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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

27.05.2011

OA 309/2008

Mr. Nand Kishore, counsel for applicant.
Ms. Sonal Singh proxy for
Mr. Alok Garg, counsel for respondents.

Learned proxy counsel for the respondents submits that she is filing additional affidavit in the Registry.

Registry is directed to place the same on record.

Put up for further argument on 31.5.2011 under heading of partly heard.

Anil Kumar

(Anil Kumar)
Member (A)

J. S. Rathore

(Justice K.S. Rathore)
Member (J)

mk

31.5.2011

Mr. Nand Kishore, Counsel for applicant
Ms. Sonal Singh, Proxy Counsel for
Mr. Alok Garg, Counsel for respondents

Heard. The OA is disposed of by
a separate order.

Anil Kumar
(Anil Kumar)
M(A)

J. S. Rathore
(Justice K.S. Rathore)
M(J)

Arfa/Am
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 31st day of May, 2011

ORIGINAL APPLICATION NO. 309/2008

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Ghasi Ram Naredia son of shri Hanuman Sahai aged about 42 years, working as Office Superintendent Grade II in scale Rs.5500-9000/-, resident of Railway Quarter NO. 244/11, Ganpati Nagar, Railway Colony, Jaipur.

.....Applicant

(By Advocate: Mr. Nand Kishore)

VERSUS

1. Union of India through the General Manager, North Western Railway, Hasanpura Road, Jaipur.
2. General Manager, North Western Railway, Hasanpura Road, Jaipur.
3. Shri Ramesh Kumar Kalaria, Assistant Personnel Officer, North Western Railway, Divisional Railway Manager Office, Ajmer (Rajasthan).

.....Respondents

(By Advocate: Ms. Sonal Singh proxy to Mr. Alok Garg)

ORDER (ORAL)

Brief facts of the case are that the respondents issued notification dated 10.10.2005 for selection of 4 posts of Assistant Personnel Officers under the scheme of LDCE-30% in scale of Rs.7500-12000/-. Out of these 4 posts, one post was reserved for SC and 3 for General candidates.

2. Pursuant of the aforesaid notification, the applicant applied for the post of Assistant Personnel Officer as a Scheduled Caste candidate and his name was included in the list of eligible candidate at sr. no.



216. The written test for this selection was held on 18.02.2007 and the result of the said test was declared on 10.07.2007 (Annexure A/4) in which the name of the applicant find place at sr. no. 6 of the list.

3. The candidates were called for interview on 30.07.2007 and the applicant was also interviewed. Ultimately, the respondents issued a panel dated 03.08.2007 (Annexure A/1) in which the name of the applicant did not find place. To this effect, the applicant filed representation dated 17.07.2008 (Annexure A/5). He also sought information under the Right to Information Act regarding his non selection on the said post.

4. The applicant after receiving the information made available to him check the assessment of marks and observed that the marks in certain questions, which were given earlier, have been reduced in order to deprive him from selection.

5. The applicant has referred to answer sheet and has drawn our attention towards Annexure A/7, which is objective type questions and further referred to Question (Ta). Earlier two marks have been awarded and the same were scored zero. Further drawn our attention towards answer sheet at Page 39 of Annexure A/7, in answer to question No. 7 (Ka), it is alleged that earlier 6 marks were awarded, which has been reduced to 4 ½. Further referred to Question No. 7 (cha), earlier marks were awarded and later on scored zero marks. In the same manner in Annexure A/8, answer to question No. 1.5, marks which were earlier awarded has been scored zero. After referring the aforesaid answer sheet, learned counsel for the applicant emphasized



that if the marks, which have been originally awarded, are considered, the applicant would have been eligible for appointment on the post of Assistant Personnel Officer.

