

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3247/2017

Reserved on : 07.03.2018.

Pronounced on :

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Ms. Praveen Mahajan, Member (A)**

Mrs. Bandana Kumari, 32 years
W/o Sh. Pramod Kumar,
R/o B-1/42, 11nd Floor,
Janak Puri, New Delhi. Applicant

(through Sh. U. Srivastava, Advocate)

Versus

1. Delhi Metro Rail Corporation Ltd. Through
Its Secretary (H&UA) & Chairman,
Nirman Bhawan, New Delhi.

2. The Sr. Dy. GM (HR),
Delhi Metro Rail Corporation Ltd.
Metro Bhawan, Fire Brigade Lane,
Barakhamba Road,
New Delhi. Respondents

(through Sh. R.N. Singh, Advocate)

O R D E R

Ms. Praveen Mahajan, Member (A)

The current O.A. has been filed by the applicant, primarily,
seeking primarily the following relief:-

"(i) Quash and setting aside the impugned selection process held by
the respondents on dt. 29.07.17 for formation of panel for the post of

SC/TO through Limited Departmental Selection from Non Supervisory category to Supervisor category in terms of notice dt. 30.12.16 (**Annexure A/1**) to the extent modified by the respondents vide their office order dt. 28.07.17 (**Annexure A/2**) thereby the scheme of marks allocation notified earlier in the original notice/advertisement has totally been changed after deciding the same is as illegal, unjust, arbitrary, malafide, unconstitutional, against the principles of natural justice, violative of articles 14, 16 & 21 of the constitution of India and against the mandatory provisions of law and thereafter.

(ii) Directing the respondents to conduct the LDS for formation the panel for the post of SC/TO in accordance with the relevant rules and instructions on the subject more particularly in terms of notice dt. 30.12.16."

2. Briefly stated, the facts of the case are that the applicant was working with the respondents as Customer Relation Assistant since 25.10.2013. On 30.12.2016, the respondents published Notice for filling up the posts of SC/TO through Limited Departmental Selection (LDS) from Non Supervisory category to Supervisory category. The last date of receipt of application was 25.01.2017, which was subsequently extended to 15.02.2017 and again extended to 26.05.2017 vide different notices. In the advertisement, the subjects for examination and marks allotted for each component of selection were notified.

3. On 11.07.2017, a notice was issued by the respondents notifying the provisional list of candidates. It was informed that vide the revised selection process, it has been decided by the Competent Authority that interview will not be held for LDS-2017 and the revised selection process would be as follows:-

(i) Written Examination (paper-I and paper-II)

(ii) Service Record (ACR/APAR)

(iii) Psycho Tech of ASC/Sr. CRA for selection to the post of SC/TO, who have not undergone psycho test at the time of appointment. There will be no psycho test for CRAs as they have already qualified the same at the time of their appointments[applicable for SC/TO post only].

4. The applicant states that as per the Instructions issued by the respondents she had been preparing for the exam which was scheduled for 29.07.2017. However, in the meantime vide Office Order No. 366/2017 dated 28.07.2017 (Annexure A/2), the respondents modified the marks allotted for each component of selection. Earlier the selection process had the requirement of candidate interview after the written exam. As per the aforementioned Office Order, the same was done away with and a new concept of giving weightage to seniority of 10 marks was introduced by the respondents. Such change in the selection process, issued 24 hrs. before the exam, adversely affected the candidates, who were not mentally prepared for the same. Hence, the same is bad in law.

5. The applicant participated in the written exam on 29.07.2017, however, her name was not included in the merit list. Rather, the candidates who secured much less marks in the written exam were shown higher in the merit list. She filed a detailed representation to the respondents through email on 08.09.2017 highlighting her grievances. The applicant contends that since the change in the process of selection of LDS 2017 held on 29.07.2017 came just a day before the written exam, the same is perverse and against the mandatory provisions of law.

6. The applicant has relied upon the decision of Hon'ble Supreme Court in the case of **K. Manjusree Vs. State of Andhara Pradesh & Anr.**, (2008)1SCC(L&S)841 in which it was held that selection criteria has to be prescribed in advance, and that the rules of the game cannot be changed subsequently. The applicant has also relied upon the law laid down by Hon'ble Supreme Court in the case of **Himani Malhotra Vs. High Court of Delhi**, 2008(7)SCC 11.

7. In the counter, the respondents have taken a preliminary objection that applicant has not impleaded anyone as a party, who is likely to get affected by the outcome of the OA. They submit that the applicant has participated in the exam knowing fully well about the changes brought about in the selection process. She cannot

now challenge the same in view of the law laid down by the Hon'ble Supreme Court and the Hon'ble High Court in the following cases:-

- (i) **Ranjan Kumar & Ors. Vs. State of Bihar & Ors.**, (2014)16 SCC 187.
- (ii) **Chandra Prakash Tiwari & Ors. Vs. Shakuntala Shukla & Ors.**, 2002 (6) SCC 127.
- (iii) **S. Prabhakar Rao Vs. UOI & Ors.**, 2007(94)DRJ 23.

