

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No.
I.A. No.

458/2003

199

DATE OF DECISION _____

Har Sharan Singh & Ors.

Petitioners

Mr. Nand Kishore

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. V.S. Gurjar

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member

The Hon'ble Mr. A.K. Bhandari, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

K.A.B.
(A.K. Bhandari)
Administrative Member

J.K.K.
(J.K. Kaushik)
Judicial Member

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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH; JAIPUR**

Date of the Order: 16-1-04

Original Application No. 458/2003

**The Hon'ble Mr. J.K. Kaushik, Judicial Member
The Hon'ble Mr. A.K. Bhandari, Administrative Member**

1. Har Sharan Singh s/o Harbhan Singh, aged 47 years, H.T.T.E., North Western Railway, C.T.I., C.T.I. Sleeper, Jaipur, R/o A-107, Tara Nagar, Jhotwara, Jaipur.
2. Bhoop Singh s/o Shri Shukh Dev, aged about 50 years, Head T.T.T.E., R/o K-39, Himmat Nagar, Tonk Road, Jaipur.
3. Ram Poop Gurjar S/o Mool Chand Gurjar, HTTE - Jaipur, aged about 37 years, R/o Murari Gaon, Bandikui.
4. Brijesh Kumar Sharma s/o Jagdish Narain Sharma, aged about 36 years, T.T.E., North Western Railway, C.T.I. Sleeper, K-39, Himmat Nagar, Jaipur.

....Applicants

Mr. Nand Kishore : Counsel for the applicants.

VERSUS

1. Union of India, through General Manager, North West Railway, Jaipur.
2. The Divisional Railway Manager, North-West Railway, Jaipur
3. Shri Mohd. Yusuf, T.T.E., C/o C.T.I., North West Railway, Ajmer.

: Respondents.

Mr. V.S. Gurjar : Counsel for the respondents.



ORDER**Per Mr. J.K. Kaushik, Judicial Member.**

Shri Har Sharan Singh and three others have inter alia assailed the order dated 23.09.2003 (Annexure A/1) by which persons junior to the applicants have been declared successful and also quashing the condition of interview in the notification. It has also been prayed that the respondents may be directed not to revert the applicant from their promotional post and be given promotion on substantive basis.

2. As succinctly put in, the material fact necessitating filing of this Original Application are that all the applicants are holding the post of T.T.E. on substantive basis and applicants no. 1 to 3 have been further promoted on adhoc basis to the post of Head T.T.E. in the year 1999, 1997 and 1997, respectively. However, the applicant no. 4 continuous to work on the post of T.T.E. on regular basis since 1994. They have been assigned their due seniority on the post of T.T.E. A notification was issued for conducting a selection to the post of Head T.T.E., Head T.C. and T.N.C.R. (Sic. Ticket Inspector/Conductor, H.T.T.E.) on dated 01.04.2003. There were in all 38 vacancies out of which 5 vacancies were meant of Scheduled Casts Category and 2 for Scheduled Tribes Category. The selection was required to be conducted on the basis of written test.

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3. The further facts of the case are that all the applicants were eligible for undertaking the selection. A select list was prepared for the purpose of written test. That it consists of two lists, list 'A' and list 'B', candidates from list 'B' are only called when the candidates from list 'A' refused to appear in the written test. The written test held on 14.06.2003 and maximum marks were fixed as 100. The questions No. 3,6 and 7 mentioned in the question paper were out of syllabus. Further question No. 10 is also irrelevant. It has been averred that during the course of examination, the applicants pointed out that the questions were out of syllabus and either it might have been modified or bonus marks should have been granted. All the applicants qualified in the written test and became eligible for promotion to the post on which they have been working on adhoc basis for a pretty long time. The respondents have not conducted the selection as per the policy circular no. 247/90 dated 07.12.1990. They have delayed the selection and clubbed the vacancies for the year 1997 to 2003. In this way, the rights of the seniors have been snatched away/denied in order to give benefits undue to favourites of the administration. The selection was notified in the year 2000 and in that also the questions asked for were out of syllabus and on the representation the selection was cancelled on this ground alone but in the instant case such course of action was not adopted.

