

Central Administrative Tribunal  
Jabalpur Bench

OA No.1065/04

Indore, this the 17<sup>th</sup> day of August, 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman

Hon'ble Mr.Madan Mohan, Judicial Member

1. D.N.Ram (SC)  
Sr.Section Engineer (Estimator)  
Under CE/C/SECR/Bilaspur  
S/o Shri L.Ram  
R/o Qr.No.1122/B  
Construction Colony  
Bilaspur.
2. Deep Chand (SC)  
Jr. Engineer  
Gr.I/W/Con/Under CE/C/SECR  
S/o Shri Prakash Chand  
R/o Qr.No.800/B, Construction Colony  
SEC Railway  
Bilaspur.
3. M.Bairagi (SC)  
Junior Engineer  
Gr.I/W/Con/Under CE/C/SECR  
S/o R.Bairagi  
R/o F/203, Ist Floor, Kalyan  
Sundaram Apartment-II, Tikrapara  
Near Durga Mandir  
Bilaspur.

Applicants

(By advocate Shri S.Paul)

Versus

1. Union of India through  
Its Secretary  
Railway Board  
Rail Bhawan  
New Delhi.
2. General Manager  
South Eastern Railway  
Garden Reach



Kolkata

3. General Manager  
South East Central Railway  
Bilaspur.
4. Principal Chief Engineer  
South Eastern Railway  
Garden Reach  
Kolkata.
5. Chief Personnel Officer  
South Eastern Railway  
Kolkata.
6. Chief Engineer (Con.)  
South East Central Railway  
Bilaspur.

Respondents.

(By advocate Shri S.S.Gupta)

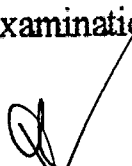
### ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicants have claimed the following reliefs:


- (i) Upon holding the action of the respondents in not placing the applicants in the panel is illegal/void, direct the respondents to consider and review the case of the applicants and if they are found suitable, may be included in the panel issued on 17.9.2004 against the vacant post of Scheduled Caste.

2. Brief facts of the case are that the applicants were appointed in the respondent department on 18.4.1983, 21.1.1994 and 20.1.1985 as Senior Estimator, Inspector of Works/Gr.III respectively. Applicant No.1 was subsequently promoted as Senior Section Engineer on 1.1.2003; applicant No.2 as Junior Engineer on 5.4.2004 and applicant No.3 as Senior Section Engineer on 1.11.2003. A notification-dated 5.3.2001 (Annexure A1) was issued for formation of Group-B panel for the posts of Assistant Engineer through limited departmental competitive examination, by which 28 posts were



notified for filling up the same. Since the applicants fulfilled all the conditions stipulated therein, they became eligible to appear in the aforesaid examination. Initially a panel of 9 candidates of AEN was published. Thus 19 posts of AEN remained vacant. Having dissatisfied with the short panel of 9 candidates, some of the candidates of Bilaspur Division filed OA No.536/02 which was disposed of by the Tribunal directing respondent No.2 to examine the matter and pass a speaking order. In order to rectify the irregularity, a supplementary written examination was conducted on 16.5.2004 with the approval of Railway Board by calling 42 reserved candidates from the earlier list. Out of 42 candidates appeared, 13 were found successful including the applicants in the written examination. Accordingly a viva voce test was held on 16.7.2004. Subsequently the earlier panel of 9 candidates was modified and enlarged to 17. In the modified panel, only 8 more reserved candidates were added but the names of the applicants were not included. Thus 11 posts remained unfilled from 2001. Even though the applicants secured more than 60% marks, they were not placed in the panel. This was apparently done due to wrong assessment of the Selection Committee. Hence 3 UR, 5 SC and 3 St posts are still lying vacant. The applicants who belong to SC community deserved to be considered for empanelment for the post of AEN. The representation submitted by the applicants dated 29.9.2004 remains unanswered. Hence this OA is filed.

