

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH,
JAIPUR**

**O.A.NO.78 of 2006 with
M.A.No.63/2006 and
M.A.No.187 of 2006**

Decided on 20th. Sept 2006

**CORAM : HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR. J. P. SHUKLA, MEMBER (A)**

Gopal Sharma son of Shri Hari Narain Sharma, aged about 44 years, resident of J-1-8, Road No.2, Ganpati Nagar, Railway Colony, Jaipur, working as Sr. Public Relation Inspector, North Western Railway, Jaipur.

Applicant

BY : Mr.P.V.Calla, Advocate.

Versus

1. The Union of India through its Chairman, Rail Bhawan, New Delhi.
2. The Union of India through the General Manager, North Western Railway, Jaipur.
3. The Selection Board through its Chairperson Shri S.B.Gandhi, Sr. Deputy General Manager (SDM)/Chief Vigilance Officer/Chief Public Relation Officer, North Western Railway, Jaipur.
4. Shri J.K. Jayant, working as Public Relation Officer, Headquarter Office of North Western Railway Jaipur.
5. Shri Kamal Joshi, Presently holding the post of Chief Public Relation Inspector, Headquarter Office, North Western Railway, Jaipur.

.... Respondents

Present : Mr.Anupam Aggarwal, Advocate for Respondents 1to3.

Mr.C.B.Sharma, Advocate for Respondent No.5

None for Respondent No.4.

ORDER

KULDIP SINGH, VC

Through this O.A. the applicant has impugned the selection conducted for promotion to the post of Public Relation Officer (PRO) in response to Notification dated 27.7.2005 (Annexure A-1), with a prayer to quash the same. He has also prayed for cancellation of the impugned panel dated 21.2.2006 (Annexure A-2). Besides that, he has

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also prayed that the respondents be directed to conduct the selection for promotion to the post of PRO as per recruitment rules and treating 3 vacancies available in the zone.

The facts as alleged by the applicant are that he was working as Public Relation Inspector in the Western Railway before formation of the North Western Railway. The applicant further alleges that vacancies had arisen to the post of PRO under undivided Western Railway. At that time he had filed a representation to the respondents to make regular selection to the post of PRO, but when there was no response on the part of respondents, he had filed the O.A. Which was disposed of with the direction to the respondents to decide his representation. When no decision was taken, he filed a Contempt Petition and thereafter, the selection was held. The applicant failed in the selection test. He made a complaint to the Railway Board alleging favouritism etc.

Thereafter the North Western Railway was formed. It is stated that there are three divisions viz. Ajmer, Jodhpur and Bikaner under North Western Railway. It is submitted that PRO is a Group 'B' post under North Western Railway Zone. The cadre strength of PRO is 2 and another post of PRO is available under the territorial jurisdiction of North Western Railway under construction wing. There were six posts of PRO under the Western Railway. In the erstwhile (undivided) zone i.e Western Railway, Shri J.K.Jayant (Respondent No.4) was holding the post of PRO at Jaipur Division and Y.K. Sharma was working as PRO at Indore in Western Railway. He proceeded on deputation with Delhi Metro Rail Corporation. When options were called for, for newly created North Western Railway Zone, Shri Y.K.Sharma opted for North Western Railway Zone. Though he is still continuing at Delhi Metro Railways Corporation but his option was accepted and he has been transferred at the strength of North Western Railway Zone. Thus, the



post meant for Shri Y.K.Sharma is being utilized by Shri J.K.Jayant who is on the strength of Western Railway.

The applicant has grievance that while J.K.Jayant is continuing on the existing vacancy of Y.K.Sharma, but that vacancy should have been filled up. However, while issuing notification dated 27.7.2005, the Department has notified only one post whereas two posts are available for selection. Similarly another vacancy is being utilized by the Railway Administration inasmuch as one Shri Dhirumal who is a substantive ACM of North Western Railway has been allowed to work as PRO on working arrangement basis. Thus, it is submitted that notification dated 27.7.2005 is defective to the extent that it has been issued to fill only one vacancy whereas it should have been for three vacancies.

