

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. NO. 263 / 1998

DATE OF DECISION 09/05/2003

Manoharlal Kaithwas & Ors. APPLICANT (S)

Shri M.K. Verma Advocate for the Applicant (s)

V E R S U S


UOI & Ors. RESPONDENTS

Shri S.P. Sinha Advocate for the Respondents

CORAM :

Hon'ble Shri R.K. Upadhyaya -- Administrative Member
Hon'ble Shri J.K. Kaushik -- Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgments ? - YES / NO
2. To be referred to the Reporter or not ? YES / NO
3. Whether it needs to be circulated to the Principal Bench of the Tribunal ? YES / NO


(J.K. Kaushik)
Judicial Member
09/05/2003

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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 263 of 1998

Jabalpur, this the 4th day of May 2003

Hon'ble Shri R.K. Upadhyaya - Administrative Member.
Hon'ble Shri J.K. Kaushik - Judicial Member.

1. Manoharlal Kaithwas, Son of Shri Bhagwandeem, aged about 50 years, Resident of L/75-A, Railway Colony, Mhow, District - Indore (M.P.).
2. Sharad Saxena, Son of Shri D.P. Saxena, aged about 42 years, C/o. S.M. Rly. Station, Ujjain (M.P.).
3. Uday Moghe, Guard, C/o. S.M. Rly. Station, Ratlam (M.P.).
4. Ramesh Bansal, Son of Shri Gangadhar Bansal, aged about 46 years, R/o. T-24-B, near Railway Station, Mhow (M.P.), Distt. Indore.
5. Shankarlal, Son of Chandrika Prasad, aged about 46 years, C/o. S.M. Ratlam Railway Station-Ratlam (M.P.).
6. Shri Bhaiyalal Nathu, aged about 43 years, C/o. Station Manager Ratlam, Rly. Station Ratlam (M.P.).
7. Shri Subhash R. Chikhle, aged about 48 years, C/o. Station Manager, Rly. Station Ujjain (M.P.).
8. K.B.L. Mishra, aged about 45 years, C/o. S.M. Ratlam, Rly. Station Ratlam (M.P.).
9. Chaturlal Meena, Son of not known, aged about 40 years, C/o. S.M. Ratlam, Rly. Station Ratlam (M.P.).
10. Basantlal Kohli, aged about 44 years, C/o. Station Manager, Railway Station Mhow, District - Indore (M.P.).
11. Rampal R., aged about 48 years, C/o. Station Manager, Railway Station-Mhow, District - Indore (M.P.).
12. V.K. Sharma, aged about 41 years, C/o. Station Manager, Neemach, Railway Station Neemach (M.P.).
13. R.C. Chack, aged about 48 years, C/o. Station Manager, Railway Station Mhow, District - Indore (M.P.).

14. Ashok Saxena, Son of Shri M.P. Saxena, aged about 41 years, C/o. Station Manager Railway Station Mhow, District Indore (M.P.).
15. Shantilal, Son of Chhotelal, aged about 41 years, C/o. Station Manager, Railway Station Ujjain (M.P.).
16. O.P. Nagar, Son of R.C. Nagar, aged about 43 years, C/o. Station Manager, Railway Station Ujjain (M.P.).

... Applicants

(By Advocate - Shri M.K. Verma)

V e r s u s

1. Union of India,
Through : Secretary, Ministry
of Railway, Rail Bhawan, New
Delhi.
2. Western Railway, Through General
Manager, Western Railway, Church
Gate, Mumbai (M.S.).
3. Divisional Railway Manager,
Western Railway Ratlam Division,
Ratlam.

