

CENTRAL ADMINISTRATIVE TRIBUNAL : JABALPUR BENCH

JABALPUR

O.A. No. 1010 of 2005

Jabalpur, this the 29th day of March, 2006

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

Hon'ble Shri G. Shanthappa, Judicial Member.

B.L. Pandey

& 22 Ors.

... Applicants

**(By Advocate : Smt. S. Menon,
alongwith Ms. P.L. Shrivastava)**

VERSUS

**1. Union of India through
Secretary, Ministry of Railways,
New Delhi.**

**2. General Manager,
West Central Railway,
Jabalpur, Madhya Pradesh.**

**3. Chief Personnel Officer,
West Central Railway,
Jabalpur, Madhya Pradesh.**

... Respondents

**(By Advocate : Shri H.B. Shrivastava &
Shri S.Nagu for interveners)**

O R D E R (Oral)

(By G. Shanthappa, Judicial Member.)

The above O.A. is filed u/s 19 of the Administrative Tribunals Act, 1985, seeking for the following reliefs :

- (i) To requisition the answer sheets of the applicants as also those incumbents whose names appear in Annexure-A/1.
- (ii) To set aside the order dated 17.10.2005 (Annexure-A/1) and direct respondents to prepare a fresh select list in accordance with the rules.
- (iii) To grant any other relief as deemed fit by this Tribunal.

2. Learned counsel for either side have submitted that they have no objection if the main O.A. is heard, instead of hearing only M.A. No.46 of 2006 for vacating interim order. Accordingly, O.A. No.1010 of 2005 is taken up for hearing.

3. Twenty three applicants are challenging the selection dated 17.10.2005 for Group-B post of AEN in the scale of Rs. 7500-12,000/- (RSRP). In the said selection 11 persons were selected. This application is filed to quash the said selection list. As per the cause title, there are only official respondents and the applicants have not made the selected persons as parties.

4. The present applicants are working in Group-C post under the respondents. By notification dated 20.12.2004 (Annexure-A/2), it



was informed by the respondent-authorities that a Limited Departmental Competitive Examination would be conducted for the purpose of promotion to Group-B Service in the Engineering Department to empanel 16 employees (13 General, 2 SC and 1 ST) against 30% of the vacancies assessed. It was also mentioned in the notification that -

- (a) The maximum marks for Paper-I is 150 and the qualifying marks is 90;
- (b) The maximum marks for Paper-II is 150 with and the qualifying marks as 90.

5. **Para 201.1 of IREM (Vol.1) gives details in respect of promotion to Group-B post. Para 204.1 postulates selection procedure. Para 205 deals with currency of panel and Para 206.2 deals with medical fitness of its employees selected for promotion to Group-B.**

6. **Since the applicants fulfilled the requisite qualification/criteria, they submitted their application for the examination. The respondents vide letter dated 23.3.2005 published the list of employees eligible to appear in the examination and the names of the applicants and the interveners appear in the list as shown in Annexure-A/3. The applicants appeared for the competitive written examination held on 11.6.2005. Earlier in the Limited Departmental Competitive Examinations held in the years 1997, 2000 and 2004, some of the applicants were successful.**

7. **While conducting the examination under the notification dated 20.12.2004, there has been mistake at the level of the respondents in encoding and decoding, to give undue favour to a few candidates who were not competent. The applicants submit that under no circumstances, they could secure less than 60% marks in each paper if valuation was**



carried out in all transparency and fairness. The applicants state they have attempted all the questions, which ought to be correct. Hence, they could not have been declared unsuccessful. The Evaluator failed to evaluate the copy of the written examination within one month from the date of its receipt. The Examiner retained the answer sheets with him for over three months, with no justification. As such, there was a delay in declaration of the written test. It is submitted that Order No.159/1988 of the Railway Board specifies the procedure of finalisation of evaluation of the examinations.

8. The results of the successful candidates declared, show the names of incumbents who lack working knowledge and professional qualification as well as working performance. The applicants apprehend that due to indifference in awarding of marks by the evaluating officers and as there was no proper tabulating of the answer sheets, much prejudice has been caused and unfair means were adopted as a result of which, qualified candidates have been kept at bay. All further proceedings of medical examination under Paras 530 and 532 thus would stand vitiated. The applicants submit that the action of the respondents is arbitrary, whimsical and violative of Articles 14, 16 and 21 of the Constitution.

9. As per the answer sheet which is produced by the respondents alongwith the reply statement at Annexure R-1, the following important instructions for the candidates are provided :

(i) Name and other sign/indications should not appear in the answer sheet other than the specified place, otherwise the answer sheet will not be evaluated.

(ii) Candidates are not allowed to keep mobile phones, or any other document/paper with



them.

(iii) Answer sheet should be given in clear handwriting & marks will be deducted for illegible handwriting.

(iv) Disciplinary action will be initiated for using unfair means.

