed on 6.12.2004, an opportunity was granted to the applicant to file rejoinder. Thereafter, three more opportunities were granted to the applicant to file rejoinder. Vide order dated 19.04.2005, it was specifically observed that in case rejoinder is not filed within a period of two weeks, the pleadings will be deemed to be completed and the matter was adjourned to 12.5.2005. On 12.5.2005, none has appeared on behalf of the parties and thus the matter was listed for hearing on 27.06.2005. Thereafter the matter was adjourned from time to time and from the order sheet it appears that none has appeared on behalf of the applicant after 28.7.2005.

4. In the amended OA, the applicant has taken entirely a new plea, which was not in the original OA that is 1) that 40% of questions in the question paper were out of

syllabus and 2) that the respondents acted in gross violation of Rule 219 (g) of IREM Vol.I.

5. Respondents in their reply have specifically pleaded that the respondents acted as per Proviso of Rule 219 (g) of IREM and as per the interim direction of the Hon'ble Tribunal candidature of the applicant was again considered wherein it was found that the applicant was not eligible to appear in the Viva-voce test and, therefore, the applicant was accordingly informed vide letter dated 19.09.2003. The respondents have further stated that the matter is also squarely covered by the judgment rendered by this Tribunal in OA No.458/2003, Har Sharan Singh & Ors. vs. Union of India and Others, decided on 16.01.2004 and also the judgment rendered in the case of Sumer Singh vs. Union of India & Ors., OA No.455/2004, whereby this Tribunal has held that once the applicant has appeared in the selection test and he failed in the selection test, he cannot challenge that the question paper was out of syllabus. It is further stated that the applicant was working only on ad hoc basis on the post of Head TTE and he has no right to be promoted on the said post without passing the selection test in which he appeared and failed. Respondents have further specifically pleaded that the applicant did not lodge any protest just after seeing the question papers or after examination but he made all allegation after he

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was declared failed and even after adding notional marks when the percentage could not be raised to 60% marks.

6. None appeared on behalf of the applicant. We have heard the Learned Counsel for the respondents and gone through the material placed on record.

7. We are of the firm view that the present OA is wholly misconceived and deserves outright rejection. As can be seen from the material placed on record, initially the grievance of the applicant was limited to the extent that the respondents may be directed to consider the candidature of the applicant after adding the notional seniority marks in terms of Proviso 219 (g) (ii) of IREM and the applicant be called for oral interview to be held on 19.09.2003. As already stated above, this Tribunal vide order dated 18.09.2003 granted ex-party interim direction to the effect that in case the applicant has secured 60% of marks prescribed for written examination and seniority in terms of Proviso 219 (g) (ii) of IREM, he shall be interviewed by the competent authority and the result will be placed in sealed cover. Pursuant to this, the candidature of the applicant was again considered by the respondents and the applicant was intimated vide letter dated 19.09.2003 that the applicant is not eligible for calling for viva-voce in terms of the

aforesaid provision. It is thereafter that the applicant filed an MA for amendment which was registered as MA No.449/2003 thereby taking additional ground that 40% of paper is out of syllabus and the selection was conducted in gross violation of Rule 219 (g) of IREM. We ~~do~~ agree with the submission made by the respondents that the said pleas taken by the applicant which are vague in nature and is after thought, cannot be entertained, as these pleas were taken by the applicant when he was intimated vide letter dated 19.09.2003 that his candidature was considered in the light of Provisc 219 (g) of IREM and as per these provisions, the applicant is not entitled for calling for viva-voce. As can be seen from the MA for amendment, which was moved on 21/22.10.2003 that is after a lapse of about one month when he was apprised about the fact that he is not entitled to any relief in terms of the case set out by him in the original/unamended OA, the aforesaid additional pleas were taken by the applicant for the first time.

8. Further, we are of the view that the case of the applicant is also fully covered by the judgment rendered by this Tribunal in the case of Har Sharan Singh (supra) and Sumer Singh (supra) whereby the same selection as in the present case was under challenge and the pleas taken by the applicants therein besides other pleas were the same as in the present case that (i) the question paper was out of syllabus and (ii) the selection was not held in accordance with rules. This Tribunal held that the

applicant is estopped from challenging the selection process on the ground that the question paper was out of syllabus and the allegation is after thought and OA No.458/2003 was dismissed by imposing a cost of Rs.2000/- on the applicants therein. For the purpose of aforesaid finding, this Tribunal also took into consideration the judgment of the Apex Court in the case of University of Cochin v. N. S. Kanjoonjamna and others (AIR 1997 SC 2083) and G. N. Nayak v. Goa University and others (AIR 2002 SC 790) as relied by the Learned Counsel for the respondents that an unselected candidate, having participated in a selection, is estopped from challenging the process, further relied upon the decision of the Supreme Court in Madanlal vs. State of J & K AIR 1985 SC 1088, Om Prakash Shukla vs. Akhilesh Kumar Shukla AIR 1986 SC 1043 and also the judgment of Delhi High court in R.B. Bhasin and Ors. vs. d. K. Tyagi and Ors. reported in SLJ 2002 (2) 239 and further observed that the applicants therein have not made any protest against the selection test and it is not permissible for the applicants to challenge the process after their participation in the selection process. Thus, the reasoning given by this Tribunal in the case of Har Sharan Singh (supra) is also applicable in the instant case.

9. At this stage, it may also be relevant to mention here that the applicants in OA No.458/2003, who were four

in number, were declared passed in the written test and were made eligible to appear in viva-voce. However, the position of the applicant in the present case is still worse. He had not passed the written test and thus was not held eligible for viva-voce test. Thus, the case of the applicant is still on weak footing as compared to the applicants in OA No.458/2003, in which the applicant No.1to3 have categorically stated that they could not have been declared failed in the viva-voce test especially when they are working on the higher post of Head TTE since the year 1999, 1997 and 1997 respectively.

10. Thus, for the foregoing reasons, the present OA is bereft of merit and is accordingly dismissed with no order as to costs.



(A. K. BHATT)

ADMINISTRATIVE MEMBER



(M. L. CHAUHAN)

JUDICIAL MEMBER

P.C./