

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
CIRCUIT AT INDORE

Date of Order :- 5-9-2003

O.A. No. 386/1998.

Smt. Praveena Gujarati W/o Shri Rajesh Gujarati, aged 28 years, Senior Clerk, T.R.O. W. Rly. Ratlam, resident of 150 New Road, Ratlam (M.P.)

... Applicant.

v e r s u s

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. The Senior Divisional Engineer (Hqrs) Divisional Railway Manager's office, Western Railway Ratlam, MP.
3. The Divisional Rail Manager, Western Railway, Ratlam MP 457001.

... Respondents.

Shri G. L. Gupta counsel for the applicant.
Shri W. I. Mehta, Senior Advocate, with Shri H. Y. Mehta, counsel for the respondents.

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Hon'ble Mr. V. K. Majctra, Administrative Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :
(per Hon'ble Mr. J. K. Kaushik)

Smt. Praveena Gujarati has filed this OA with the following prayers :-

"8.1 The office order No. ED/839/5/2/EL/Pt. 22 dated 7.5.98 issued by the respondent No.2 by which applicant is reverted from the post of Senior Clerk scale Rs.4500-7000 to the post of Clerk scale 3050-4590 contrary to the rules and Rly. Board's circular may kindly be declared illegal and to be quashed.

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8.2 The suitability test conducted by the respondent in the year 1995, 98, 97 and 1998 in which written test as per Railway Board's circular 50% question paper must be objective be asked out the question papers are not set according to the provisions laid down by Annexure A/13. Hence the written test is to be declared illegal and to be quashed and fresh test should be ordered as per Rules.

8.3 Declares that applicant is working on the post of Chief Clerk since 1993 successfully and awarded merit certificates and cash award, hence she cannot be reverted on the ground of unsuitability in the so called illegal written test held and on the basis of service record and seniority, the applicant may kindly be regularised from the day before her juniors are promoted as Chief Clerk.

2. The facts of this case : as abridged & relevant for resolving the controversy involved, are that the applicant while holding the post of Clerk was promoted on ad hoc basis to the post of Senior Clerk vide letter dated 30.08.1993. She was subjected to a suitability test in the shape of written test for the post of Senior Clerk in the year 1996. Her name was not included in the list of successful candidates. She was also not declared as failed or unfit as per the result circulated on 13.12.1996. She made a representation vide Annexure A-12 on 13.02.1996 (SIC 13.12.96) wherein she has shown surprised that her name is not included in the list of selected persons whereas she was having confidence of passing the same and requested for revaluation of her answer sheet. Thereafter another written test was held in the year 1998 in which she appear and promote succeed. Again a representation was made on the same fashion on 11.5.1998 (Annexure A-19) but of no avail.

3. It has been further averred that an order dated 02.05.1998 (Annexure A-1) came to be passed, by which the applicant has been ordered to be reverted. There has been no response to the representation filed against the impugned order.

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4. The OA has been filed on a number of grounds. As a matter of fact, there is an intermixture of the grounds with the facts. The main ground is that as per Rule 214 of IREM Vol. 1, no written test was required to be conducted and before passing over the senior railway servant, the senior railway servant is required to be declared as unfit for holding the post in question and such unfitness should be declared before such passing over. The other ground of attack is that the senior clerk is a non-selection post and the procedure as required under Rule 215 of IREM has not been followed. The applicant has been working continuously for about 5 years and also gained sufficient experience. She has deliberately not been declared pass. She has also not been declared as unfit or failed in the test. The another ground which has been taken in the OA is that there are number of selections have been held in earlier years but the persons who have not done papers successfully have been declared pass due to favouritism and malpractice. She has been working for a period of more than 18 months and she cannot be reverted without following the procedure established by law. She cannot be reverted on the ground of unsuitability or on the basis of suitability adjudged by written test which is contrary to the Railway Rules etc.

5. The respondents have contested the case and have filed an exhaustive reply to the OA. It has been averred that they have not violated any provisions of the rules and have in fact acted as per rules. Since the applicant could not qualify the suitability test and by securing requisite qualifying marks she has not been promoted and

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her juniors who have qualified the said test have been promoted. It is also submitted that none of the juniors have been impleaded as party respondents in this case. The another ground of defence set out in the reply is that the applicant has been reverted to her original post since she failed to qualify in the suitability test and in such cases no show cause notice was required to be given.

6. It has also been averred that the requirement of having 50% of objective type of question in the written paper as intended to be a guideline only and is not an inflexible percentage. The grounds have been generally denied and, therefore, the OA deserves to be dismissed with costs.

