

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

(1)

Original Applications No.361, 407 & 595 of 2005

Jabalpur, this the 7th day of December, 2006.

Hon'ble Dr.G.C.Srivastava,Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

1. Arvind Kumar Shukla, S/o Shri Parshuram Shukla, Aged about 41 years, 164, Samar Vihar Colony, Alambagh, Lucknow (UP)
2. Suresh Kumar Mishra, S/o Shri R.P.Mishra, Aged about 45 years, R/o 563k/18, Shyam Nagar, Alambagh, Lucknow (UP)
3. Subhodh Kumar, S/o Shri Nathuram Ahirwar, Aged about 40 years, R/o 563/86, Chitragupt Nagar, Alambagh, Lucknow (UP)
4. Rakesh Kumar Dwivedi, S/o late Shri G.C.Dwivedi, Aged about 41 years, C/o Shri Manoj Sinha, 183, Samar Vehar Colony, Alambagh, Lucknow (UP)
5. Prahalad Kumar Gupta, S/o Shri Swamisharan Gupta, Aged about 41 years, R/o Plot No.7/559, Kha.437, New Srinagar, Alambagh, Lucknow (UP)
6. Parwat Singh Yadav, S/o late Dinanath Yadav, BP-35, Forty feed Road, Patel Nagar, Mughalsarai, District Chandouli (UP)
7. Vijay Singh Khare, S/o late Ram Narayan Khare, Aged about 44 years, R/o 563/183 Chitragupt Nagar Alambagh, Lucknow (UP)
8. Shivanand B.Kolhkar, S/o Shri Basappa, Aged about 42 years, R/o New R.E.Colony, Near Railway Station, Surat (Gujarat).

Gp

9. Anil Kumar Dixit, S/o late Parshuram Dixit, Aged about 41 years, R/o 10, Chhetrapal Society Umragam, Surat (Gujarat).

10. Anil Kumar Jain, S/o Shri T.C. Jain, Aged about 40 years, O/o CPM/RE, Surat (Gujarat).

11. Satya Prakash Sharma, S/o late Badri Prasad Sharma, Aged about 44 years, R/o 563k/18, Shyam Nagar, Alambagh, Lucknow (UP)

12. Hari Babu Niranjana, S/o Shri Raja Ram Niranjana, Aged about 40 years, R/o C-312, Sector-D, LDA Colony, Kanpur Road, Lucknow.

13. Arvind Kumar Saxena, S/o late K.L. Saxena, R/o 48, Rajendra Nagar, Nishatpura, Bhopal (MP).

14. Ram Prakash Gupta S/o Shri Umashankar Gupta, Aged about 39 years, R/o 39F, Samar Bihar Colony, Near Manak Nagar Railway Station, Alambagh, Lucknow (UP)

15. Ajay Tiwari, S/o Shri Harishankar Tiwari, Aged 39 years, R/o 1470/2, Mirza Compound, Massihaganj, Sipri Bazar, Jhansi (UP)

-Applicants

(By Advocate – Shri S. Paul)

VERSUS

1. Union of India, Ministry of Railway, Through its Secretary, Rail Bhawan, New Delhi.

2. General Manager, Central Organization, Railway Electrification (Core), Allahabad (UP).

3. General Manager, West Central Railway, Indira Market, Jabalpur.

4. Chief Personnel Officer, West Central Railway, O/o General Manager, West Central Railway, Indira Market, Jabalpur.

Cm

5. Chief Personnel Officer, Central Organization,
Railway Electrification (Core), Allahabad (UP).

6. Divisional Railway Manager (P), West Central
Railway, Bhopal Division, Bhopal.

-Respondents

(By Advocate – Shri M.N.Banerji)

Original Application No.407 of 2005

1. V.Muralidharan, S/o late K.Vishwanathan, Aged about
38 years, Working as Technical Mate, R/o 166, Shakti
Nagar Sector-1, Bhopal (M.P.)

2. D.K.Pandey, S/o Shri Vasudeo Pandey, Aged about 40
years, Working as Technical Mate, R/o Near Tilhan
Sangh, Sadar Bazar, Hoshangabad, District-Hoshangabad
(M.P.).

-Applicants

(By Advocate – Shri S.Paul)

VERSUS

1.The Chairman, Railway Board, Rail Bhawan, New
Delhi.