... Respondents

(By Advocate - Shri S.P. Sinha)


O R D E R

By J.K. Kaushik, Judicial Member :-

Shri Manoharlal Kaithwas and 15 others has filed this original application seeking following reliefs :

- "(i) The respondents may kindly be directed to certify all the relevant records pertaining to the selection for the post of Passenger Train Guard, for kind perusal of this Hon'ble Tribunal.
- (ii) The Select List dated 31-3-1998 (Annexure A-4) may kindly be quashed and further this Hon'ble Tribunal be declared the entire Selection Proceedings illegal.
- (iii) The respondents be directed to consider the case of applicants for the promotion/selection on the post of Passenger Train Guard.
- (iv) Any other order/direction, which this Hon'ble Tribunal may deems fit & proper under the facts & circumstances of the case, may also be passed in favour of the applicants.
- (v) Cost of the Application may kindly be awarded."



2. The material facts leading to filing of this case are that the applicants are senior Goods Guard. They have been upgraded to the scale of pay of Rs. 1350-2200, which is equivalent to pay scale of Passenger Guard. All the applicants are employed on the post of Passenger Guard on adhoc basis for last 3-4 years. The post of Passenger Guard is a selection post. The selection is to be conducted by a selection board which should consist of not less than three officers, one of whom should be a Personnel Officer and one member of the board should be from a Department other than that for which selection is held.
3. It has been further averred that in the present case selection committee was constituted of Divisional Operating Manager, Divisional Safety Officer and Assistant Personnel Officer, and none of the members was from other Department.
4. In the present case the selection has been conducted on the basis of the viva-voce test as regards the professional ability consisting of 50 marks as per 219(g) of IREM and no written test was held. The selection committee interviewed a total number of 213 persons in three days by giving one to two minutes for interview to each candidates. The panel has been prepared on 25/09/1997 and total 71 persons have been empaneled (Annexure A/1). Prior to 25/09/1997 13 persons were selected vide order dated 28/07/1997 without holding any selection process. These persons were selected since they were already working as Passenger Guard on adhoc basis. The applicants have also been working as Passenger Guard for the last 3-4 years on adhoc basis. A select list has been declared vide order dated 31/03/1998. Even though all the applicants successfully completed the Departmental Training in Udaypur Zonal Training Institute but unfortunately they have been rejected by the selection committee and it seems
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that the committee did not take into account the records of services of the applicants and also their experience as an adhoc and officiating passenger Guards. They have further averred that Ministry of Railway on 25/01/1976 have issued a circular, wherein it has been provided that employee who had been working on the post on adhoc basis quite satisfactorily cannot be declared un-successful in the interview. A reference has been made to the judgment of this Bench of the Tribunal at Raipur (Annexure A/6).

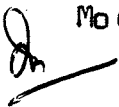
5. The original application has been filed on the grounds that the selection committee board was not constituted as per Rule 218 of IREM, wherein it has been provided that one member out of the three should be an outsider. The selection committee has not strictly followed the procedure as provided under Rule 218(g). No marks have been allotted to the candidates as provided under the rules. No extra marks have been provided to the applicants for their experience as adhoc Passenger Guard. No marks for seniority has been provided and the selection has not been held periodically.

6. An exhaustive reply has been filed on behalf of the respondents who have vigorously contested the case. The facts and grounds raised in the original application have been generally denied. It has been submitted that the selection of the Passenger Guard is made out of senior Goods Guard only and three times the number of vacancies are called for selection. The selection board was constituted as per rules in force and all the members were from different Department. That due procedure has been followed. The viva-voce was conducted in just and proper manner. The applicants cannot say that they do not know the names of the members and hence they could not challenge. Having participated in the viva-

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voce test they cannot challenge its constitution. The panel has been prepared as per the existing rules. The 13 posts referred to by the applicants in their original application belongs to restructuring cadre and were filled in by modified selection. The marks in the interview was awarded as per their performance and the selection was also based on the allotted marks on their record and performance as per para 219 of IREM (SIC 218). The grounds raised in the original application have been specifically refuted.