Another point which has been taken up by the applicant is that the constitution of Selection Committee stands vitiated as it was not constituted as per rules. According to the rules, Director of Public Relations, Railway Board is also required to participate as a Member of the Selection Committee but he has not been made as Member of the Selection Committee by the Railway. Thus, the selection on that account is also bad and cannot be sustained in the eyes of law. Besides, the applicant has pleaded that he is more meritorious than respondent no.5 but the respondents declared respondent no.5 as successful. He has also pleaded that his appreciation letters, service record and CRS etc. have not been properly considered.

The official respondents as well as private respondents have contested the O.A. The official respondents have taken preliminary objection that the present O.A. challenging the selection to the post of PRO is not proper inasmuch as the applicant had earlier challenged the same selection on the grounds mentioned in O.A.No.382 of 2005. The said application was withdrawn with liberty to file fresh O.A. vide



order dated 24.2.2006 (Annexure A-15). However, in this O.A. he has raised some new grounds. In view of the principles of estoppel, he has no right to add new grounds to challenge the said selection. Therefore, adding of any further ground in this O.A. beyond the grounds raised in his earlier O.A. is not tenable. The O.A. should, therefore, be rejected for this reason alone.

The OA is also not maintainable in view of the law propounded by the Hon'ble Supreme Court that a candidate, who has rubbed his shoulders with other persons in a selection without any protest, and when failed, he has no right to challenge the same on unnecessary grounds. Applicant failed to make any protest against the selection either before or during it and even he failed to protest immediately after appearing in the interview with regard to any illegality. Rather after being declared pass in the written test he himself sought vacation of interim directions regarding non-declaration of the result of the selection so as to facilitate further conduct of selection. It is further stated that the applicant has no right to assail the Notification after submitting himself to the same by participating in the selection in pursuance thereof particularly ^{when} he had not been selected.

It is further stated that the O.A. is also barred by limitation. The applicant challenges the notification dated 27.7.2005 after one year, which is barred by limitation.

The respondents have also denied the allegations of the applicant that he has been discriminated against during the selection at any point of time.

The respondents have, however, clarified that after formation of new zone i.e. North Western Railway, only two posts of PRO were transferred to North Western Railway, one from Western Railway and another from Northern Railway. Out of these two posts, against one post a regular incumbent Shri J.K. Jayant is working whose lien is still.

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with the Western Railway. Against another regular post, one regular PRO Yashwant Kumar Sharma, has been permanently absorbed. He is presently on deputation with Delhi Metro Railway Corporation and likely to return after completion of his tenure. As such only one post is to be filled up out of the three posts of PRO existing with the respondents.

The applicant has also challenged the Notification dated 27.7.2005 on the ground that no syllabus was provided along with Notification whereas earlier there was practice to disclose syllabus also to the candidates. In reply, the respondents have clarified that as per rules there is no need to provide syllabus to the candidates. Moreover, sufficient information was available about syllabus in the notification itself. So the plea of the applicant on this count is not maintainable.

As far as composition of the Selection Committee is concerned, the respondents have pleaded that the bare reading of the IREM clearly empowered the General Manager to constitute the Selection Committee with three heads of Department including the head of department concerned. It is important to mention that Sr. Deputy General Manager is also holding the charge of Chief Public Relation Officer. Therefore, he was nominated in the selection committee as per law. Thus, there was no illegality in the constitution of the selection committee.

Even if for the sake of argument it is taken that Director Public Relations, Railway Board, should also be a member in the committee even then the SDGM / CPRO being much higher in rank than Director, Public Relations, his presence has caused no prejudice to the applicant. Thus, they support their action.

We have heard the learned counsel for the parties at length and perused the material on the file.