4. It has been next averred that the selection was for the Commercial Department and Commercial Officer was not associated in the selection and as such the appropriate Board

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was not constituted. It has also been averred that in the direct recruitment as well as in promotion for the post in question the element of interview has been eliminated. Further an extract of Railway Board's Record Note 2.2 as under, has been referred to:

"Panel should be formed for selection post in time to avoid adhoc promotion case should be taken to see while forming panel that employee which have been working on the post on adhoc basis quite satisfactory are not declared unsuitable in the interview. No particular employee reaching the field of consideration should be saved from harassment."

The applicants appeared in the viva voce but they were declared unsuccessful despite that the applicant No. 1 to 3 were working satisfactorily on adhoc basis for a long time.

5. The salient ground on which the Original Application has been filed are diverse in number and have been narrated in para 5 and its sub-paras but we shall deal them as necessary for the controversy involved in this case, in little later part of this order.

6. The respondents have resisted the claim of the applicants and have filed a detailed reply to the Original Application and it has been averred that the applicants have failed to place on record even an iota of evidence to sustain the allegations to the effect of not following the procedure prescribed for the selection and they having been declared as failed. They have in fact failed to make out any case, worth the name. The primary ground of defence of the respondents has been set out in para 4.5 of the reply, it has been averred that the applicants did not raise any objection against selection at the time of examination. Therefore, they are estopped from challenging the selection after having been participated in the same and have been

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unsuccessful. The rule regarding conducting of the selection have been discussed in detail in the reply and it has been averred that the applicants No. 1, 2 and 3 were given the relaxation on the basis of notional seniority criteria and then only they qualified for appearing in the interview. It has been reiterated that the applicants did not raise any grievance at the time of selection regarding any illegality. As far as the following of their procedure is concerned, the intention of the rule is that Officers nominated to set the question paper and evaluate the answer books is different as far as possible. There is no evidence to the effect that the applicants have been declared failed in interview and the same cannot be sustained.

7. The further defence of the respondents as set out in the reply is that the benefits of Record Note 2.2 the candidates who does not obtain 60% marks in the written test cannot get the benefit of the said instruction and the applicants No. 1 to 3 were even not eligible to be called for interview. A candidate is required to secure 60% marks in the professional ability and 60% marks of the aggregate for being placed on the panel. The grounds have been generally denied and it is averred that the claim of the applicants is without any substance and the Original Application merits rejection, being misconceived and frivolous.

8. A rejoinder has been filed on behalf of the applicants referring two certain Supreme Court decisions in **Sant Lal's** case regarding pleadings and another case of **Subhash Chander Sharma vs. UOI** has been relied upon. It has also been

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averred that a circular has been issued vide which the viva voce test is eliminated from the selection, to the extent of about 45% marks the written test was out of syllabus along with the rejoinder a letter in the shape of representation has been filed which is said to be dated 19/6.

9. We have heard the learned counsel for the parties at a great length and have carefully perused the records of this case. The respondents have been fair enough to make available relevant records in regard to the selection in question.

10. The learned counsel for the applicants has vehemently endeavoured to emphasise and reiterate the facts and grounds mentioned in the pleadings of the applicants. He has submitted that the respondents have not calculated year-wise vacancies and due to non-calculation of the year-wise vacancies, the selection cannot be sustained since the applicants are quite senior and their chances for appearing in the further selection, despite their failure in the present one have been taken away. Further for no fault of the applicants, their future prospects have also been taken away. In the written test papers, to the extent of about 45 % of marks were out of syllabus. There was no officer from Commercial Branch despite that the examination was related to the Commercial Branch. The applicants No. 1 to 3 have been working satisfactorily on the promotional post and they could not have been failed in viva voce test. He has also submitted that applicants No. 1 to 3 were rightly called by giving

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them the notional seniority marks for appearing in the interview as per the rule 219 (g) read with note appended to the same.