7. A detailed rejoinder has been filed on behalf of the applicants reiterating the facts raised in the original application and controverting the averments taken in the reply. In addition to it a copy of the judgment of the Apex Court in R.C. Srivastava Vs. Union of India and another has been filed and marked as Annexure A/7, submitting that the controversy is fully covered by the decision of the highest court of the country. Certain additional documents were filed on behalf of the respondents as well as on behalf of the applicants. The applicants have filed another judgment of this bench of the Tribunal in OA No. 211/1995 passed in Moolchand and others Versus Union of India and others. Certain other documents have been filed on behalf of the respondents as Annexure R/7 and Annexure R/8 and have further submitted that the record note 2.2 has been discussed along with the entire circular of the Railway Board dated 09/08/82. In the judgment of Ahmedabad Bench of the Tribunal in OA No. 796/1999, decided on 18/10/2001, no benefit of adhoc working on the post of Passenger Guard could be extended to the applicants in selection. Another document has been filed on behalf of the applicants, whereby the Hon'ble High Court of Madhya Pradesh at Indore Bench ^{has} affirmed the judgment of Moolchand and others case (supra) and dismissed the writ



petition filed on behalf of the Union of India in limine.

8. We have heard the elaborate arguments of the learned counsel of the parties and have carefully considered the pleadings and records of this case alongwith the various authorities cited on behalf of the parties.

9. Both the ^{learned} counsel for the parties have reiterated their pleadings. The respondents have been very fair and have produced the records of the selection. From perusal of the records we have seen that the marks have been awarded in various heads i.e. personality, seniority, professional ability and records of service strictly in accordance with para 219(g) of the IREM Volume-I. We have also seen that all the applicants have secured less than 30 marks i.e. less than 60% of marks in the professional ability. In this way they have failed in the professional ability and passing in professional ability is necessary for further consideration. For passing one is required to get 60% marks which none of the applicants have secured. Thus the contention of the applicants that the selection board has not conducted and awarded marks as per the rules in force is not correct and stands repelled.

10. The next contention is in regard to the constitution of the selection panel. The learned counsel of the applicant has submitted that the selection board was not constituted in accordance with the rules in as much as there was no person on the selection board who could be said to be an outsider. On the other hand the learned counsel for the respondents have submitted that the selection board was very much according to the rules and once the applicants have appeared in the selection they cannot challenge the constitution of the Board. They are infact estopped from challenging the

board. It comes to our mind that the Railway Board has issued a very specific circular ^{No. E(NG-1)-95/PM/1/14, dated 02/03/1998} pointing that Personnel Officer is an Officer outside the Department and this position has been settled relying upon the said circular in OA No. 275/1997, Kishore Kumar Shukla Versus Union of India decided by a co-ordinate bench of this Tribunal at Jaipur vide judgment dated 23/04/2002. Thus the contention of the applicants in this regard are not sustainable on any of the count.

11. The another contention of the learned counsel for the applicants is that the applicants have been working on adhoc ^{promotional} basis on the ~~xxxxxx~~ post of Passenger Guard and they have been discharging their duties on the said ~~xxxxxx~~ post on adhoc basis satisfactorily for last 3-4 years and they are entitled to get the benefit of the record note 2.2 of the Railway Board circular dated 25/01/1996 (Annexure A/5). It has also been submitted that the same issue was involved in R.C. Srivastava's case (supra) before the Hon'ble Supreme Court and that judgment is also placed on record as Annexure A/7. The same has been followed by this very bench of the Tribunal in Moolchand and others (supra) case which has been further affirmed by the Indore bench of the Hon'ble High Court of Madhya Pradesh (Document-A).

12. On the contrary the learned counsel for the respondents have vehemently opposed the contention of the applicant and have submitted that the Ahmedabad Bench of the Tribunal has taken a contrary view vide Annexure R/8. It has been further submitted that the Railway Board has issued another circular dated 09/08/1982 which was not placed before the Hon'ble Supreme Court while deciding R.C. Srivastava's case and the same was also not placed before this bench of the Tribunal

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while deciding the case of Moolchand and others. ^{this} In view of the matter either the judgment of Ahmedabad Bench in J.K. Verma and others Versus Union of India and others should be followed or else the matter should be referred to the Chairman for constitution of the larger bench since there is difference of opinion between the co-ordinate benches of this Tribunal.