The applicant has challenged the notification dated 27th July,

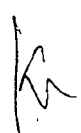
2005 vide which North Western Railway notified the selection for promotion to Group B post of Public Relation Officer (Regular-100%) Scale Rs.7500-12000 (Public Relations Organization) Gen. Admn. Deptt. To challenge the same, he has raised an issue that while issuing this notification candidates were not informed about the nature and character of syllabus, as to what sort of questions were to be put to the candidates and what was the field concerning the post of PRO and as such the notification to this effect is bad. It is also stated that for this purpose though it is provided in para 204.2 that no syllabus is to be given but that itself is not relevant and even if it is assumed that same is relevant, even then in the present case the kind of syllabus provided by the respondents for the present selection is irrelevant and has no nexus with the object sought to be achieved.

It is also submitted that when a practical knowledge of a person is to be adjudged for a particular job, then there could not be any need or scope for testing his knowledge regarding Establishment and Financial Rules. It is further stated that earlier in the selection the applicant had participated and syllabus was provided but now the syllabus has not been made available while taking shelter under para 204.2 of IREM and as such the notification for examination is bad. In reply to this, learned counsel for the respondents submitted that earlier on the same issue the applicant had filed an O.A. No.382/05 which has been decided by this Tribunal vide order dated 24.2.2006. He further pointed out that when earlier O.A. was filed at that time the applicant had challenged only the issue of Notification and there was no dispute regarding syllabus as raised now. But when the applicant had prayed for interim relief, the Court had directed that he may appear, subject to the final outcome of the O.A. However, when the result of the written examination was not being declared and interim order was coming in way, applicant had chosen to withdraw the O.A. to



facilitate further selection and thus, he himself having participated in the examination, is now estopped from challenging the same, once he has failed in the viva voce.

In this regard, learned counsel for the applicant submitted that though he had filed an O.A. earlier but that was withdrawn and while disposing of the O.A. the Court had allowed him to take all permissible and possible pleas to challenge the examination and the result thereof. We have also gone through the judgment. We find that in para 3, while disposing of the earlier O.A. the Bench has clearly mentioned that "needless to add that it will be permissible for the applicant to raise all the permissible pleas and dismissal of this OA will not come in his way for filing the subsequent OA". Considering the specific permission granted by the Bench, the law of constructive resjudicata would not apply and the applicant can take the plea of non supply of syllabus to challenge the selection. We have examined the case on this aspect. However, to our mind, this plea is not available to the applicant because the applicant has been taking calculated chances, and when he had succeeded in written examination, he himself had withdrawn the O.A. and wanted to take chance in the viva voce also because otherwise the department was not proceeding with the viva voce. So, the applicant did take a calculated chance to appear in the viva voce in the hope that he may be selected and had he been selected probably he would not have objected for not providing the syllabus. As far as legal position is concerned, the applicant had not challenged para 204.2 and once he himself had passed in the written examination, he cannot be allowed to turn around and allege that non providing of the syllabus was without any object sought to be achieved by the department. He had specifically challenged that no question regarding Establishment and Financial Rules could have been asked. However, on going through the Notification we find that first of all in



recruitment rules the Director Public Relations, Railway Board, should have been one of the Members of the Committee and in the absence of the Director, the entire process of selection is illegal and consequently the panel issued vide Notice date 21.2.2006 deserves to be declared as illegal. The applicant has also stated that only one post of PRO has been notified whereas there are three posts and regular promotion ought to have been made for all the three posts. Of course, he also pleads that he is more meritorious as compared to the respondent no.5 and it is applicant who should have been selected and appointed. The applicant has also pleaded that the Selection Committee prepares a sheet containing the particulars of the performance of the candidates and if the same is summoned and perused, it will be proved that in what manner and how the applicant has been deprived of his chance of selection.

As regards the number of vacancies, the Respondents in their reply have submitted that after the bifurcation of the Western Railway a new zone of Western Railway has been carved out. Two posts, one from Western Railway and one from Northern Railway were transferred to it and out of these two posts, on one post a regular incumbent Shri J.K.Jayant is working whose lien is still with Western Railway and will have to be repatriated to Western Railway and against another regular post, one regular PRO, Shri Y.K.Sharma has been permanently absorbed. He is presently on deputation with Delhi Metro and Railway is likely return back. During arguments, we were informed that he has already returned to his parent department.