3. Heard learned counsel for both parties. It is argued on behalf of the applicants that initially 28 posts were notified to be filled for the post of AEN but a short panel of only 9 candidates was published. Later in order to rectify the irregularity, a supplementary written examination was conducted on 16.5.2004 with the approval of Railway Board by calling 42 reserved candidates from the earlier list. Out of 42 candidates appeared, 13 were found successful including the applicants in the written examination. The applicants having come out successful in both written and viva voce, there was no justification



for disqualifying them. The respondents have not awarded marks to the applicants properly. The learned counsel further argued that nothing adverse was communicated to the applicants with regard to the ACRs of the applicants for the last 5 years. The respondents have not considered factors such as the applicants had scored 60% marks, good ACRs and seniority position.

4. In reply, learned counsel for the respondents argued that policy matter cannot be a judicial matter of interference. It is not within the jurisdiction of Tribunal to judge as to whether the marks given in viva voce and in record of service are adequate or not in relation to the nature of duties and responsibility of the post concerned. The apex court has held that the Tribunal cannot assume the role of an appellate body over the decision of the selection board. A written test was conducted on 14.10.2001 wherein 564 candidates appeared. Based on their performance in the written test nine candidates qualified and a panel of 9 candidates was formed vide memo dated 11.12.2002. Thereafter an SC candidate along with three other candidates who could not clear the written test filed OA No.536/02 before CAT, Jabalpur for providing them mandatory pre-selection coaching etc. In compliance with the directions of the Tribunal, the department held a supplementary written examination on 16.5.2004. A total 13 candidates including the applicants qualified in the written test and were called for viva voce. Keeping in view the performance of the candidates in the written as well as viva voce and after assessing the record of service (ACRs) the selection board recommended only 8 more candidates for empanelment. Mere appearing in the viva voce does not make one entitled for empanelment. To be considered for empanelment, a candidate has to get minimum 60% marks in each of the two papers and 60% marks in the viva voce and record of service together i.e. 30 out of 50 marks. The applicants could not be accommodated in the panel dated 17.9.2004 as they did not obtain the minimum qualifying marks i.e. 30



out of 50 under the head record of service and viva voce together. The OA is liable to be dismissed.

5. After hearing the learned counsel for both parties and carefully perusing the records, we find that according to the records submitted by the respondents, the applicants could not secure 30% marks in the viva voce test. We have seen the marks obtained by 13 other candidates in which 2 more candidates are mentioned as unsuitable though they have qualified in the written examination and viva voce. We have also perused the ACR Chart (Annexure A4). The arguments advanced on behalf of the applicants are that the applicant performed well in the viva voce and the respondents have not properly assessed their marks properly. Rather they have wrongly assessed the applicants' performance in viva voce. Against this argument, the respondents have contended that is not within the jurisdiction of Tribunal to judge as to whether the marks given in viva voce and in record of service are adequate or not in relation to the nature of duties and responsibility of the post concerned seems to be legally correct. This view is also upheld by the Apex Court in <sup>Benay</sup> judgments. In the case of AIR 1997 SC 2618 – Durga Devi & another Vs. State of H.P. & Others, decided on 11.4.97, the Apex Court has held that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates and further held that the court has no such expertise. The respondents have specifically stated that the representation of the applicants dated 29.9.2004 was not received in their office but their earlier representations dated 24.9.04 and 15.10.200<sup>4</sup> were disposed of through Chief Engineer (Con)/SEC Railway/Bilaspur vide letter dated 23.11.2004.



6. Considering all facts and circumstances of the case, we are of the considered opinion that this OA has no merit. Accordingly the OA is dismissed. No costs.

(Madan Mohan)  
Judicial Member

(M.P. Singh)  
Vice Chairman

aa.

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिलिपि अर्जित:-

- (1) सचिव, उच्च न्यायालय नगर एम्प्लॉयमेंट, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यर्थी श्री/श्रीमती/कु.....के काउंसल
- (4) बंधुपाल, के.प्र.अ., जबलपुर न्यायापीठ

सूचना एवं आवश्यक कार्यवाही हेतु

उप निदेश

Issued  
30/9/05

S. P. W. D. V. O. B. R.  
S. S. Gupta D. N. O. B. R.