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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT INDORE

Original Application No. 156 of 2005

Indore, this the 20th day of April, 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman

Hon'ble Shri K.B.S. Rajan, Judicial Member

Kishan Singh Arya,

aged - 58 years,

S/o. Shri Kalyan Singh Arya,

Shanti Colony,

Rly. Station,

PO : Dauloda (MP).

... Applicant

(By Advocate - Shri A.N. Bhatt, alongwith Shri C.P.
Lashkari)

V e r s u s

Union of India & Ors.

Represented by :

1. The General Manager,
Western Railway, HQ Office,
Churchgate - Mumbai - 20.

2. The Divisional Rail Manager,
Western Railway, Ratlam,
Madhya Pradesh.

... Respondents

(By Advocate - Shri Y.I. Mehta, Sr. Advocate alongwith
Shri D.S. Patel)

ORDER**By K.B.S. Rajan, JM.-**

"...precedents are not to be mechanically applied;"

Apex Court in Rohit Pulp and Paper Mills Ltd. v. CCE, (1990) 3 SCC 447

This is the second round of litigation. In the earlier round, the applicant along with certain others filed OA No. 236/98. He was earlier positioned as Station Superintendent in the scale of Rs 2,000 - 3200/- in Feb. 1997 which he held for about a year. During the viva conducted by the Respondents for regular promotion to the grade, the applicant failed and he along with certain others assailed the very mode of selection, as according to the applicant, promotion to a selection post was by holding written test followed by viva voce, as per Rule 215 of I.R.E.M. Again, the applicant had contended that in so far as those who are already holding the higher post, on the basis of the Railway Board circular dated 25-01-1976 and on the strength of the decision of the Apex Court in the case of R.C. Shrivastava vs Union of India decided on 03-11-1995, no one should be disqualified in viva voce. Thus on the above two pronged attack, the applicant and others in the aforesaid OA prayed for the very quashing of the selection held on the basis of viva voce.



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2. This Tribunal by order dated 11-08-2003 after referring to the provisions contained in para 2.2 of circular dated 25-01-1976 and subsequent circular dated 09-08-1982 and after profusely extracts from the judgment of the Apex Court in the case of R.C. Shrivastava (supra) disposed of the OA with the following directions:-

For the reasons stated above, OA is disposed of with a direction to the respondents to review the cases of the applicants by re-examining the marks obtained by the applicants in the interview in accordance with their circulars and keeping in mind the decision of the Apex Court (Supra). In case it is found that the services of the applicants on ad hoc basis were satisfactory, they should be allowed at least pass marks and keeping in view their eligibility, they should be included in the panel and accorded notional promotion and seniority as per the rules and instructions on the subject and pass a detailed and speaking order within a period of three months from the date of receipt of a copy of this order."

3. In compliance with the above order, the respondents have considered the case of the applicant but rejected the case of the applicant vide speaking order dated 10-11-2003. The main reasons for rejection of the claim of the applicant are as under:-

(a) After going through the Service Sheet, Confidential reports and interviewing the applicant, the applicant was not found suitable.

(b) Apex Court decision was in respect of selection where the mode of selection is by holding written and viva voce.

(c) Rule 215 of the IREM gives option to hold written test and/or viva voce.



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4. The applicant has challenged the rejection order and prayed for quashing of the very selection held in 1998 and 1999.

5. Respondents have contested the OA. The following are the multi-pronged attack by them:-

(a) When the applicants have prayed for quashing of the very selection, all those who were selected should have been impleaded, whereas the applicant did not. Hence, on the ground of non joinder of necessary parties, the OA is liable to be dismissed.

(b) Once the applicant has participated in the viva voce, he cannot challenge the mode of selection. After trying his chance he had challenged and the same is not permissible.

In ***Suneeta Aggarwal v. State of Haryana, (2000) 2 SCC 615*** the Apex Court has held, "*The appellant having appeared before the Selection Committee without any protest and having taken a chance, we are of the view that the appellant is estopped by her conduct from challenging the earlier order of the Vice-Chancellor.*" Again, in the case of ***Chandra Prakash Tiwari v. Shakuntala Shukla, (2002) 6 SCC 127***, the Apex Court has held: "*in Om Prakash Shukla v. Akhilesh Kumar Shukla a three-Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise.*"



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(c) The service sheet reflects that the applicant ~~has~~ in the past had been punished for various misconduct of minor character and the authorities have correctly followed the principles contained in R.C. Shrivastava's case inasmuch as the applicant was not rejected solely on the ground of disqualification in the viva voce but on the ground of unsatisfactory performance during his ad hoc service as Station Superintendent.

(d) Once selection Board has considered and furnished its decision, save for the same being perverse, the Court normally does not interfere with the decision of the selection board., vide **Abraham Kuruvila v. S.C.T. Institute of Medical Sciences & Technology,(2005) 9 SCC 49** wherein, the Apex Court has upheld the following decision of the Division Bench of the High Court *"The selection of a candidate has to be made by the duly constituted Committee. The High Court cannot examine the matter as a super Selection Board. The scope of judicial review is limited. There is no suggestion that the Committee was not constituted in conformity with the Rules. Still further, it is clear from the record that the appellant's name was duly considered. It may be that the appellant is better than what the Committee had found him to be. Equally it is also possible that the appellant may have an exaggerated view of his own ability. However, the suitability and merit have to be adjudged by the competent authority and not by the Court."*

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6. The applicant on his part contended that R.C. Shrivastava's decision has not been followed.

7. We have given our anxious consideration to the case. R.C. Shrivastava's case was decided by the Apex Court in respect of a contingency where there were both written test and interview and it has been held that when a person is already working in a particular post on ad hoc basis for a substantial period, and if his performance was found satisfactory, merely on the ground of his having received low marks in viva voce, he should not be rejected for promotion. This precedent cannot be applied mechanically and it has to be seen whether the applicant's case falls squarely within the parameter as available in the precedent. In the instant case the following are the clear distinguishing features:-

- (a) Whereas in R.C. Shrivastava, the examination was written examination cum viva voce, in this case it is mere viva voce and such viva voce alone is certainly permissible.
- (b) Whereas the Apex Court decision clearly states that the person working on ad hoc basis should have a satisfactory performance, in the instant case, the records do not reflect satisfactory performance.

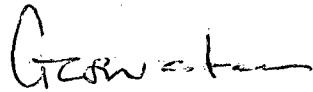
8. Thus, R.C. Shrivastava cannot be mechanically applied in this case. Rather, the same supports the decision of the respondents. There is substance in all the contentions raised by the respondents, vide para 4 above

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9. In view of the above, the applicant has not made out any case and consequently, the O.A. fails and is accordingly dismissed. No cost.



(K.B.S. RAJAN)
JUDICIAL MEMBER



(Dr. G.C. SRIVASTAVA)
VICE CHAIRMAN