

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 233/1998 of

DATE OF DECISION.....6.3.2000.

Sri Biswajit Das

PETITIONER(S)

Shri G.P.Bhowmik

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Mr. B.K.Sharma

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE SRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J).

DATE OF DECISION.....

1. Whether Reporters of local papers may be allowed to see the judgment ? NO PETITIONER(S)
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ? NO ADVOCATE FOR THE

Judgment delivered by Hon'ble Member (J).

Lakshmi Swaminathan

RESPONDENT(S)

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE

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1. Whether Reporters of local papers may be allowed to see the judgment ?
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X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 233 of 1998

Date of decision : This the 6th day of March, 2000.

Hon'ble Mrs. Lakshmi Swaminathan, Member (J).

Hon'ble Mr. G.L. Sanglyine, Administrative Member.

Sri Biswajit Das
Son of Dimbeswar Das
C/o Sri Dilip Tarang
D.S.K. Farm Dapoo
Guwaati-781 001

...Aplicant

By Advocate Mr. G.P. Bhowmik.

-versus-

1. The Union of India,
Through the General Manager,
N.F. Railway,
Maligaon, Guwahati-11.

2. Railway Recruitment Board,
represented by the Chairman,
Station Road,
Guwahati-1

....Respondents

O R D E R (ORAL)

MRS. LAKSHMI SWAMINATHAN, MEMBER(J).

The applicant is aggrieved by his non-selection to the post of Assistant Station Master (For short ASM) pursuant to the advertisement issued by the respondents in the Employment notice No. 2/96 dated 7.10.1996.

2. The brief relevant facts are :

The applicant belongs to the reserved category of Scheduled Caste and is a Graduate. He had applied against the aforesaid advertisement No. 2/96, calling for applications for consideration for appointment to the post of ASM. Admittedly, at the time when

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the advertisement was issued, the respondents had stated that there were 9 posts reserved for Scheduled Caste candidates. The applicant has himself stated that in the advertisement, it was also mentioned that the number of vacancies shown against the various posts mentioned in the aforesaid advertisement can be decreased or increased. The applicant has stated that the respondents had increased the reserved vacancies for Scheduled Caste candidates from 9 to 17. The applicant passed the written test which was declared on 29.8.1997. He was among the candidates called for the viva voce test. The viva-voce test also included a psychological test which was part of the mode of selection for recruitment to the post of ASM. The viva-voce test was held on 5.10.1997 but unfortunately the applicant did not pass in the viva-voce test.

3. The applicant has challenged the results declared by the respondents and appointment of certain other persons against the aforesaid vacancies to the posts of ASM. One of the main grounds taken by Shri G.P.Bhowmik, learned counsel for the applicant is that at least three candidates whose roll nos. did not figure in the list of successful candidates published by the respondents i.e. Roll Nos. 22032080, 22031254 and 22030788 have been later included which is illegal. The second ground taken by Sri Bhowmik, learned counsel is that the respondents could not have increased the reserved vacancies for SC candidates

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from 9 to 17 which is against his fundamental right. Learned counsel has submitted that if the subsequent vacancies had not been included in the advertised posts, the applicant could have appeared against those vacancies and also be selected. The third ground taken by the learned counsel is that the Select Committee did not put any relevant question to the applicant in the psychological test but merely confined itself to some preliminary questions like educational qualification etc. He has, therefore, submitted that for these reasons the application may be allowed and the final result declared on 9.1.1998 by respondent No.2 against the Employment Notice No. 2/96 dated 6.10.1996 for selection of candidates for the post of ASM be set aside. He has also prayed for a direction to the respondents to hold viva voce/psychological test for the SC candidates afresh and make the appointments to the post of ASM.

4. We have seen the reply filed by the respondents and heard Mr. B.K.Sharma, Learned Counsel. The respondents have submitted that it was clearly mentioned in the advertisement itself that the number of posts given in the advertisement are subject to increase or decrease. They have also stated that although the applicant was declared successful in the written test held on 8.6.1997, and the result was published on 29.8.1997, but he was not successful in the viva voce/psychological

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test. According to them it was necessary that the candidates were examined psychologically also, which is part of the rules and instructions for selection. Shri Sharma, learned counsel has drawn our attention to Annexure-II in which an addendum was issued on 1.9.1997 i.e. 2 days after the publication of the main results for ASMs. He has submitted that in this list of successful candidates for the post of ASMs, out of the three candidates whom the applicant has mentioned, have been included subsequently, two of them, namely, candidates with Roll Nos. 22032080 and 22031254 have been declared passed and the other Roll No. mentioned by the applicant had not been declared passed. The learned counsel has further clarified that another candidate with Roll No. 22030787 was also declared passed by addendum dated 1.9.1997. These three candidates were among the 25 other candidates who had successfully completed the written test. His contention is that since these three candidates bearing the aforesaid Roll Nos. have also passed the test, the respondents have correctly issued the addendum dated 1.9.1997, prior to holding the viva-voce test which was held on 5.10.1997. The Roll No. of the applicant was not in the list of successful candidates in the viva-voce test, as he did not pass the viva-voce test/psychological test and he cannot now challenge the test on the ground that he had not been properly tested. Shri Sharma has also taken the preliminary

