

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 793 of 1999

Jabalpur, this the 9<sup>th</sup> day of October, 2003

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

Mukul Sharma, aged about 36 years,  
S/o late D.N. Sharma, R/o Smt. R.R. Sharma,  
R.B.II Building No. 238/6, Near Railway  
Hospital, Central Railway, Jabalpur

- APPLICANT

(By Advocate - Shri M.K. Verma)

Versus

1. The Union of India through Chairman,  
Railway Recruitment Board, Mumbai CST.

2. The Secretary, Railway Recruitment Board,  
Mumbai CST.

3. Asstt. Secretary, Railway Recruitment Board,  
Mumbai CST

- RESPONDENTS

(By Advocate - Shri S.P. Sinha)

ORDER

By G. Shanthappa, Judicial Member -

The above OA is filed by the applicant seeking  
the following reliefs-

"1. The order of the respondent dt. 28.10.99 as  
Annexure A-7 may kindly be quashed.

2. The respondents may kindly be directed to  
investigate the order dt. 28.10.99 as per  
Annexure A-7.

3. Call the entire records of the viva examination  
of the applicant.

4. The Respondents may kindly be directed to pay  
Rs. 5 lakhs being the punishment for physical  
suffering and mental agony to the applicant".

2. The learned counsel for the applicant Shri M.K.

Verma has submitted the facts of the case. The facts are -

the applicant was afforded an opportunity to attend the

interview for the post of Assistant Catering Manager

(for short 'ACM') vide advertisement no. 2/88. He was

allowed to appear in the written test held on 21.5.1989

and he was one of the successful candidates in the said

selection and he was entitled to be called for interview/

viva voce. Because of the letter of the interview was

sent to the wrong address of the applicant, he was denied

Contd...2/-

the opportunity of appearing in the interview. Thereafter, another interview letter was given to him in pursuance to the order of this Tribunal in OA 897/1990 decided on 28.10.96. The applicant attended the interview/viva voce on 31.12.1996. In the meanwhile the respondents had challenged the aforesaid order of this Tribunal before the Hon'ble Supreme Court in SLP (C) No.CC7488/97. The said SLP was dismissed on 26-9-97 on the ground of delay in filing. When the respondents did not comply the orders of this Tribunal, he filed a CCP No.38/1998 before this Tribunal. The said CCP was dismissed on 3.12.1999. When the respondents failed to get orders from the Hon'ble Supreme Court, they complied the orders of this Tribunal and issued the order dated 28.10.1999(Annexure-A-7) by way of letter assigning the reasons for rejecting the case of the applicant. The contents of the said letter are as under-

"With reference to the Written Test held on 21.05.89 for the post of Asstt.Catering Manager -Category No.19 of the Employment Notice No.2/88 and your interview held on 31.12.96, it is advised that you have not qualified to be placed on the panel of Asstt.Catering Manager. This is being advised to you in view of Hon'ble CAT-Jabalpur's order dtd. 28.10.96 in O.A.No.897/90."

3. The case of the applicant is that the respondents have harassed the applicant with ulterior motive and malafide intention and declared the result by disqualifying the applicant as the revengeful action. As per the interim order dated 22.1.1991 of this Tribunal a post of ACM is still vacant. Since the applicant is qualified and selected, a direction may be given to the respondents to appoint the applicant to the said post. It is further argued, the impugned order is capricious with malafide intention. The same is liable to be quashed only after examining the entire records of the applicant along with other candidates so as to find out the justification of the viva voce examination.

4. Per contra, the respondents have filed their reply statement denying the allegations made in the OA. The respondents have admitted the proceedings before the Tribunal as well as the Hon'ble Supreme Court. There is no justifiable

reason for any direction for investigation, merely because the applicant has failed. The result is correct. There is no ground brought out to doubt the correctness of the result. Every failed candidate cannot have any right for production of records as this would disturb the smooth functioning of the recruitment board. The applicant was not qualified for empanelment or appointment. The recruitment board has fairly conducted the viva voce examination for all the candidates, including the applicant and communicated the result by way of the letter which is challenged in this OA. The reliefs asked for by the applicant are not tenable in the eye of law. The applicant has failed to prove his case for grant of relief. Hence the OA is liable to be dismissed with cost.

5. According to the direction of this Tribunal, the learned counsel for the respondents has produced a sealed cover containing the proceedings of selection process of ACM.

6. The applicant has filed the rejoinder to the reply of the respondents along with two documents, contending that the respondents have deliberately, only to give trouble to the applicant, not supplied the documents at Annexure-A-II and unnecessarily they challenged the orders of this Tribunal before the Hon'ble Supreme Court. There are no more facts <sup>which</sup> are clarified in the rejoinder.

7. We have heard the arguments of either side, perused the pleadings and documents on records. The case of the applicant is that only to deny the opportunity of appointment to the applicant, as a punitive idea, the respondents have issued the impugned order. The impugned order does not speak about the details of interview or any kind of test and the procedure adopted and the marks awarded to each of the candidates. Mere mentioning that the applicant is not qualified to be placed on the panel of ACM does not give reasons. The said order is issued only to avoid contempt action of this Tribunal. The applicant

is very much qualified for the post of ACM. The reliefs as prayed for shall be granted.

8. The learned counsel for the respondents argued that the applicant was not qualified, hence his name cannot be considered for the post of ACM. He supported the action of the respondents. There is no illegality or irregularity and there is a fair and unbiased selection process. The applicant has failed to prove his case for grant of relief. He further requested the Tribunal to open the sealed cover and verify the proceedings. Accordingly, we opened the sealed cover and perused the marks secured by the applicant and compared with other candidates. The particulars of the applicant in the proceedings are as under -

Roll No. 29/192418

Community - GL


Interview marks - 10


Marks secured in the written test - 65

Total - 75.

It is stated that there were 43 candidates who appeared for written test. Those who have attended both the written test and interview, they secured more marks than the applicant.

9. Considering the arguments of either side and perusing the pleadings and documents including the selection proceedings, the applicant has failed to prove his case for grant of relief as prayed for in this OA. Hence we are of the opinion that the arguments of the respondents are acceptable. There is a fair selection proceeding conducted and marks were awarded. The applicant secured total marks 75. All the qualified candidates secured more marks than the applicant. Hence the name of the applicant was not considered for the post of ACM. For the above reasons, we dismiss the OA. No costs.

  
(G. Shanthappa)  
Judicial Member

  
(Anand Kumar Bhatt)  
Administrative Member.