

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

20.01.2012

OA No. 480/2008

None present for the parties.

Since the advocates are abstaining from work, the case be listed on 02.02.2012.

Anil Kumar
(Anil Kumar)

Member (A)

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

ahq

02/02/2012

OA No 480/2008

Mr. Nand Kishore, Counsel for applicant.
Mr. N. C. Erogl, Counsel for respondent No. 1 &
Mr. N. C. Erogl, Counsel for respondent No. 3.
Mr. Ashok Joshi, Counsel for respondent No. 2.

Heard.
O.A. is disposed of by a separate
order on the separate-sheets for the
records recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 2nd day of February, 2012

Original Application No.480/2008

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Man Singh Shekhawat
s/o Shri Sanwat Singh Shekhawat
working as T.T.E. scale Rs. 4000-6000,
at Railway Station Jaipur,
North Western Railway
r/o Village and Post Udaipurwati,
District Jhunjhunu.

.. Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through
General Manager,
North Western Railway,
Hasanpura Road,
Jaipur
2. Divisional Railway Manager,
North Western Railway,
Power House Road,
Jaipur
3. Shri Vipin Yadav,
Head T.T.E.
c/o C.T.I., Sleeper Coach,
North Western Railway,
Jaipur

.. Respondents

(By Advocate: Shri N.C.Goyal for resp. No. 1 and 2 and Shri Ashok Joshi for resp. No.3)

O R D E R (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) An appropriate order, writ or directions, the Respondents may be directed to place the name of the applicant in the panel dated 02.07.2008 (A/1) as no adverse remarks have ever been communicated vide which it will be proved beyond reasonable doubt i.e. working was very good and not adverse as far as the above selection is concerned.
- (ii) They may be directed to issue the posting orders of the applicant and fix his payment according to rule as his juniors have been placed on panel and posting orders have been issued.
- (iii) They may be further directed to adhere their instructions mentioned in Annex.A/6 para 7 of the facts.
- (iv) Any other directions and orders which is deems proper in the facts and circumstances of the case may kindly be allowed to the applicants.

2. The main thrust of the applicant is that the respondents may be directed to place name of the applicant in the panel dated 02.07.2007 (Ann.A/1) as no adverse remarks have ever been communicated to him. In support of his submissions, he placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of Abhijit Ghosh Dastidar vs. Union of India and ors. passed



in Special Leave to Appeal (Civil) No. 26556/2004 dated 22.10.2008 and the judgment dated 21.08.2009 rendered by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.586/2009, Shri Krishna Mohan Dixit vs. Union of India and ors.

3. On behalf of official as well as private respondents, it is submitted that notification dated 04.02.2008 has been issued for selection to the post of Head TTE/Head TC in the pay scale of Rs. 5000-8000 and name of the applicant appears at Sl.No.95 whereas name of respondent No.3 appear at Sl.No.96 in the seniority list. Both the learned counsel appearing for the official as well as private respondents have raised the issue that as per para 219 (G) of the Indian Railway Establishment Manual (IREM) Vol.I a candidate has to secure 60% marks whereas the applicant has not secured aggregate 60% marks in the selection. Hence the applicant has not been kept in the panel for the promotion to the post of Head TTE. The respondent No.3 has secured aggregate 60% marks, therefore, his name was included in the panel.

4. It is not disputed that the applicant secured only 55.5% aggregate marks. It is also not disputed that the candidates were awarded marks strictly in accordance with the prevalent rules considering service record, marks awarded in the written test and the seniority. As evident by Ann.A/5, which has been filed along with the OA by the applicant himself, the applicant secured 30.5



marks out of 50 marks in the written examination, 18 marks out of 30 marks in service record and 7 marks out of 20 marks in seniority and thus total 55.5 marks out of 100 marks, which are admittedly not 60% marks aggregate as required as per provisions of IREM mentioned hereinabove.

