

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 788 of 2001
Original Application No. 315 of 2001
Original Application No. 814 of 2001

Jabalpur, this the 9th day of October, 2003

Hon'ble Shri Anand Kumar Bhatt, Administrative Member
Hon'ble Shri G. Shanthappa, Judicial Member

1. Original Application No. 788 of 2001 -

1. Shashi Sharma, aged 33 years, son of U.S. Sharma, Welder, Technician-I, Shell Component Shop, Coach Rehabilitation Works Shop, Central Railway, Bhopal (M.P.).
2. Suresh Kumar Chadar, aged 38 years, son of Pyarelal Chadar, Fitter, Technician-I, C/o SSEPCR Shop, Coach Rehabilitation Works Shop, Central Railway, Bhopal (M.P.).
3. D.S. Kaurav, aged 37 years, son of Sudama Prasad, Fitter, Technician-I, C/o SSEPCR Shop, Coach Rehabilitation Works Shop, Central Railway, Bhopal (M.P.).
4. Sunil Sharma, aged 36 years, Son of S.C. Sharma, Coach Repairer, Technician-II, C/s SSE FUR Shop, Coach Rehabilitation Works Shop, Central Railway, Bhopal (M.P.).
5. Sandeep Dubey, aged 32 years, son of G.P. Dubey, Coach Repairer, Technician-II, C/o SSE FUR Shop, Coach Rehabilitation Works Shop, Central Railway, Bhopal (M.P.).
6. K.C. Mohabiya, aged 37 years, son of T.B. Mohabiya, Machinist, Technician-II, C/o SSE M/s. Shop, Coach Rehabilitation Works Shop, Central Railway, Bhopal (M.P.).
7. Ravindra Batham, aged 29 years, Son of Balbir Singh Batham, Welder, Technician-I, C/o SSE Body Shop, Coach Rehabilitation Works Shop, Central Railway, Bhopal (M.P.). ... Applicants

(By Advocate - Shri S. Nagu)

V e r s u s

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

2. General Manager,
Central Railway,
Chhatrapati Shivaji
Terminus, Mumbai.

3. Chief Works Shop Manager,
Coach Rehabilitation Works Shop,
Central Railway, Bhopal (M.P.).

4. Chief Mechanical Engineer,
Central Railway, Chhatrapati
Shivaji Terminus, Mumbai.

... Respondents

(By Advocate - Shri S.P. Sinha)

2. Original Application No. 315 of 2001 -

1. Abdul Sattar, aged about 40 years,
S/o Shri Sheikh Nathoo,
R/o WS-201/5, Khajanchi Bagh, East
Railway Colony, Bhopal (MP).

2. Hemraj Gangarwal, aged about 38
years, S/o late Shri N.R. Gangarwal,
R/o WS-220/4, CRWS Colony,
Nishadpura, Bhopal (M.P.).

... Applicants

(By Advocate - Shri S. Nagu)

V e r s u s

1. Union of India, through the
Secretary, Ministry of Railway,
Government of India, Rail
Bhawan, New Delhi.

2. General Manager, Central Railway,
Chhatrapati Shivaji Terminus,
Mumbai (Maharashtra).

3. Chief Workshop Manager, Coach
Repair Workshop, Central Railway,
Bhopal (MP).

... Respondents

(By Advocate - Shri S.P. Sinha)

3. Original Application No. 814 of 2001 -

1. Ashok Kumar Tripathi, aged about 47
years, S/o Shri R.N. Tripathi,
Technician Grade I, Furnishing Shop,
Coach Rehabilitation Workshop (CRWS),
Central Railway, Bhopal (MP).

2. Bernard Michael, aged about 36
years, S/o late Shri Simon Michael,
Technician Grade I, Paint Shop, Coach
Rehabilitation Workshop (CRWS),
Central Railway, Bhopal (MP).