2. The General Manager, Central Organization, Railway
Electrification, Allahabad (U.P.)

3. The General Manager, West Central Railway, Jabalpur
(M.P.).

-Respondents

(By Advocate – Shri M.N.Banerji)

Original Application No.595 of 2005

Gulab Chandra Joshi, S/o late Shri P.L.Joshi, Aged about
45 years, R/o H.No.211/1A, Outside Ditiya Gate,
Thapak Bagh, Jhansi (UP).

-Applicant

(By Advocate – Shri S.Paul)

VERSUS

Cm

1. Union of India, Ministry of Railway, Through its Secretary, Rail Bhawan, New Delhi.

2. General Manager, Central Organization, Railway Electrification (Core), Allahabad (UP).

3. General Manager, West Central Railway, Indira Market, Jabalpur.

4. Chief Personnel Officer, West Central Railway, O/o General Manager, West Central Railway, Indira Market, Jabalpur.

5. Chief Personnel Officer, Central Organization, Railway Electrification (Core), Allahabad (UP).

6. Divisional Railway Manager (P), West Central Railway, Bhopal Division, Bhopal.

-Respondents

(By Advocate – Shri M.N.Banerji)

COMMON ORDER

By Dr.G.C.Srivastava, VC.-

OA 361/2005 has been filed jointly by Arvind Kumar Shukla and 14 others praying for the following main relief:-

“7(ii) Upon declaring that the action of the department in subjecting the applicants to a RRB level/ high/ different level of test qua G.S.Kushwaha’s case, is bad in law, command the respondents to convene a screening test for the purpose of regularisation by applying the same standard which is made applicable in Kushwaha’s case (supra) within a stipulated time. Till such time, fresh screening is convened the respondents be restrained from reverting the applicant (sic –applicants).

(iii) The action of the respondents in sending the applicants to Group “D” post be declared illegal and set aside”.

2. OA 407/2005 has been filed jointly by V.Muralidharan and D.K.Pandey praying for the following main relief:-

Gm

(5)

"8.1.....set aside the screening process and consequent non inclusion of the applicants in the list of successful candidates for regularization/ appointment as JE (Electrical)Gr.II in the order dated 07-06-2004 (A/1).

8.2 to issue appropriate writs, orders, directions for commanding the respondents to hold similar level of screening as was done by Respondent Railway Administration, for regularization of G.S.Kushwaha & other similarly placed applicants on the post of Junior Engineer Gr.II, without following the norms and procedure as applicable to Railway Recruitment Board Level Test, as has been done by the Respondent Railway Administration in regularization of other similarly placed Technical Mates on the post of Junior Engineer Grade-II, in compliance of the policy decision of Railway Board (Annexure A/11 & 12)".

3. OA 595/2005 has been filed by Gulab Chandra Joshi praying for the following main relief:-

"7(ii) Upon declaring that the action of the department in subjecting the applicant to a RRB level/ high/ different level of test qua G.S.Kushwaha's case, is bad in law, command the respondents to convene a screening test for the purpose of regularisation by applying the same standard which is made applicable in Kushwaha's case (supra) within a stipulated time. Till such time, fresh screening is convened the respondents be restrained from reverting the applicant.

(iii) The action of the respondents in sending the applicant to Group "D" post be declared illegal and set aside".

4. Since the facts-in-issue in these three cases are the same and the relief sought for is identical, the 3 OAs are being decided by this single order. OA No.407/2005, however, is being taken as the leading case for the purpose of this order.

5. The facts of these cases are that the applicants are diploma holders in engineering and were initially appointed on daily wages as casual work supervisor. In due course, they were granted temporary status as technical mates and were regularized as group-D employees by an order dated 3.3.1998. They claim that they should be regularized as Chargeman 'B'/ Inspector of Works Gr.III as they have been working against such vacancies. The claim of the applicants is based on their contention that similarly situated

temporary status employees in Central Railway have been regularized as Chargeman 'B'/ Inspector of Works Gr.III. (6)

6. The applicants have averred that several writ petitions were filed directly before the Hon'ble Supreme Court because of delay in regularization and in writ petition no.1198/1988, in which V.Muralidharan was one of the petitioners, the Hon'ble Supreme Court passed the following order on 3.5.1989:-

"Learned counsel appearing on behalf of the respondents agreed that the petitioners will be given an opportunity to appear before the Railway Recruitment Board for their selection to posts in accordance with their suitability and qualification for such post. In such selection there will be no question of age bar. So long as such an opportunity is not given, the respondents are restrained to terminate the services of the petitioners. The Writ Petitions are disposed of as above. There will be no order as to costs".