13. In order to appreciate the aforesaid issue it is considered necessary to reproduce the relevant portion of record note 2.2, ^{of} and the circular dated 09/08/1982. The circular dated 09/08/1982 also contains the record note, hence the contents of this circular are reproduced as under :

"Copy of letter No. E(NO)I-82-PMI-132 dated 09/08/1982 from Joint Director Establishment, Rly. Board, New Delhi addressed to all concerned.

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Sub : Selection for promotion of class III staff
Adhoc promotees

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An extract of the record note of a Meeting held by the then Deputy Minister for Railways and the Railway Board with the Head of the Personnel Departments of Railway Administration on 27th Novr'1975 was sent to the Railways, Production Units and R D S O vide Board's letter number E(NG)I-75/PMI-264 dated 25.01.76. It was also stated in this letter that instructions should be issued to all concerned for strict compliance of the decision as contained in the Extract of the minutes referred to above particularly in regards to persons belonging to Scheduled Castes and Scheduled Tribes. The extract of the Record Note is reproduced below for ready reference. :-

"2.2 Panel should be formed for Selection posts in time to avoid ad-hoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on adhoc basis quite satisfactorily are not declared un-suitable in the interviews,
In particular any employee reaching the field of consideration should be saved from harassment."


2. It would appear that the instructions referred to above have led to the normal rules and procedures of selection as contained in the Indian Railways Establishment Manual and other cognate orders issued from time to time not being followed in some cases. With a view to ensuring that such departures do not take place, it is hereby clarified that the intention of the instructions conveyed in the Board's letter of 25.01.76 referred to above was not to bypass or supersede in any manner, the

normal rules of grade. Selection as contained in the Indian Railways Establishment Manual and other orders issued from time to time but only to serve as a Broad Guide line for the rendered Departmental promotion Committees and the authorities who are required to consider and approve employees for promotion. In any case, there was no intention to confer any right on employees officiating on adhoc basis in higher posts to be selected and included in the panels for these posts. You are requested to issue instructions to all concerned accordingly."

"3. The instructions contained herein will also apply to all selections which are pending finalisation as on the date of issue of this letter and also to the selections to be held in future. They will, however, not have the effect of prejudicing any orders already passed by competent courts in individual cases based on the court's interpretation of the provisions contained in the letter of 26.01.1976 referred to above."

14. As far as the question that a selection which consists of only oral as regard the professional ability, record note 2.2 provides that persons should not be failed in viva-voce who have been working satisfactorily on the promotional post. The issue has been settled by this Bench of the Tribunal in Moolchand's case (supra) and the same has been affirmed and upheld by the Hon'ble High Court of Madhya Pradesh bench at Indore in Union of India and others Versus Moolchand and others in writ petition No. 2167/2001, decided on 07/11/2001 and the issue does not remain res-integra.

15. The only controversy which boils down to the sole issue is as regards the implication of the circular dated 09/08/1982 extracted above. Whether the same would make any difference as regard the interpretation of the record note 2.2 given by the Hon'ble Supreme Court in R.C. Srivastava's case and also by this bench of the Tribunal upheld by the Hon'ble Madhya Pradesh High Court. In case implication is that applicants would not get benefit of the record note 2.2 the applicants would sink and in case the same would not make any difference they will swim. As regards



the record note 2.2 the Hon'ble Supreme Court has already examined the record note 2.2 in very detail in the case of Shri R. C. Srivastava Versus Union of India ^{and another} in Civil Appeal No. 9866/1993 and it has been specifically said that the said circular is not contrary to the rules of the Railways and therefore it is to be deemed to be supplemental to the rules of promotion applicable to the employees of Railway. There hardly remains ~~nothing~~ ^{anything} for our adjudication as regards the record note 2.2 is concerned.