... Applicants

(By Advocate - Shri S. Nagu)

Sh

V e r s u s

1. Union of India, through Secretary,
Ministry of Railways, Government
of India, Rail Bhawan, New Delhi.
2. General Manager,
Central Railways, Chatrapati
Shivaji Terminus, Mumbai
(Maharashtra).
3. Chief Works Shop Manager, Coach
Rehabilitation Workshop (CRWS)
Central Railway, Bhopal (MP). ... Respondents

(By Advocate - Shri S.P. Sinha)

O R D E R (Common)

By Anand Kumar Bhatt, Administrative Member -

The facts and the reliefs sought in OA No. 788/2001, OA No. 315/2001 and OA No. 814/2001 are similar and therefore they are taken up together for a common order. However, for the sake of convenience we are discussing the OA No. 788/2001 which will also apply mutatis-mutandis to the above two cases.

2. In OA No. 788/2001 the reliefs sought by the applicants are as follows :

"(i) The Hon'ble Tribunal be pleased to hold that no test, written or viva-voce was required to be passed by the applicants in accordance with the law, after having successfully completed 2 year training of Apprentice Mechanics.

(ii) The Hon'ble Tribunal be pleased to quash the impugned letters dated 8.10.99 (A-26) and letter dated 29.11.99 (A-29) as being void, illegal and opposed to law.

(iii) The Hon'ble Tribunal be further pleased to direct the respondents to appoint the applicants as Junior Engineer Grade II with effect from the date their batch-mates were appointed i.e. 30.6.97.

(iv) The Hon'ble Tribunal may be pleased to grant all consequential benefits as a necessary consequence of the aforesaid reliefs.

(v) Any other appropriate writ, order or direction which this Hon'ble Tribunal deems just and proper may also be passed in the interest of justice."

3. The facts of the case according to the applicants in brief are that the applicants are working on substantive basis in the category of Skilled Artisan (Technician I/II). In para 140 of IREM, 25% quota has been prescribed in the cadre of Intermediate Apprentice Mechanic, to be filled up from the Artisan staff with atleast 3 years of experience in the Skilled grade with requisite qualification. The training prescribed for the said quota is of 2 years. As per the prescribed rule the eligible Artisan staff had to undergo a test (in written as well as viva-voce) ^{and if selected,} followed by training of two years. A written test and interview is prescribed after every semester. After passing such tests the departmental candidate is declared to have completed the training successfully, whereafter he is entitled to be appointed for the post of Chargeman Grade II (J.E. Grade II). Apart from the semester test there is no other selection procedure/test which has been prescribed. A circular was issued by the Chief Workshop Manager, Coach Rehabilitation Workshop, Central Railway, Bhopal (respondent No. 3) on 23.01.1995 and 31.03.1995, requesting the names from the Artisan staff for recruitment to the post of Chargeman Grade-B. The eligible candidates were subjected to a test on 09.07.1995. The successful candidates were declared by the letter dated 22.07.1995 (Annexure A-8). These applicants were called for viva-voce held from 25th July, 1995 to 31st July, 1995 and the applicants ~~were~~ successfully passed and were empaneled for the post of Chargeman Grade-B vide Annexure A-9. The applicants reported for training at Pre-Supervisor Training Centre (PSTC), Jhansi and had undergone training for ^{two to} ~~three~~ years. They passed the first three semester examinations and have appeared in the fourth semester examination. After completion of the training of two years the applicants were sent back to their erstwhile posts. However by notification dated 13.09.1997 the panel