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objection that the O.A. is not maintainable as the applicant has, inter-alia challenged the validity of the selection of the aforesaid three candidates who have been declared passed in the addendum dated 1.9.1997, who have not been made parties in the O.A. So, he has submitted that the O.A. suffers from non-joinder of necessary parties. He has, therefore, submitted that as the application is without merit and is not maintainable for non-joinder of necessary parties, the same may be dismissed.

5. We have carefully considered the pleadings and the submissions of the learned counsel for the parties.

6. It is noticed from the advertisement No. 2/96 dated 6.10.1996, inviting applications in the prescribed form for the post of ASM in N.F. Railway, that it was clearly mentioned that the number of vacancies shown was subject to increase or decrease. In the present case, admittedly the number of vacancies for SC candidates was increased from 9 to 17. It is also an admitted fact that the applicant had also qualified in the written test but was not successful in the viva-voce test. The number of posts were increased by GM (P)'s letter dated 21.8.1997. Nothing has been placed on record by the applicant to show that the increase in the number of posts for the SC candidates has adversely affected his interests. This was done prior to holding of the viva-voce test in which he

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had also appeared but failed.

7. In the facts and circumstances of the case, we do not find any illegality in the action of the respondents increasing the number of posts for SC candidates which was admittedly done prior to declaration of the results of the written test, which has also not been challenged by the applicant at the appropriate time.

8. Regarding the second ground taken by Sri Bhowmik, learned counsel, about the declaration of the results of at least two candidates by addendum dated 1.9.1997, we do not also find any irregularity. It is noticed that the result of the written test for the post of ASM was declared on 29.8.97 and within two days thereafter, the respondents have further declared the results pertaining to three other candidates. It is not the contention of the learned counsel for the applicant that the aforesaid three candidates did not appear in the written test along with the applicant on 8.6.1997. The mere fact that the respondents have included two/three more candidates as having passed in the written test in the results declared on 1.9.1997 will not give any right to the applicant to have the results set aside. Admittedly, the applicant had also appeared in the viva-voce test which was held on 5.10.1997, but unfortunately he was not declared successful. It is settled law that a person who has appeared before a duly

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constituted Selection Committee and has been declared unsuccessful cannot turn around and challenge the interview process on the ground of unfairness. The Hon'ble Supreme Court in the case of Madan Lal & Ors -vs- The State of J & K & Ors. (1995(3) SCC 486) has held as follows:

" The question as to whether the candidates who had got more marks in the written test as compared to the selected respondents is in the realm of assessment of relative merits of candidates considered by the expert committee before who these candidates appeared for the viva voce. Mere on the basis of petitioner's apprehension or suspicion that they were deliberately given less marks at the oral interview as compared to the rival candidates, it cannot be said that the process of assessment was vitiated. It has to be kept in view that there is not even a whisper in the petition about any person bias of the Members of the Interview Committee against the petitioners. They have also not alleged any mala fides on the part of the Interview Committee in this connection. Consequently, the attack on assessment of the merits of the petitioners cannot be countenanced."

The observations of the Hon'ble Supreme Court in another case, Union of India & Anr -vs- Samar Singh & Ors (JT 1996 (9) SC 184) ~~are~~ also relevant.

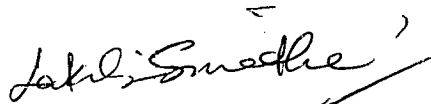
9. The aforesaid judgements of the Supreme Court are applicable to the facts of this case. In this case, the applicant has not raised any question of mala fide or bias on the part of any Member of the Selection Committee. His contention that the Selection Committee asked him certain questions which according to him were not relevant is not a sufficient ground to set aside the results of the viva voce test. It is also settled law that the Tribunal in exercise of the power of judicial

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review cannot act as if it is the Selection Committee. The contention of the applicant that he has not been tested in a proper manner is without any basis as he had taken a chance to get himself selected. Hence, we find no merit in the submissions of the applicant regarding the challenge to the selection process followed by the duly constituted Selection Committee. Apart from the merits of the case, we also find force in the submissions made by Shri Sharma, learned counsel for the Railways that the O.A. suffers from non-joinder of necessary parties, as none of the selected candidates has been impleaded.

10. In the result, for the reasons given above, we find no merit in the O.A. and it is accordingly dismissed.

No order as to costs.



(MRS. LAKSHMI SWAMINATHAN)
Member (J)



(G.L. SANGLYNE)
Administrative Member

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