6. Learned counsel for the respondents strongly controverted the submission made on behalf of the applicant and submitted that the respondents have correctly evaluated the answer sheet and awarded the marks. With regard to question No. 7(k), it is alleged that 6 marks has been awarded but in fact 3 marks were awarded and after scoring the marks were increased to 4 ½ and it is apparently visible with naked eyes that earlier 3 marks were awarded. Thus the contention of the applicant that marks were reduced is wrong. With regard to question No. 7(cha), she submitted that earlier 2 marks have been awarded which were subsequently increased to 3 marks. With regard to Annexure A/8, Question No. 2(ga), of course earlier 6 marks were wrongly awarded in which 1 answer was correct and 1 answer was wrong. Thus out of 6 marks, 3 marks has been correctly awarded. The cut off marks for SC candidates 263 marks. Admittedly, the applicant scored only 261.5 marks out of 350 marks. So far as the factual aspect is concerned, the applicant utterly failed to establish the case in his favour.

7. By way of rejoinder to the reply, the applicant referred to letter dated 20.04.2005 (Annexure A/11), wherein in Note 5, the following guidelines were issued, which is reproduced as under:-

"Note 5 There should be absolutely no cutting, erasing, overwriting etc. of the marks once awarded to answer to multiple-choice objective type of questions. In case of questions requiring narrative type of answers also while there should not be any over-



writing, erasing, corrections of marks, if genuinely warranted, may be made by striking the marks originally given and entering the fresh marks duly attesting the correction."

Learned counsel for the applicant also referred to Para No.

13.2.3 of IREM, which reads as under:-

"13.2.3 In the case of two or more candidates securing equal marks in the aggregate (written test + viva voce + record of service) in 30% LDCE, their relative merit position for the purpose of their empanelment may be determined on the basis of their relative seniority in the feeder grade (s). The candidate who is senior shall rank higher. The same criteria shall be applied for determining who will be empanelled against the last vacancy from amongst those who secure equal marks in the aggregate."

Much emphasis has been given by the learned counsel for the applicant that objective type questions in the written test can be answered only in 'Yes' or 'No'. He referred to Para No. 3.1 of RBE Circular No. 123/2006, which reads as under:-

"3.1 The opportunity is also taken to clarify that objective type questions besides including the type of questions in the form of 'multiple choice', 'filling up the blanks', 'tick 'true' or 'false'' 'right' or 'wrong', 'match the following' may include questions requiring one word/line answer, " 'yes' or 'no' ", naming, e.g. 5 States, Railways, posts, grades etc. This is to avoid unnecessary rigidity in framing the questions."

8. Learned counsel for the respondents strongly controverted all these and submitted that some objective questions requires a answer in detail and the answer cannot be given in 'Yes' or 'No'. She also referred to certain examples. The respondents have also filed an Additional Affidavit just to explain the factual as well as legal aspect, the Para Nos . 6 to 8 of which reads as under:-

"6. That the applicant in its original application has basically raised the contention that marks had




been scored out and reduced however by a bare perusal of the answer sheets which have been annexed by the applicant, it reveals that with regard to paper I which begins from 26 of the paper book, the marks have been increased from 114 to 115.5 on the top sheet at page 27. Thereafter on Page 29, 30, 31, 32, 33, 34, 35, 36, 38, 40, 42, 43, 44, 45,, 46, there is no crossing of the marks. Whereas on pages 39 marks have been increased from 3 to 4.5 and further on page 41, marks have again been increased from 2.5 to 3. Thereafter with regard to paper which begins from page 44 of the paper book, there is no correction/crossing of marks on page 49, 51, 52, 53, 54, 55, 56, 57, 28, 59, 60, 61, 62, 63, 64, 65. The marks have been increased on page 50 from 2 to 3 and similarly the marks on page 66 were wrongly given as 6 whereas one portion of question no. 2(ga) was wrong. The question that was to be answered was with regard to per capita allocation under various head under the staff benefits funds with regard to recreation other than sports. The applicant has answered as 3.5 which was incorrect answer and the correct answer was 2.25 and as such the marks were awarded as 3 rightly as only one portion of the question was correct and hence there is no cutting of marks which is adversely affecting the applicant and in this regard the Railway Board letter dated 12.3.2004 will be kept ready for the perusal of the learned tribunal at the time of arguments. Similarly the question 6 (ta) was can group-A probationer be allowed to draw HRA. The answer to which is not a simple yes or no as there are conditions which have to be explained as a probationer while under training in campus/training school is not entitled for HRA. But a probationer while working post in Railways is residing in a private accommodation is entitled to HRA and as such there is no discrepancy in the evaluation.