7. Subsequently, after five years, some of the petitioners, claiming that they were not given the opportunity to appear before the Railway Recruitment Board, approached this Tribunal in OA NO.161/1994, wherein the Tribunal directed the respondents to consider the case of the applicants therein for regularization in the post of IOW Gr. III by giving them an opportunity to appear before the Railway Recruitment Board for regularization. The Tribunal as an alternative measure also directed the respondents to consider the aspect of extending the applicants same treatment as had been reported to have been meted out to similarly placed persons by the South Eastern Railway. As the applicants therein were not regularized despite these directions of the Tribunal, some of them filed OA No.398/1995 (Gyanendra Singh Kushwaha & others Vs. Union of India & others) which was decided on 29.2.1996. In the said case the Tribunal issued the following directions:

"6....we direct the respondents to constitute a screening committee and consider the case of the applicants as permissible under the law as has been done by South Eastern Railway within four months from the date of communication of this order".

Qr

(7)

After the said order was passed, the respondents held an internal written test and viva voce test and regularized these applicants G.S.Kushwaha and others. After the said benefit was extended to G.S.Kushwaha and others, some other OAs [OA No.471/97 (Ravi Shankar Khare Vs. Union of India and others) and OA No. 627/1998 Deepak Arya Vs. Union of India and others] were filed for similar benefits. All these OAs were allowed by directing that the benefit which was extended to G.S.Kushwaha and others, should also be extended to these applicants. When some others, including the applicants in the present OAs, found that the respondents did not effect any change in their status despite aforesaid decisions and they continued as Technical Mates, they approached this Tribunal in OA Nos.577/1998, 604/1998 and 435/2000, which were disposed of by a common order on 12.3.2003 (annexure A-2) with the following directions:-

"5.1 There is no dispute that the post of IOW Gr.III/Chargeman is a selection post. The same is to be filled up by holding a screening test as has been directed in the case of G.S.Kushwaha in OA 398/1995 vide order dated 29.2.1996. In case there are not enough number of vacancies for the regularisation of the present applicants, they need not be reverted to Group-D posts and may be continued in the present status wherever they are working or if there is no work in that project, they may be adjusted in any other project where such work is still in progress. At the cost of repetition, it is clarified that all these applicants are entitled to be given same treatment and benefits as have been given to G.S.Kushwaha and others in OA 398/1995.

6. In the result, these Original Applications are allowed. The respondents are directed to give effect to this order

Jr

(8)

within a period of three months from the date of communication of this order. The parties are directed to bear their own costs".

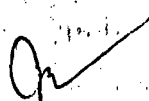
8. The aforesaid order dated 12.3.2003 of the Tribunal was challenged by the respondents in Writ Petition No. (S) 2334/2003, (The Chairman Railway Board Vs. D.K.Pare & 14 others) which was dismissed on 13.11.2003, mainly because another Writ Petition No.3700 of 1998 (Union of India and others Vs. Pramod Kumar Verma and others) which covered the aforesaid matter was challenged in the Supreme Court and the SLP was dismissed by the Hon'ble Supreme Court on 29.8.2003. The Hon'ble High Court granted two weeks' time to comply with the order from the date of receipt of a copy thereof. Consequently, the respondents issued a notice on 26.12.2003 (annexure A-5) regarding holding of a screening test on 17.1.2004. The applicants appeared in the screening test but failed to qualify. This prompted the applicants to file contempt petition no.38/2004 along with execution application (MA No.502/2004) on the ground that the directions given by the Tribunal on 12.3.2003 were not implemented by the respondents in true spirit. These petitions were dismissed by an order dated 15.6.2004 as the Tribunal found that its order has already been complied with by the respondents. The applicants (V.Muralidharan and D.K.Pandey) challenged the aforesaid order before the Hon'ble High Court in Writ Petition (S) No.8879/2004. This writ petition was dismissed as withdrawn reserving the liberty to the petitioners to approach the Tribunal challenging the screening test to which they were subjected. Consequently, the applicants have come to the Tribunal once again.