An

* 3 *

dated 04.08.1995 was cancelled. The applicants alongwith 36 others had approached the Tribunal in OA No. 677/1997 in which vide order dated 22.06.1998 the Tribunal directed for revaluation of the answer sheets of all 38 applicants therein to prepare the final panel of selected candidates. Against this order of the Tribunal the Railway Administration had moved to in W.P. the Hon'ble High Court and Hon'ble Apex Court in SLP which were dismissed. As per the direction of the Tribunal revaluation was done and out of 38 empaneled candidates earlier, 27 were declared passed. All the applicants were included among those 27 candidates. Vide letter dated 27.05.1999 it was informed that the applicants should be ready for participating in another written test and viva-voce. The written test was scheduled on 22.06.1999. The fourth semester results were also declared. In the notice dated 02.06.1999 in which the date for the written test was declared (Annexure A-22), it was mentioned that the seniority of the applicant in the grade of Charge-man Grade-B (J.E.-II) will be on the basis of the written test. However according to the applicants no pass marks were mentioned for the candidates and thus the applicants appeared in this examination under the impression that passing in the impugned test will not be a pre-condition for appointment in the cadre of Charge-man-B. The result was declared on 24.06.1999 in which 20 out of 27 candidates were declared passed. The applicants' names were not included in the panel. The applicants preferred a representation and by memo dated 08.10.1999 all the candidates were informed individually that since they could not secure the prescribed minimum marks they were declared failed (Annexure A-27). The applicants again represented to respondent No. 3 to intimate the bench marks of the said examination. Vide letter dated 29.11.1999 (Annexure A/29) respondent No. 3 informed that 60% qualifying

A~

marks were prescribed and the applicants failed to secure the said percentage. It was also informed that no second chance for passing the impugned test was permissible on the basis of impugned letter dated 07.06.1985 of C.P.O. (Mech.). The applicants wanted a copy of the letter dated 07.06.1985 of C.P.O. (Mech.). However a copy was not provided and they were allowed to see the said documents in the office of the respondent No. 3. The applicants have collected information from other zonal headquarters and strengthened the facts. They made a representation on 05.12.2000 to the Chief Mechanical Engineer (CME), Central Railway Headquarters, Mumbai with a copy to the Deputy General Manager, Central Railway and Chief Works Shop Engineer and respondent No. 3. However they did not get any response. They may an appeal to the General Manager, Central Railway on 23.08.2001 (Annexure A-33). After that they have come to the Tribunal.

4. The grounds taken by the applicants are a) after passing of the semester examinations there cannot be any other further selection procedure written or oral which has not been prescribed by the IREM or any other order of the competent authority, b) Para 123 bestows Railway Board's having full powers to make rules pertaining to Group-C and Group-D Railway Servants. Vide Para 124 of IREC, General Managers of the Indian Railways have also been empowered to make rules to the extent that such rules would not be inconsistent with any rules made by the President or the Ministry of Railways. However the rules for the additional tests ^{are} ~~is~~ inconsistent by the rules made by the Ministry of Railways. The said letter dated 07.06.1985 of the Central Railway has been issued by the C.P.O. (Mechanical) Central Railway, Mumbai who ¹ is not authorised to make any rules for appointment to the

cadre of the Junior Engineer, c) this additional test gives an arbitrary power to the Railway Administration. The impugned selection process is vitiated by the fact that the candidates who have undergone initial written test and viva-voce and undergone training of two years where they have passed all the semester examinations. They were subjected to in-consequential and unnecessary test which have no nexus with the object sought to be achieved.

5. The applicants have also given a separate application for condonation of delay where they have given various reasons as to why there has been a delay after the panel was declared on 30.06.1999. The applicants came to the Tribunal on 20.11.2001 after exhausting the departmental remedies. They have also stated that they had to spend a lot of time for collecting information from various other Railways.

6. In the detailed oral submissions, the learned counsel for the applicants Shri Nagu has reiterated the pleadings in the OA. He has especially stressed that the applicants appeared in the additional test under the assumption that it was only for fixation of seniority. The other point stressed was that in no other Railway zone such examinations have been prescribed. He has given the relevant orders ~~on behalf~~ of Northern Railway (Annexure A-37), North Eastern Railway (Annexure A-40), South Eastern Railway (Annexure A-41) and Eastern Railway (Annexure A-43). He has also drawn our attention to the result sheet of the Eastern Railway dated 13.03.1995 (Annexure A-43) where the candidates who have secured even 48.7% have been declared suitable for the promotion. Thus the principle followed by the Central Railway is discriminatory. He has stated that the denial of any more chances to pass the additional test is based on the