16. Now we advert to the circular which is heavily relied upon by the learned counsel for the respondents i.e. circular dated 09/08/1982. The basic feature of the circular is that the record note 2.2 has been reproduced in it and is kept intact. We also observe that the circular does not contain any ambiguity and its plain meaning is very clear. In this view of the matter the said circular could be construed and the qualification would not expand or compress the scope of the main circular. As a matter of fact the natural meaning has to be given to the circular and otherwise also by adding or by reducing any thing from it ^{by} authorities cannot be justified as has been settled by the Hon'ble Supreme Court in Mohinder Singh Gill Versus Union of India and others AIR 1978 SC Page 851. Now examining the qualification, a doubt has been posed indicating that the record note 2.2 is likely to be construed as a departure from the normal rule whereas it is to be served to be as a guide to the Board. The plain reading of the record note 2.2 indicates that a case has to be taken with while framing the panel of employees who have been working on the post on adhoc basis quite satisfactorily are not failed. Thus in the normal circumstances a care has to be taken keeping in view that the persons

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are soldering ~~responsibility~~ responsibility are not required to be failed in the interview. There is no ~~embargo~~ embargo or binding on the selection Board that they have to be compulsorily pass/ ^{ad hoc employee} in the viva-voce. In other words or else they cannot be failed. Rather the interpretation would be that normally they should not be failed and in case there is ^{any} ~~ab~~ normal reason they can be failed. In our considered opinion the said circular is only a clarification and cannot supplant the original rule which has been framed by the competent authority and has been upheld by the Hon'ble Supreme Court of India.

17. Now examining the matter from other angle we also find that the selection of the employees is done on the basis of comparative merit and the comparison is to be made with equals. In cases where one is working on higher post i.e. on promotional post on ad hoc basis and other is working on a lower post i.e. feeder post and their efficiency is to be examined on the basis of their performance on the higher or lower post. It would be difficult to compare a person who is working on a promotional post and soldering responsibilities of superior posts and another is working on a lower post soldering lesser responsibility. How can there be comparison between the two. It seems that overcoming situation of reasonable and rational selection has been found out and working satisfactorily on the promotion post itself is considered to be sufficient to pass a candidate in interview, of course subject to if there is any ab-normality. We infact concur such view and do not find any fault with the same.


18. Keeping in view the aforesaid discussion we are of firm opinion that the circular dated 09/08/1982 (supra) would not have made any difference if the same were

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brought to the knowledge of the Hon'ble Supreme Court or to this Bench of the Tribunal. In this view of the matter we have no hesitation in deciding this original application on the lines of this Bench of the Tribunal has decided the similar controversy in Moolchand's case (supra) and which has been affirmed by the Hon'ble Madhya Pradesh High Court at Indore Bench, In this view of the matter we also are not agreeable to the request of the learned counsel for the respondents that the matter should be referred to a larger bench.

19. In view of the foregoing discussions, the original application deserves to be partly allowed with a direction to the respondents to grant the benefit of record note 2.2 (Annexure R/7) and in case they are otherwise qualified in the selection panel they should be empanelled in the impugned selection for the post of Passenger Guards. However they shall be granted only proforma fixation and will be placed below all the persons who are empanelled and the actual payments shall be allowed only from the date they are put to work on the working post of Passenger Guards. This order shall be complied within a period of 4 months from the date of receipt of the copy of this order. However in the facts and circumstances of the case, we make no order as to cost.


(J.K. KAUSHIK)
JUDICIAL MEMBER

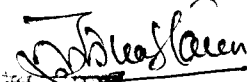

(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

पूजाकर्म सं ओ/न्या..... न्यायालय, दि.....

परिचालिका कार्यवाही

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सूचना एवं आदेश


13.5.03

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