So, it is submitted that there was only one post vacant for which the selection has been made. Learned counsel for the applicant submitted that there was one post of PRO in Construction Wing, that is also to be taken into consideration and there are total six posts. He further stated that Shri J.K.Jayant should be repatriated and he should

not be allowed to continue at North Western Railway.

As regards position of vacancies is concerned, the plea of the applicant that six posts are available is not established from record since the respondents have categorically stated at bar that only two posts have been allocated to the North Western Railway and even adding one post of Construction Wing, at best there will be three posts and one is already being manned by Shri Y.K.Sharma, who was expected to be repatriated back from Metro Rail and has to come back to North Western Railway. As far as retaining of Shri J.K.Jayant is concerned, he might have been retained for certain administrative reasons and he will be repatriated as and when the Management will desire to do so ^{as per rules} and on this aspect this Bench cannot issue any direction to the respondents. So, there was only one post left for which selection has been held. So, plea regarding availability of more vacancies does not help the applicant at all.

The next important question which arises for determination is whether the selection committee had been properly constituted or not. In this regard, the learned counsel for the applicant referred to the recruitment rules known as Railway Public Relation Department (Group 'A' and Group 'B' Posts) Recruitment Amended Rules, 1982, framed under Article 309 of the Constitution of India and the Constitution of DPC for the post of PRO as mentioned in column No.12, is reproduced as under :

"Departmental Promotion Committee :

1. Senior Deputy General – Chairman.
2. Two Heads of Department/Additional Head of department-Member.
3. Director, Public Relations, Railways Board, Member."

Learned counsel for the applicant submitted that as per the rules framed under Article 309 of the Constitution of India, Director Public Relations, Railway Board has to be one of the members of the

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Committee for selection absence of whom would vitiate the selection. In support, learned Counsel for the applicant has also referred to another similar matter where a selection was held for Hindi Assistant Grade II, in the grade of Rs.4500-7000 and since a defect was found in constitution for the committee, finding that same was in violation of the rules and as such the panel was cancelled. This was so stated in letter No.G-379/Misc/Staff(Non-Gaz.)Part-16, dated 10.6.1999. In the background of this, it is prayed that in this case also since the committee was not properly constituted, so panel should be cancelled. In reply to this, respondents plead that the applicant had failed to raise any objection to the constitution of the Committee, either before the selection or after it. He failed to raise any objection with regard to interview or any illegality caused or any prejudice having been caused to him, rather after having qualified the written examination he himself sought vacation of interim directions, so that he could appear in the selection and as such estoppel would operate against him. Besides that it is also submitted that non associating of Director, PRO Railway Board has also not caused any prejudice to the applicant. In support of their contention, learned counsel for the respondents submitted judgment reported as Utkal University Vs. Dr. Nrusingha Charan Sarangi & Others, 1999 SCC (L&S) Page 541 wherein it has been held that allegation of bias against a member of the Selection Committee, must be carefully examined and the selection should not be lightly set aside without adequate material to indicate a strong likelihood of bias or a direct personal interest of the member in appointing a particular candidate. The mere fact that one of the members of the Selection Committee was a member of an organization or was on the Editorial board of a magazine brought out by the organization and the candidate was editor of that magazine, is not sufficient to infer that such a member would necessarily be favourably inclined towards such

a candidate. More so when the facts were known to the objector but he raised the objection only when selection was over and he was not selected. Respondents also placed reliance on a judgment in the case reported as Madan Lal & Others Vs. State of J&K & Others, 1995 SCC (L&S) 712 wherein also the challenge was to the selection. It was held that objectors had no locus standi to impugn, on the ground of unfairness of interview process or defect in constitution of selection committee, who had taken a chance to get themselves selected at the impugned interview but challenged the same only when they failed.