5. We have perused the original record of the selection and three years ACRs of the applicant. In all the three years the applicant has been awarded benchmark as 'Good'. The applicant has himself given a chart in para 4(ix) of the OA according to which for benchmark 'Good' only 6 marks are to be awarded whereas for 'Very Good' 8 marks and for 'Outstanding' 10 marks are to be awarded. Upon perusal of the original record, it reveals that no irregularity is committed by the respondents in awarding the marks and the applicant has not been able to demonstrate as to how he is claiming that his name be included in the panel Ann.A/1.

6. The respondents placed reliance on the judgment dated 18th March, 2009 rendered by this Tribunal in OA No.292/2008, Rakesh Shukla vs. Union of India, with regard to the similar controversy wherein this Tribunal has observed as under:-

"6. In order to sort out the controversy involved in the matter, we directed the respondents to produce the record in view of the stand taken by the respondents that the applicant has not secured 60 marks in aggregate. The respondents have produced the select panel as well as assessment sheets of the



candidates including those who have qualified the written examination but could not be empanelled. From perusal of these documents, it is clear that the Selection Committee has prepared the select panel of 8 persons only in which the name of the applicant does not find mention. Further from the assessment sheet as well as the result of the written test, it is clear that in fact 15 persons have qualified the written test and their names were arranged on the basis of their seniority in the feeder cadre rather than marks obtained in the written test. As per the result declared in terms of the written examination, the name of the applicant find mentioned at sl.No.8. From perusal of the assessment sheet, it is clear that only nine persons have obtained more than qualifying marks i.e. 60% marks whereas the applicant whose name find mentioned at sl.No.8 of the assessment sheet has not obtained requisite 60% marks. Further from the result of the assessment sheet and select panel, it is evident that although 9 persons have qualified the written examination but the panel was prepared of 8 persons as per vacancies notified. Even one person, who has qualified the written examination, and whose name find mentioned at sl.No.9 of the assessment sheet has not been included in the panel because of the vacancy position as notified vide notification dated 13.02.2007 (Annexure A/3).

7. Thus in view of what has been stated above, we are of the view that even if it is admitted that vacancies were not correctly determined vide notification dated 13.02.2007 and in fact 9 vacancies should have been notified instead of 8 vacancies, even then, the applicant is not entitled to the relief on the ground that applicant has not obtained requisite 60% marks in aggregate and in that eventuality it was person at sl.No.9 i.e. Shri V.K.Agnihotri whose name ought to have been



included in the panel who has qualified the selection by obtaining more than 60% marks instead of applicant. Thus it is Shri V.K.Agnohotri, who may have some grievance regarding non inclusion of his name in the select panel on account of non determination of vacancies correctly vide notification 13.2.2007 (Annexure A/3). Admittedly, the applicant who has not qualified the examination could not have been empanelled, even if vacancies position is taken as 9 instead of 8."

7. Having considered the judgment relied upon by the applicant and the respondents, in our considered view, the judgments relied upon by the applicant are not applicable to the facts and circumstances of the present case as the judgment relied by the applicant pertain to the selections which are made absolutely on the basis of ~~benchmark~~ whereas in the present case the benchmark is not the sole criteria of selection but the criteria is the marks awarded for written test, service record and seniority. Therefore, the ratio decided by the Hon'ble Supreme Court in the case of Abhijit Ghosh Dastidar and by the Principal Bench in Shri Krishna Mohan Dixit (supra) is not applicable in the facts and circumstances of the present case and the judgment relied upon by the respondents in the case of Rakesh Shukla (supra) squarely covers the controversy.

8. Having considered the judgment relied upon by the parties and upon careful perusal of the material available on record as well as the original record and the ACRs of the applicant, we find no



illegality in the order impugned dated 02.07.2008 (An.A/1) which requires no interference by this Tribunal. Consequently, the OA being devoid of merit fails and is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K. S. Rathore
(JUSTICE K.S.RATHORE)
Jdil. Member

R/