letter dated 07.06.1985 by C.P.O.(M)'s letter as mentioned in Annexure A-29 and is not as per Rule 123 and Rule 124 of the IREC by which such powers has been given only to the Railway Board and the General Managers. Vide Annexure A-45 Para 303(a) has been amended. However the examination prescribed to be held at the end of the training period means only the semester examination and thus that should have been the last examination. Both Para 213 and Para 219(f) of IREM, does not provide for such examination in which the applicants have failed and the ^{impugned} ~~said~~ examination was prescribed only for seniority. Shri Nagu stated that even if it is accepted that C.P.O. as H.O.D. is empowered to issue rules, ~~but~~ as per Para 203 of the IREM these have to be informed to the candidates, which has not been done in this case and therefore it is vitiated. He also stressed that the powers of General Manager in Para 124 of IREC cannot be delegated, as they are already delegated powers.

7. In the reply, the respondents have stated that the system prevalent in other Railway Zones are not binding on the Central Railway. They have also opposed the application for condonation of delay. The written test and viva-voce was completed after successful completion of the training in which the applicants have appeared. No objection was raised by the applicants as they should have done immediately after issue of the notification dated 02.06.1999. From the fact that the applicants had appeared in the above test it is evident that they were aware of this procedure. The impugned letter dated 07.06.1985 prescribes firstly the tests by the training school on completion of the training and after qualifying in the training test the Divisional Workshop has to conduct separate written test and viva-voce. This practise

^{has}
have been followed all over the Central Railway. The recruitment was made on the basis of the said letter dated 07.06.1985 and because the applicants applied for selection and joined the training they are stopped from challenging the procedure which they have followed. ^{At} The end of the training ~~common~~ examination is conducted for all the candidates and there is no discrimination against the applicants. This procedure is being followed since the formation of the Workshop. As the prevalent procedure was followed for the applicants it cannot be said that the Tribunal's order in OA No. 262/1999 has been violated. Shri Sinha states that as per the Para 213 of the IREM the H.O.D. is competent to make rules. Although for the Bhopal Workshop this was the first such recruitment, the system of end of training examination was followed in the Training School at Jhansi from the beginning.

8. Shri Sinha in his oral submission has stated that all the systems followed in the other Railway Zones cited by the learned counsel for the applicant relate to direct recruits only. In the Central Railway 39 such examinations have been conducted and ^{the same} ~~this~~ procedure has been adopted in such examination. The cited judgment of the Tribunal in OA No. 559/1997 dated 11th August, 2003 was in the context of seniority and therefore it can be distinguished. He also states that in OA No. 262/1999 it has been mentioned that there could be a further test.

9. In the rebuttal Shri Nagu stated that as ^{for} ~~for as~~ the practise followed in other Railway Zones, the respondents have not stated in their reply that they relates to direct recruits only. He has further stated that the 39 examinations

which have been mentioned by Shri Sinha, nobody has failed.

10. We have gone through the pleadings and documents and have heard the counsel on both the sides at length.

11. As far as the condonation of delay application is concerned the reasons given by the applicants are satisfactory and the delay is condoned. The basic issue in the entire case is whether the end of training examination is as per the rules and the another related issue is whether the candidate should be allowed only once chance as per the letter dated 29.11.1999 (Annexure A-29), which quotes the order issued by CPO (M) dated 07.06.1985.

12. The applicants have challenged the validity of the additional test as: a) the initial selection was on the basis of clearing the written test and viva-voce, and b) there were four semester examinations at the end of each semester which the applicants passed. Now whether in addition to the four semester examinations whether ^{it} is appropriate or justified for the respondents to take another end-of-training examination. He has also laid emphasis on the fact that the clear terms and conditions of the end of training examination had not been intimated to the applicants in advance. There is no doubt that before appearing in the test the applicants were not informed that the minimum pass marks in the examination is 60% and if they failed in the examination they will not be eligible for promotion in the grade. The practise followed by other Railway Zones is relevant here as this kind of tests does not seem to be prevalent in other Railway Zones. In the absence of any written submission in this regard the oral submission by the learned counsel for the respondents that the instances cited by the applicant are only for direct recruits can only be for direct.