Besides that learned counsel for the applicant also submitted that according to the IREM, 202.1, which provides that "Selection Committee should consist of three heads of the Department or Additional Heads of Department, including Chief Personnel Officer or Additional Chief Personnel officer, and the Head of the Department concerned **or as has been provided for in the relevant Recruitment Rules**". (emphasis supplied) which is missing in this case. After referring to the rules, learned counsel for the respondents pointed out that para 202.1 requires that any three Heads of the Department could be associated in the selection committee and since the same has been done in this case and no prejudice has been caused to the applicant so same cannot be challenged now by the applicant.

In our view, this contention of the respondents has no merit because the bare perusal of para 202.1 requires that the selection committee should consist of three heads of the department or additional heads of department including the Chief Personnel Officer or Additional Chief Personnel officer and the Head of the Department concerned OR *as has been provided for in the relevant Recruitment Rules*. So, the rule is in two parts. First part supports the contention of respondents, but if there are specific rules, the second part will apply leaving the first part as insignificant. Admittedly, in this case Director,

PRO, Railway Board had not been associated as Member and the recruitment rules for the post of PRO too show that Director, PRO, Railway Board is to be one of the Member of the Committee in the selection for the post of PRO and as such the selection would stand vitiated on that count.

Now coming to the question of prejudice having been caused to the applicant or not because of non constitution of proper DPC. In this regard though it has been pleaded by the respondents that no prejudice has been caused to the applicant and he having not raised any objection at the particular point of time i.e. Before viva voce and as such he cannot object to the constitution of DPC in the absence of showing any prejudice having been caused to him on this account. The law on theory of prejudice is well settled and crystallised. We may mention that whenever there is violation of binding statutory rules, then prejudice is deemed to have been caused and one is not required to demonstrate such prejudice. If there is violation of directory rule which may or may not be followed because of some administrative reasons, in that situation the litigant or the party to whom prejudice is alleged to have been caused, has to prove that prejudice has been caused to him by leading appropriate evidence in this regard. But whenever there is violation of mandatory / statutory requirement of rules, then prejudice is automatically caused and in such cases even existence of prejudice or malafide intentions need not be established. But in this case applicant has made an allegation that he has been caused prejudice and there is allegation of malafide also and as such non constitution of proper DPC being in violation of statutory rules, is deemed to have caused prejudice to the applicant. Besides that the Railway Department themselves in a case relating to selection for the post of Hindi Assistant Grade II, found that selection committee was not properly constituted as the Senior Rajbhasha Officer Class I, had

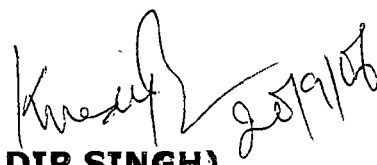
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not been associated and as such held that the selection was in violation of the rules and the panel was cancelled. So, the Railway itself accepts the legal position. Same is the case in hand where the Director PRO, Railway Board has not been associated nor has been asked to join. So, the selection committee which has been constituted in violation of the rules is illegal and the panel prepared by such committee cannot be sustained in the eyes of law and has to be quashed and set aside.

A plea has been raised that there is one post of Director, PRO, Railway Board and there are about 16-17 Zones of Railway and it is not possible for one incumbent to participate in the selections, whenever he is required. But we find that whenever there is mandatory rule, that has to be followed at any cost and there are examples in other rules also including in the service rules of the Central Administrative Tribunal itself, where the Registrar of the Principal Bench is designated as member and he has to participate in the various DPCs. He either goes to the outlying Bench or DPC is held at Principal Bench, New Delhi itself. So, on the same lines, Railway ^{can also easily} ~~should~~ also make some arrangement to facilitate the participation of Director, PRO, Railway Board, in DPC meeting and the DPC cannot be allowed to be held in violation of the rules and as such the selection to that extent stands vitiated.

In view of the above discussion, the impugned order Annexure A-1 is upheld but the impugned order, Annexure A-2, is quashed and set aside. The respondents are at liberty to start the selection afresh from the stage of viva voce test after reconstituting the DPC in accordance with the rule and law. No costs.


(J.P.SHUKLA)
MEMBER (ADM.)
HC.


(KULDIP SINGH)
VICE CHAIRMAN