9. The main grievance of the applicants in all the 3 OAs is that they have failed to qualify because the screening test held for them

C

is not similar to those held for G.S.Kushwaha and others. Their contention is that G.S.Kushwaha and others were given hand-written papers in the screening test held on 12.2.1997 and questions were asked to ascertain their working knowledge with liberty to answer any five questions. Other temporary Technical Mates for whom the screening test was held on 11.10.2003 were also given hand-written question papers and they were required to answer only specified number of questions – all of which were framed to test their working knowledge. On the other hand, the applicants aver that, in their case, they have been subjected to a theoretical test of Railway Recruitment Board level in the garb of screening test held on 17.1.2004 wherein they were required to answer all the 75 compulsory questions, none of which related to the working knowledge of the applicants. They have also stated that they were not allowed to take the question papers along with them after completion of the screening test, unlike in the case of G.S.Kushwaha and others. The applicants claim that question papers are retained by the authorities only in RRB level recruitment/ selection examinations. Since the screening in their case was not of the same level as in the case of G.S.Kushwaha and others, this is a case of gross discrimination and this screening process should accordingly be set aside.

10. In their reply, the respondents have stated that the screening test was held on 17.1.2004 and 21 candidates were declared successful. Since the applicants have failed in the screening test, they have no case for grant of relief. The respondents have further contended that it is not necessary that only hand-written papers should be prepared only because in earlier screening test hand-written papers were given. Depending upon the availability of



10

facilities and administrative convenience for maintaining secrecy question papers were prepared in the present case. It is not possible that in every examination similar questions should be repeated. It has further been averred by the respondents that the question papers were based on practical and fundamental theoretical knowledge, which a diploma holder is required to possess. The very fact that many other similarly placed employees qualified the examination confirms that the screening test was of appropriate level. It has further been stated by the respondents that as a concession to the applicants, the qualifying marks were kept at 40% for unreserved, 30% for SC and OBC and 25% for ST as against 60% in the case of G.S.Kushwaha, which is the nodal case. In view of these facts and circumstances, the respondents prayed that the OAs may be dismissed being devoid of merits.

11. We have heard the arguments advanced by the counsel of both the parties. Written submissions were also made by the learned counsel for the applicants in OA 407/2005.

12. We notice that 40 employees had approached this Tribunal in OA Nos.577/98, 604/1998, 435/2000 and 769/2001, which were disposed of by a common order on 12.3.2003. In compliance with the directions of the Tribunal in these OAs, a screening test was held on 17.1.2004 and 21 of these applicants qualified in the screening test. Only 18 original applicants have approached us through these OAs for relief. This very fact negates the allegation of the applicants that the screening test was such as could not be answered by the employees of their level. Therefore, the argument advanced by the applicants that the screening test was not of the same level as the earlier ones has no force and is rejected. The fact

Q

(11)

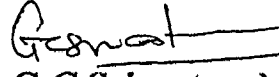
that some of the question papers were hand-written and others printed does not carry ^{weight} ~~weight~~, as it all depends upon the wisdom of the examination holding authority, provided absolute secrecy is maintained. There is no allegation that anybody has been favoured in the screening test. The fact that no choice was allowed in the impugned screening test is also of little relevance, as trends of question papers keep on changing and it is not necessary that number of questions or their pattern or even providing choice or otherwise should always follow a known trend. The respondents have shown enough consideration to the candidates by lowering the qualifying standard from 60% to 40%. It is not for the Tribunal to call for the question papers and act as a technical expert to find out whether the level of the question papers was of the proper standard. The very fact that 21 candidates did qualify in the screening test and only 18 of those who did not succeed have come before us shows that by and large there has been no discontentment about the screening test. There is nothing on record to show that the applicants in these 3 OAs have complained to the authorities about any irregularity relating to the conduct of the screening test either at the time of the examination or immediately thereafter. It is now a well settled legal position that if a candidate takes a calculated chance and appears at the selection without protest, then only because the result of the selection is not palatable to him, he cannot turn round and subsequently contend that the process of selection was unfair [see *K.H. Siraj Vs. High Court of Kerala*, 2006 SCC (L&S) 1345, *Union of India and another Vs. N. Chandrasekharan and others*, (1998) 3 SCC 694; *Madan Lal Vs. State of J& K*, 1995 SCC (L&S) 712; *Om Prakash Shukla Vs. Akhilesh Kumar Shukla*, 1986 SCC (L&S) 644]. In view of these facts, we are not inclined to interfere with the result of the

G

examination or conduct of the screening test. We do not find any merit in these OAs.

13. In the result, all the 3 OAs are dismissed without any order as to costs.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

rkv