7. That the applicant has been picking and choosing the questions and developing answers on his own which is not permissible. The fact remains that the evaluator none other than the Chairman, Railway Recruitment Board and some credit can be given to him with regard to knowledge of the subject. In fact, the facts remains the evaluation has been done correctly. The applicant has not written the complete answer and as such because the nature of the questions were subjective marks have been awarded by the evaluator to the extent the answer has been given. In fact, only by way of an example and to further buttress the contentions of the respondents taken in their reply the questions 1.13 of paper 2 was whether the WC Act is not applicable to the staff posted in Foreign Countries. The answer to the question was not a simple yes or no as it has been provided in section 15B of the Workmen Compensation Act that the provisions of the Act will apply to those workmen working in foreign countries provided that they are recruited by the companies registered in India otherwise in case of companies registered out of India, provisions of



Workmen Compensation Act are not applicable. The answer of a plain yes or no becomes a fluke which is not the objective of the present examination as it is a test based on question pertaining to a practical application. Further in the question 7(gha) of paper 2, the question was whether Workmen Compensation Act is applicable to workers having been under influence of alcohol at the time of accident. Again, the answer is not a simple yes or no, as under the Workmen Compensation Act, it has been provided in section 3 that the provisions of the Workmen Compensation Act will not be applicable in case the workmen is under the influence of drink or drugs and injury happens to him which does not result in death or permanent total disablement and as such the question was subjective in nature which had to be answered accordingly and the same was not done by the applicant. In such situation, the evaluator cannot be made to consider the answer which is a simple yes or no, as the answer needed elaboration on the situations under which the Workmen Compensation Act, was applicable. Similarly, the question 2(gha) of paper I with regard to the question if two or more candidates secured equal marks in aggregate i.e. written test + viva voce test + record of service in LDCE for promotion to Group B post then who shall be selected was asked. The answer was not a plain senior or junior. It had to be answered considering that the question was with regard to an LDCE which is limited departmental competitive examination wherein the candidates from various seniority division/cadre participate in the examination and as such who is senior or not is relative and as such the relative seniority has to be considered accordingly to which a person may be senior or junior to other candidate in the list. There are number of criteria which have to be considered and the same has to be elaborated and answered which was not done by the applicant or by the private respondent and as such both of them were not awarded marks as they did not even make a mention of word 'relative seniority'.

8. That it is further submitted that in order to ensure complete secrecy to the identity of the candidates, as has been mentioned in the reply filed in paragraph 4.10 wherein it has been mentioned that as soon as the written test is over, a dummy roll number is given on the fly-leaves attached to each answer sheets and the fly-leaves containing the original roll number as well as the dummy number is separated and kept under the custody of the officer in charge. The answer sheets that are sent to the evaluating officer contain only the dummy roll numbers, so that the evaluating officer does not know the identity of the candidates. In these circumstances the evaluator cannot identify the copies. It is further submitted that the currency of the panel has been mentioned in the Master Circular 68 in paragraph 13.5 which is based on para 205 of IREM which provides



that the currency of the panel will be for a period of 2 years from the date of approval of the competent authority or till a fresh panel on the basis of next selection becomes available whichever is earlier. In the present case the competent authority had approved the panel on 30.8.2007 and the same has expired on 2.8.2009. There is no rule by which interpolation can be made at a later stage as provided in the Master Circular of the IREM."

9. Further referred to Para No. 13.5 of the Master Circular on Instructions governing promotion from Group 'C' to Group 'B', issued by the Railway Board, which reads as under:-

"13.5 The panel will be current for a period of 2 years from the date of approval of the competent authority or till a fresh panel on the basis of next selection becomes available whichever is earlier. Where provisional panels are drawn the currency will count from the date of approval of provisional panel. If the operation of the approved panel has been held in abeyance whether wholly or partly as a result of injunction from the Court of Law the currency of the panel should be reckoned after excluding the period covered by the Court's directive. Before operating the panel after the vacation of the injunction/after disposal of the case by the Court of Law, the personal approval approval of the General Manager should be taken."