He has made us to traverse through the selection procedure and pointed out that the respondents have committed vast irregularities in conducting the selection. He also tried to build up a case that certain persons who passed by relaxation standard belonging to reserved category have been placed at a higher merit than the one who passed without such relaxation standard. It has also been contended that as per the rules, the facts not denied shall be taken as admitted by the respondents.

He was confronted with a very specific query as to whether any complaint or representation was made soon after the illegality was found out. The learned counsel for the applicants submitted that a representation was made in this ^{behalf} and a copy of the same has been filed as Annexure A/6, which is, dated 19.06.2003.

However, he also conceded that the letter does not ^{bear} any date ^{illegible signature and seal in token of} and it only bears a ^{receipt of 19/6 due to which} the same was not annexed to the Original Application itself. The learned counsel for the applicant avoided direct answer to this effect and argued that since now there is no requirement of conducting the viva voce test, the applicant should be deemed to have passed the selection and they should be treated applicants as regular on the promotional post. He has placed reliance on certain judgements of this very Bench of the Tribunal in the case

of Pritam Singh vs. Union of India and Ors. ; O.A. No. 120/2001 decided on 31st August 2001 & in the case of **V.N.**

Sharma vs. Union of India & Ors. ; O.A. No. 455/1996



decided on 12.03.1998 etc. and submitted that since the applicants No. 1 to 3 have been working satisfactorily on the promotional post, they could not have been declared unsuccessful in the viva voce test and the action of the respondents is *ex facie* contrary to the rules and the Fundamental Right of the applicants as enshrined in Article 14 & 16 of the Constitution has been violated and infringed.

11. Per contra, the learned counsel for the respondents has endeavoured to counter all the submissions made by the learned counsel for the applicants and has submitted that the respondents did not commit any irregularity while conducting the selection test. He has strongly contended that the applicants undertook the selection without any protest and it is only after they failed in the same they took recourse to filing of this case. They never objected to the conditions enunciated in the notification. Even after the written test or after result thereof, there was no complaint what-so-ever and this fact has been clearly pointed out in the reply. As regards, the Annexure A/6 which ^{is} annexed to the rejoinder, there is no mention of the same in the body of main O.A. and the same seems to be after thought and also suspicious. He has contended that law position is well settled by the Supreme Court in *catena* of judgements wherein their lordships have held that an unselected candidate, having participated in a selection, is estopped from challenging the process. Reliance has been placed on the decision in

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), in support of his contentions.

12. The learned counsel for the respondents has next contended that applicants have not placed any evidence in support of grounds stressed by them and OA has been filed for making fishing and rowing inquiries without any basis. It is for the applicants to stand on their own feet and they cannot develop their cases on the shoulders of the respondents.

He emphasised that the selection has been correctly held and the complete records had been made available for perusal of this Tribunal. Whether, the due care has been taken of the Railway Board Record Note No. 2.2 or not would be evident from the relevant records. However, he had no dispute regarding the settled law on the point but with exception that it would apply only to the cases where one has passed in the written test without adding notional marks, which the applicants No. 1 to 3 did not. As regards the conducting of the viva voce as a part of the selection test, the same was mandatory as per the rules in force and the subsequent rules cannot be applied to earlier selection. Even the rules meant for direct recruitment could be applied to promotions. This is besides the fact that the applicants have appeared in the complete selection without any protest. Thus the OA deserves to be dismissed with costs.