10. The applicants submit that the respondents have not followed the provisions as referred to in instruction (1) above. The supplementary sheet which was enclosed alongwith main sheet has no fly leaf. The respondents have also not followed the provisions of IREM. Accordingly, after careful consideration of all these aspects the Hon'ble Tribunal was pleased to grant interim order.

11. Per contra the respondents have filed their detailed reply statement and also the additional reply statement. In their main reply statement the respondents have contended regarding remedies available to the applicants. They have not mentioned under what provisions the applicants have to exhaust their remedies. In Para 6 of the reply statement they have given a bald statement that the applicants have not exhausted the available remedies.

12. The respondents submit that in pursuance to the notification dated 20.12.2004, the applicants and others were allowed to appear in the written examination on 11.6.2005. Clear and important instructions were provided to the candidates appearing in the examination and instructions were also mentioned in the question papers supplied to the candidates. The instructions were :

(i) No sign/identification marks should be mentioned in the answer sheets on other than the specified place, otherwise the answer

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sheets will not be evaluated.

(ii) Making any identification marks or name in the answer book is strictly prohibited.

(iii) Any candidate not observing the above, will be disqualified.

13. In order to avoid any manipulation by the candidates or evaluating officers, all copies were marked with private code numbers, without the Roll No. or name of the candidate. It was noticed that answer sheets of 55 candidates had some marks which discloses their identity in spite of the clear instructions given. Hence, the answer sheets of those 55 candidates were evaluated as the said candidates had violated the instructions. The names of the candidates who had followed the instructions and had passed the written examination on their own merit, figure in Annexure-A/1. The persons selected and whose names are appearing in Annexure-A/1, have not been made as party-respondents by the applicants in the present O.A. Hence, O.A. is liable to be dismissed for non-joinder of parties.

14. The respondents state that they have followed the correct procedure as per provisions of IREM (Vol-I) (1989 Edition), as amended from time to time, while conducting the above examination. There is no provision in the rules to get the answer sheets evaluated by some independent evaluator. The General Manager of the Zonal Railway, is competent to approve the panels of gazetted staff.

15. Out of the 23 applicants in the O.A., 16 candidates failed to qualify in the written examination. 7 candidates amongst the applicants had written some identification marks on their answer sheets and, therefore, the said answer sheets were not evaluated for the reason that the said candidates have not followed the given instructions. 11 candidates who have passed the written examination, have been declared suitable for viva-voce.



16. The respondents have also filed reply to the additional pleadings.
17. It is the contention of the respondents that they have followed the instructions strictly and have conducted the examination in accordance with the procedures. They have produced a answer sheet which is enclosed as Annexure R-1. There is no violation of the instructions while conducting the examination. Lastly, they were not able to submit their version at the time of granting interim order. 14. Subsequently the respondents have filed their main reply statement on 23.11.2005 and additional reply on 27.3.2006. The five persons listed in Annexure A-1 have filed intervening application on 24.11.2005 vide MA No. 966/2005. The applicants have also filed MA No.3/2006 for production of additional documents and also for bringing on record the material facts. The intervening applicants have also filed MA No. 46/2006 on 18.1.2006 for vacating interim order.
18. Through M.A. No.966 of 2005, five persons whose names are listed in Annexure-A/1, have prayed for intervention, which was considered
19. The learned counsel for the interveners has supported the arguments of the learned counsel for the respondents. They have filed the reply statement contending that since they have been selected, their rights are affected because of the interim order. For this they have filed an application for vacating the stay.
20. We have heard the learned Counsel, Smt. Sobha Menon, for the applicants, Shri H.B.Srivastava for the official respondents and Shri S.Nagu, for the interveners.



21. While arguing the case, the following contentions have been raised by the applicants:

The authorities have not followed the procedure while conducting the examination. As per para 208.1 of IREM (Annexure A-10) regarding other instructions - the answer papers of the written examination as well as the mark sheets of viva-voce should be marked with indelible ink. Each answer book should carry a fly leaf. Both fly leaf as well as the answer book should be stamped and signed by the gazetted officer in-charge of conducting the examination. The employees should write their name and designation on the fly leaf only. After the answer books are received from the employee the fly leaf should be removed and allotted a roll number which should also be simultaneously recorded on the corresponding answer book. The answer books should be sent to the examiner with the roll number alone indicated on the answer books. The fly leaves removed from the answer books should be carefully preserved in a sealed cover which should be kept in the personal custody of the Chief Personnel Officer.

22. The learned counsel for the applicant has also referred to para 9 of the IREM at Annexure A-11 which refers to evaluation of answer sheets. Para 9.1 states that as soon as the written test is over, a dummy roll number should be given on the fly leaves attached to each answer sheets and the fly leaves containing the original roll number as well as the dummy number should be separated and kept under the custody of the officer in-charge of the cadre for which selection is held. The answer sheets then are sent to the evaluating officer which should contain only the dummy roll numbers, so that the evaluating officer does not know the identity of the candidates.