7. A detailed rejoinder has been filed on behalf of the applicant elaborating certain provisions of law regarding the selection. It has been submitted that there was not even a single objective type of question in the written test and the correct procedure has not been followed. It is also averred while making the ad hoc promotion to the non selection posts, the administration is required to follow certain rules and certain other facts have been reiterated. One another letter dated 23.12.1998 has been filed wherein one Shri Satya Narayan was ordered to be transferred on the post of Senior Clerk.

8. We have heard the elaborate arguments laid on behalf of both the parties and have bestowed our earnest consideration to the submissions made and the records of this case.

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9. Learned Counsel for the applicant has reiterated the facts and grounds raised in the pleadings of the applicant. He has submitted that as per Rule 214 of IREM Vol. 1, prior to ~~the~~ passing over of the applicant by his juniors, the applicant has not been declared unfit or unsuitable. He has submitted that the result of the applicant itself was not declared and she has never been declared as fail in any of the examination and without declaring her result she has been treated as failed. He has submitted that the applicant has made representations against the test conducted by them but there has been no response. He has also submitted that as per the rules in force, the written test should consist 50% of objective type of marks since the post of Senior Clerk is the highest non selection post. Learned counsel for the applicant has argued that a person named Shri Satya Narayan was also not declared as pass but still he has been regularised and treated as substantive holder of the post of Clerk vide Annexure A-22. He also reiterated that no written test was required to be held as per the rules in force, still the respondents have conducted the suitability test on the basis of written test. It was also submitted that she is not claiming any relief against any individual and his relief is against UOI. Thus, there is no need of impleading any of the successful candidates as party in this case.

10. On the contrary, learned counsel for the respondents have reiterated their defence as set out in the reply. It has been submitted that the result of the applicant was very much declared at all times and as per the practice in vogue

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the result is declared in respect of the persons who pass in the suitability test, and the ~~xx~~ names of the persons who failed is generally not indicated. It has also been submitted that the applicant has made false averments that her result was not declared and this fact is proved from her action that she has made representation against the result and asked for revaluation of the answer sheets. Had she not considered herself failed, there was no question for ~~examining~~ asking for revaluation and instead of it she would ^{have} asked for her result itself, and the plea raised in the present application is nothing but an afterthought exercise. It has been next contented that in the representation the applicant has only asked for revaluation of the answer sheets and the ground that written test was wrongly held and the paper was not of the objective type as per the rules or there was any malpractice or mal-administration in passing the candidates etc. is not there at all. It has also been argued that the applicant had not said in the representation even a word that the written test was not to be conducted in the matter. These representations have been made after she has failed in the suitability test. He has submitted that the Supreme Court has settled law on this point that a failed candidate who did make any ^{to} protest/appear in an examination cannot challenge the same after he has been declared unsuccessful. The complete exercise is an afterthought exercise. He has also submitted that as far as Annexure A-1 is concerned, it is the natural result and consequences of her failure in the written test. Her reversion was necessitated because the selected candidates

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were to be accommodated and a person who is appointed on ad hoc basis has no right to continue on the post. As far as the appointment on ad hoc basis is concerned, it is given as per the seniority, ~~and as regards the passing of the candidates~~ In this present case, nothing wrong has been done and all action has been taken as per the rules inasmuch as the applicant undertook this written test and when she was not declared successful in the same she had to be ~~as~~ reverted and no further querries are required in the matter.

11. We have considered the rival contentions raised before us. At the very outset, we would like to examine as to ~~whether~~ whether a person who is failed in the test could challenge the very test or the selection. As per the records it is borne out that at no point of time prior to the declaration of the result, the applicant has pointed out any infirmity in the procedure for conducting written test and it is only after she has been declared fail she has made a representation to the authorities and that representation also is regarding her confidence of passing the examination and for revaluation of the answer sheets. It absolutely does not give any whisper regarding any irregularity or inapplicability of the suitability test. As regards the position of law on this point, there are unanimity in the decisions up to the Hon'ble Supreme Court that once a candidate has appeared in an examination without any protest and he does not complaint about it till he declared unsuccessful, he has absolutely no right to challenge the same.

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The issue does not remain res integra. This proposition of the law is settled by the Hon'ble Supreme Court in Madanlal vs. State of J&K AIR 1995 SC 1088, Om Prakash Shukla Vs. Akhilesh Kumar Shukla AIR 1986 SC 1043, and also a judgement of Delhi High Court in R.B. Bhasin and Ors. vs. D. K. Tyagi and ors. reported in SLJ 2002 (2) 239. Applying these decisions to the present case, the inescapable conclusion would be that the O.A. cannot be sustained and the same deserves to be dismissed on this ground alone.