After referring this clause, learned counsel for the respondents submitted that selection was made in the year 2007 and appointments have already been made. The panel is not in existence as the period of two years has already lapsed after selection.

10. In support of his contention, learned counsel for the respondents referred to judgment of the Hon'ble Supreme Court in the case of **Himachal Pradesh Public Service Commission vs. Mukesh Thakur & Another**, 2010(6) SCC 759, in which Para No. 20 reads as under:-



"20. In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission has assessed the inter-se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and nor for Respondent 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court.

11. Learned counsel also referred the judgment of the Calcutta High Court in the case of **Pradip Gharami vs. University of Calcutta & Others**, 2007 (1) SLR 592, the para No. 4 which reads as under:-

"4. According to the rules governing the examination, no review is permissible. Simply because marks obtained by the petitioner in two successive examinations are almost identical, in my view, it cannot be concluded that the examiner did not script properly. On the ground that the petitioner did not obtained the pass marks, the writ court is not supposed to exercise the power of judicial review. In my view, assessment of script made by an examiner in a university examination is not open to judicial review of the writ court. Hence there is no scope to issue a mandamus as prayed for.

12. Further placed reliance on judgment of the Hon'ble Supreme Court in the case of **Union of India & Others vs. Smt. Draupadi Behara and another**, 2005(4) SLR 143, in which in Para No. 7, the Hon'ble Supreme Court has held as under:-

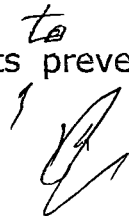
"7The process of valuation of answer papers or of subsequent valuation of marks do not attract the principles of natural justice since no decision making process which brings about the adverse and evil consequence to any examinee is involved. Moreover, it is in the public interest that the result of public examination when published, should have some finality at a particular stage. If re-valuation is allowed as of right, it may lead to gross and indefinite uncertainty."



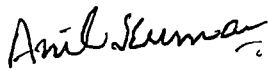
13. After referring the aforesaid judgments, learned counsel for the respondents submitted that it is not permissible for the Tribunal to examine the question papers and answer sheets. It is for the State Public Service Commission to examine the inter se merit of the candidates. He also submitted that the select panel is valid only for two years and two years period has already lapsed. Therefore, in view of the ratio decided by the Hon'ble Supreme Court in the case of **M.P. Electricity Board through the Chief Engineer, M.P. EB and Another vs. Virendra Kumar Sharma**, 2002 (9) SCC 650, the present OA is not maintainable. In Para No. 5 of the judgment, the Hon'ble Supreme Court has held as under:-


"5.Moreover the validity/currency of panel was for a particular period; that is a salutary principle, behind that Rule so that after the selections are made and appointments to be made may take long time, it is possible that new candidates may have become available who are better or more qualified than those selected, and if they are appointed it would be in the best interest of the institution. Hence we do not think there was any justification for the High Court to have interfered in the matter and directed appointment of the respondent."

14. Thus in view of the settled preposition of law as well as provisions of IREM, Master Circular on instructions governing promotion from Group 'C' to Group 'B' issued by the Ministry of Railway and certain other circulars issued by the Railway Board from time to time and in view of the ratio discussed hereinabove, we are of the view that the marks which are alleged to be reduced is not correct but in fact the marks are increased. The respondents have only reduced 3 marks for the wrong answer. The contention of the applicant that it is deliberate on the part of the respondents ^{to} prevented the



applicant to get success in the selection is baseless and without any founding rather contrary to the factual aspect of the case. Thus this Tribunal do not wants to interfere in the process of Examination as held by the Hon'ble Supreme Court in the case of Smt. Draupadi Behara (supra). According, the present OA deserves to be dismissed being bereft of merit and the same is dismissed with no order as to costs.


(ANIL KUMAR)
MEMBER (A)
AHQ


(JUSTICE K.S. RATHORE)
MEMBER (J)