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Note (1) of this para states that evaluating the answer sheets without the fly leaves and dummy numbers is not allowed.

Note (2) of the said para states that evaluating of answer sheets where fly leaves and dummy numbers are present, but the candidate has written his name or roll number in the other sheets of the answer book, is also not allowed.

Para 9.2 states that the evaluating officer should not resort to awarding of any grace marks to individual candidates. In its Note (1) it is provided that moderation can be resorted to by the selection board or with the approval of the authority competent to accept the recommendations of the selection board, viz. DRM and PHODs. However, this has to be done before the dummy numbers are decoded. Otherwise the identity of the candidates will be known to the selection board and there is chance of moderation being resorted to help a particular candidate. Further Note (1) of para 9.3 provides that it is often observed that one of the points emerging out of the vigilance investigation is on evaluation of answer sheets pertaining to omission and commission of the marks. It is essential that whenever the answer sheets are sent for evaluation, the evaluating officer should be informed of the instructions on the subject.

23. While granting interim order of status quo on 24.10.2005 and extended from time to time, this Tribunal has considered the case of the applicants and passed an *ex parte* interim order.

24. We have carefully examined the contention of the applicants and the respondents and also we have given opportunity to the interveners to submit their arguments. As per the intervention

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application, they cannot be made as party to the proceedings since the right of arguments will be there and they were heard.

25. According to the reliefs of the applicants, they have prayed to quash the impugned order which is a select list of 11 candidates, who have not been made party to the proceedings. If the applicants' want to challenge the impugned order, then right of hearing to the persons who are selected should be given. When the applicants have not made them as parties to the proceedings, then interveners cannot be considered as private respondents here.

26. With regard to the contention of the respondents that the remedies are not exhausted by the applicants before approaching the Tribunal, we are referring to para 208.3 of IREM which relates to representations against selection. In this para it is provided that representations against selections should be dealt with on merits without restriction of any time limit for their submission.

27. We have carefully examined the provision under the said chapter and also the contentions raised by the respondents.

28. The learned counsel for the applicants has submitted that even if there is any violation of the procedures while conducting the examination, at this stage the Tribunal can interfere because the illegality has been committed at the beginning.

29. The main contention of the applicants is that the respondents have not followed the relevant provisions while conducting the examination, and accordingly the selection is illegal and vitiated, which has to be quashed. Thereafter there should be a direction to the respondents to prepare fresh select list in accordance with the principles of fair play and rules. The applicants are to be considered on par with others who have been selected. Today, it has to be



considered by us, whether interim order is to be continued or modified or cancelled. The main contention of the respondents is that they have conducted the examination as per correct produce and hence, the examination is not vitiated.

30 Since the applicants have not exhausted the remedies available to them under Rule 208.3 and also they have not made the selected candidates as parties to the proceedings, on these two grounds the application is not maintainable.

31. According to the interpretation of the learned counsel for the applicant, para 208.3 is applicable only after the examination is over and the marks are allotted. Para 208.3 reads as follows :

"208.3 Representations against selection -

Representations against selections should be dealt with on merits without restriction of any time limit for their submission."

32. At this stage when no viva-voce is over, this provision is not applicable. It is the further contention of the applicants that as per Note (1) of para 9.2 in Annexure A-11 once the decoding is given to the answer books then nothing can be done and hence at this stage question of representing the respondents as per para 208.3 does not arise.

33. It is an admitted fact that the applicants have not submitted their representation against their grievance, as required under Para 208.3 of IREM (Vol.I). We have carefully examined the contentions of the learned counsel for the parties. The applicants can take all the aforementioned grounds in their objection and only after receipt of the reply and after preparation of final list, they can challenge the



selection list.

34. The interveners have submitted a judgment of the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Rajesh P.U., Puthuvalnikathu & Anr., 2003 (7) SCC 285, wherein the Hon'ble Apex Court has dealt with whether Courts/Tribunals can interfere in respect of an examination. The learned counsel for the applicants has submitted that the ratio of the said judgment is not applicable in the present case.

We have carefully examined the judgment of the Hon'ble Apex Court. At this stage it is not found justifiable to refer to the judgment of the Hon'ble Supreme Court as the applicants have not exhausted the remedies available to them.

35. In view of the aforesaid, this OA is dismissed. No costs.
36. Registry is directed to supply the copy of memo of parties to the concerned parties while issuing the certified copies of this order.



(G. Shanthappa)

Judicial Member



(G.C. Srivastava)

Vice Chairman

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प्रियोग

वायलपुर, दि.

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प्राप्ति. वायलपुर

ज्ञ. उत्तरांश्ल

क्ष. उत्तरांश्ल

सूचना एवं अन्तर्यामा

25/4/06

उप रजिस्ट्रार

Smt. S. M. Man 21.02.2008

H. B. Joshi 29.02.2008

S. M. Joshi 22.02.2008

25/4/06