be taken ^{it with} as a pin-ch of salt. For the respondents Shri Sinha argued that in the training institute at Jhansi all previous batches have undergone this type of end of training test. However the rebuttal of Shri Nagu for the applicants is relevant that in none of all these examinations any of the candidates have been failed. In any case after the candidates undergoing the long training of two years, where they were selected after an initial written test and viva-voce, it does not add to sense that they will be given only one chance to appear in the impugned end of training examination and thereby wasting the public money on the training expenditure on the applicants. ^{It is in case they failed in the first attempt} The impugned order of the C.P.O. (Mech.) dated 07.06.1985 is at Annexure R-1. Here the prescribed end of training test has been mentioned in Part-II of the said letter. The relevant Para 4 of the said letter is ^{quoted} as below :

"4. Part II Training.

4.1 The employees so selected should be imparted two years training as per the syllabus circulated in this office letter No. HPS/111/M4/D/Syllabus of 13.11.79.

4.2 After completion of the above training, the employees should be subjected to written test and interview.

4.3 The question paper for this written test should be set by technical officers not below the rank of Senior Scale in the respective Units and the answer books valued by them.

4.4 The written test should be conducted in the respective Workshop/Division.

4.5 The interview of the employees who qualify in the written test will also be conducted by them.

4.6 The qualifying marks for this written test and interview should be 60% for all employees including those belonging to SC/ST communities.

4.7 The employees who qualify in the above should be appointed to the working posts of Chg. 'B' gr. Rs. 425-700 (RS) with the approval of ACME/DRM.

4.8. In case of failure in the training the concerned employees will be posted in the same post and held by them prior to the selection to the posts of Chg. 'B'."

The reading of this para does not mention anywhere that this test shall be taken only once and no further chances will be given in case of candidate does not achieve 60% of marks. It has been mentioned in Para 4.16 of the OA that the trainee is allowed to avail three chances to pass each semester examination at the cost of the administration and more chances if any are allowed at the cost of trainee. It is provided in Para 227 of the IREM. Taking the same analogy, giving only single chance to the candidates for the end of training test and that also in the present case without intimating the candidates about the minimum ^{pass} marks and that it is a pre-condition of their final selection and promotion, does not come in the spirit of the letter dated 07.06.1985 (Annexure R-1). We do not ^{I think that there} consider ^{I whether} whether it can be a question ~~that~~ it has been passed by a competent authority or not. We agree with the learned counsel for the respondents that C.P.O.(M) is the head of the Department and is duly authorised to make rules, as per provisions in Rule 203 of IREM. We also do not agree with the learned counsel for the applicants that the rule making power of the General Managers of Indian Railways under Para 124 of IREC is a delegated power. Para 123 and Para 124 of IREC are concurrent powers and Para 124 gives original powers and not delegated powers to the General Managers. Therefore in all fairness it would be appropriate that if the applicants have not been able to clear the end of the training examination conducted at the respective workshops/divisions level, ^{I more} they be given chance to appear again to clear this final hurdle. Accordingly, it is ordered that the respondents will give atleast three more chances to

the applicants to clear the said examination consist-^{of}ing the written test and interview. It is further provided that as the last test was conducted on 22.06.1999 and the four semester training ended in July, 1997, in case the applicants so desire a refresher training for about two months shall be arranged by the respondents for once at the cost of the Railways for the benefit of the applicants. During this refresher course the applicants will be entitled to the full salary and allowances. However it is further ordered that the candidates will be given seniority ^{it and other consequential benefits} only after they are promoted on the basis of their successfully passing the said end of training examination.

^{it three}
13. In the result the Original Applications succeed~~s~~ in part. No costs.

Sd/-
(G./Shanthappa)
Judicial Member

Sd/-
(Anand Kumar Bhatt)
Administrative Member

"SA"