13. We have considered the rival submissions made before us by the learned counsel for the parties. As far as the proposition of law is concerned besides the judgement cited by the learned

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13. We have considered the rival submissions made before us by the learned counsel for the parties. As far as the proposition of law is concerned besides the judgement cited by the learned

counsel for the respondents, the similar issue is decided by 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 a judgement of Delhi High Court in **R.B. Bhasin and Ors. vs. D.K. Tyagi and Ors.** reported in SLJ 2002

(2) At the very outset it would be expedient to ascertain whether the applicants have made any protest against the selection test or not, the stand of the respondents is firm that they have not. As far as the applicants are concerned, it has been mentioned in para 4.5 of the OA that they pointed out during the course of examination that the questions were out of syllabus and should been either modified or bonus marks given. But in rejoinder the position is improved and a representation of dated 19/6 is said to be made to the respondent Chief Commercial Manager, N W R, Jaipur. However, it only contains that some question were out of syllabus. Incidentally, Chief Commercial Manager, N W R, Jaipur is not impleaded as a party and it is otherwise not feasible to know the correct position in regard to the same. In any case there is no mention of any such representation in the OA and once the applicants were called for viva voce test, there was hardly any question of making any protest; thus it can safely be inferred that the applicants did not make any protest against the selection in question and the Annexure A/6 is an after thought exercise just to overcome the violent objection taken in the reply by the respondents that no protest was made by them.



If at all any protest could be said to have been made, it was very unspecific and was only in respect of some question being out of syllabus without any details and the applicants had no grievances regarding other grounds i.e. clubbing of vacancies, conducting viva voce test as part of selection etc. If that be so, it is no protest ^{at} all, and the law laid down by the Apex Court would apply and cover the issue on all fours and therefore, the OA can not be sustained on this count alone.

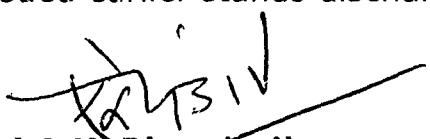
14. Now turning to the next ground regarding grant of benefits of Railway Board Record Note No. 2.2, we have perused the records of the selection and find that none of the applicants has failed in viva voce test. The viva voce test is of 15 marks and the applicants have secured 11, 10, 11 and 11 marks, respectively. The applicants No. 1 to 3 have failed to secure 60% marks in personality test and the applicants No. 2 to 4 have also not secured 60 % in overall grading in selection. Thus the contention of the learned counsel for the applicant that they were failed in viva voce is totally wrong and the Record Note 2.2 as well as the decisions in case of **Pritam Singh and other**, cases supra have been adhered/followed to though it was not required to be so adhered in case of applicants No. 1 to 3 since they did not obtain pass marks in written test. No fault can be found out in the action of the respondents, on this ground and therefore the same is groundless.

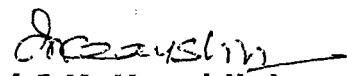
15. Adverting to yet another vital ground regarding dispensing with the viva voce test- it is the admitted position

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that on the date of issue of the notification regarding the selection in question, the provision of viva voce test has been in existence as per rules and it is only on dated 7.8.2003 there has been change in the rule when viva voce test has been dispensed with in promotion to the post in question. Thus the contention of the learned counsel for the applicant cannot be accepted. However, even if we subscribe to the said contention, it would not improve the case of the applicants in as much as applicants No. 1 to 3 have failed in written test and did not secure 60% marks in professional ability thus they can not be empanelled at all. As regards, the applicant No. 4 if the marks in viva are not taken as a part of selection, his marks would be only 46.35 whereas passing marks would be 51% and he also can not find birth in the panel. They cannot get any support from the judgement quoted in sub-para B of para 5 in the OA. On this count also, there is no substance and we are unable to concur the same.

16. In the circumspection, the inescapable conclusion is that this Original Application is devoid of any merit and substance. It stands dismissed, accordingly. In the facts and circumstances of this case, the applicants are saddled with costs of Rs. 2000/- which may be recovered by the respondents from next monthly salary of the applicants (i.e. Rs. 500/- from each). The rule issued earlier stands discharged.


(A.K. Bhandari)
Administrative Member


(J.K. Kaushik)
Judicial Member