12. Now the learned counsel for the applicant has vehemently ~~xx~~ placed reliance on the order dated 23.12.98 (Annexure A-22) and strived hard to establish that one of a similarly situated person Shri Satyanarayan was given substantive appointment to the post of Senior Clerk despite his failing in the suitability test. But the said letter does not make this position evident and it goes ~~against~~ the very case of the applicant inasmuch as he has not been so regularised but so continued only on ad hoc basis. As regards the question papers, whether it should be objective or not there is hardly any deliberation is required on this point because it is for the first time the afterthought exercise has been done narrating these things in the OA only. However the post of Senior Clerk is not the highest non selection post in the cadre. The highest post in the cadre is Chief Office Superintendent and which is a selection post. Thus, there is nothing wrong even in the question paper. We are not impressed with the arguement

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of the learned counsel for the applicant that the applicant's result has not been declared. Each time her result has been declared and in last two occasions even ~~if~~ she had made representation and once she has failed in the written test nothing further was necessitated for declaring her unfit or unsuitable before her passing over by her juniors. The juniors had to be promoted since they have passed the suitability test and the applicant was reverted to give a way to the selected candidates.

13. As regards the contention of the learned counsel for the applicant that this post is a hon selection post and the written test was not required to be conducted for adjudging the suitability of the candidates. Learned counsel for the applicant has not ~~been~~ countenanced this argument from any law. On the contrary, the very rule which is being relied upon by learned counsel for the applicant makes a mention ~~thexxth~~ that the suitability of the individual is to be adjudged by the Competent Authority on the basis of the records of the case or departmental tests as laid down. This is evident from the circular at Annexure A-6, which has been filed by the applicant himself. Thus, this ground also has no substance.

14. As regards the procedure which is stressed upon by the learned counsel for the applicant that the applicant could not have been reverted except after following the due process, since she has worked for more than 18 months. It is answered by the respondents vide Annexure R-1 that the safe guard applies to the cases where the staff has been

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promoted to higher post after due empanelment in case of a selection post and after passing the suitability test, in case of non selection post and since the applicant has not passed the suitability test, she cannot get protection of the said rule and on this ground no interference in the action of the respondents can be sustained.

15. Thus in our view the ground submitted on behalf of the applicant has no substance and we do not find that there has been any illegality or arbitrariness in the action of the respondents. We have tried to go to the heart of the problem and we find that there has been absolutely no harassment to the applicant. She has only made certain loose averments regarding malpractice in the DRM office but without any evidence in support of such averments. She should thank to herself since she could not qualify the suitability test and was ~~superseded~~ superseded without any fault on the part of the respondents.

16. Before parting with the case we are constrained to observe that the applicant has filed ex facie, an frivolous petition and the pleadings are volta face on most of the points. The applicant has concealed more than what is revealed from the pleadings. Every time her case was considered and she was allowed to appear in the examination in which she failed. She also raised certain objections and now in the petition she says that she is not declared failed. She appears in the examination without any protest and comes out with a case that post is a non selection post and no written test is required to be held.

After failing in the selection she is reverted and the challenge is made that she has been reverted arbitrarily. She makes representation without any complaint regarding the ~~xxx~~ type of paper and in the QA everything is said to be faulty. We feel that this is a fit case where there has been misuse of the process of this court and such practice is required to be curbed and we take notice of this while passing the main order.

17. In view of what has been said and discussed above, the OA is devoid of any merit or substance and the same deserves to be dismissed. We do so accordingly. The applicant is saddled with a cost of Rs.2000/- which shall be recovered by the respondents in two equal installments from the monthly salary bill of the applicant.

Dr. Kaushik
(J. K. KAUSHIK)
MEMBER (J)

(J. K. KAUSHIK)
MEMBER (J)

V. K. Majtra
(V. K. MAJTRA
MEMBER (A)

(V. K. MAJCTRA)
MEMBER (A)

पृष्ठांकन सं ओ/न्या.....जलालपुर, दि.....
प्रतिलिपि अच्ये धितः—

प्रसिद्धिमिति अवो धितः—

(i) संदेश, उत्तर व्यापारालय खार एसोसिएशन, जबलपुर
 (ii) अमेरिका श्री/श्रीमती/कु. के काउंसल
 (iii) इत्यादि श्री/श्रीमती/कु. के काउंसल
 (iv) एसोसिएशन, जबलपुर व्यापारी

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