7.1 The respondents contend that the marking pattern was originally notified vide their Notice dated 30.12.2016 but was later modified vide Office Order No. 366/2017 dated 28.07.2017 in accordance with the settlement arrived at with the Staff Council, an elected body of all employees of DMRC. The change in the selection process was uploaded on internet of DMRC followed by an Office Order No. 366/2017 dated 28.07.2017 before actual conduct of the exam. The respondents aver that the dates for exam were extended from time to time as the Staff Council had brought many issues for consideration, which were considered by a Committee of three DGMs of different disciplines and their findings were placed before the management for final decision. The management's objections were also deliberated and discussed with the Staff Council. The entire process took some time, resulting in extension of dates on two-three occasions.

7.2 The respondents further contend that Notice No. DMRC/HR/O&M/LDS Vol-II/48 dated 11.07.2017 was issued and uploaded on internet wherein the marking pattern as per discussion with the Staff Council was mentioned and the revised selection process notified. Based on further representations of Staff Council and several rounds of meetings, it was again decided by the competent authority to do away with the interview after written examination, APAR grading, and psycho test. Finally, the Staff Council's request for change of marking pattern was accepted as 70% for written marks, 20% marks for APAR and 10% marks for seniority, & the interview was done away with. There was nothing illegal in this modification of selection process, which was based on demand of the Staff Council by way of a transparent process of mutual agreement.

8. During the course of hearing, learned counsel for the applicant Sh. U. Srivastava vociferously argued that though it is a right of the respondents to prescribe the recruitment process, eligibility of the candidates, minimum qualifying marks etc. but all these parameters must be prescribed in advance. Informing the candidates about a change in selection process merely twenty four hours before the exam is not only arbitrary but also illegal. More so, since the candidates had proceeded to prepare for the exam on the basis of

the earlier parameters, when interview carried 10% weightage instead of seniority. He alleged that this change was unfair and had been brought about to benefit the selected few. He argued that the change in method and manner of selection of the respondents, just one day prior to the date of exam was contrary to the principle laid down by the Hon'ble Supreme Court in the case of **K. Manjusree** (supra), and had caused great prejudice to the applicant.

8.1 Learned counsel for the respondents Sh. R.N. Singh succinctly argued that the applicant was well aware about the Scheme of the exam and the proposed changes in the selection process before she participated in the same. He contended that Hon'ble Supreme Court in the case of **Ranjan Kumar and Ors. Vs. State of Bihar and Ors.**, (2014)16 SCC 187 has held that no adverse order can be passed against persons who were not made parties to the litigation. Since the applicant has not impleaded the other persons who might get affected by the outcome of the O.A., this itself raises a question mark about the maintainability of the O.A.

8.2 Taking the Bench through the facts of the case, the learned counsel emphasized that having participated in the selection process the applicant is stopped from challenging its fairness as held by Hon'ble High Court of Delhi in the case of **S. Prabhakar Rao Vs. UOI & Ors.**, 2007(94)DRJ 23. The applicant has come to the Court

after the result was declared and merely because she found herself to be unsuccessful and did not achieve the required merit list, she cannot be allowed to challenge the entire selection process. Taking support from the decision of the Apex Court in the case of **Chandra Prakash Tiwari & Ors. Vs. Shakuntala Shukla & Ors.**, (2002)6 SCC 12, learned counsel submitted that the law is well established that in the event a candidate appears in the interview, only because the result of the interview is not "palatable" to her, she cannot turn round and allege that the process of interview was unfair or there was some lacuna in the selection process.

9. We have gone through the facts of the case, considered the rival contentions and the citations relied upon by both sides. In our opinion, the only condition, mandatory for the respondents before changing the norms for selection was that the same had to be notified prior to the date of the examination, when the selection commenced. A perusal of the documents on record show that Office Order dated 28.07.2017 modified the earlier Notice specifying the parameters for selection. This was issued before the exam which took place on 29.07.2017. It is also clear that the said change was pursuance to the settlement reached between the respondents and the Staff Council, which is an elected body of all the employees of DMRC. Minutes of the meeting and the discussions held on 22nd & 23rd July, 2017 are available on record. Amongst other issues, the

decision regarding change in norms of selection is also recorded at Serial No. 7 (page-55), stating that:-

"The proposed LDS exam for promotion to supervisor categories, shall compose of 70% written marks, 20% for APAR and 10% for seniority. It will be subsequently reviewed to provide opportunities for senior employees, in consultation with Staff Council."

As MOM signed with Staff Council bearing No. DMRC/HR/Staff Council/2017 Dated: 23.07.2017 and further note No. DMRC/HR/Staff Council/2017 Dated: 27.07.2017, revised scheme of marks allocation for each component of Selection would be as under:

Component of Selection	Maximum Marks	Qualifying Marks for General Candidates for unreserved posts	Qualifying Marks for SC/ST Candidates for reserved posts.
a) Written Examination-	70	42	35
b) Interview		Done away with	
c) APAR	20	12	10
d) Seniority	10	As per seniority	As per seniority
TOTAL	100	60	50

10. These facts are not disputed by the applicant. The persistent refrain of the learned counsel for the applicant is that even though the selection process was changed by the aforesaid order on 28.07.2017 but since the change was made barely 24 hrs. ahead of the exam, hence the selection process stood vitiated. This plea of the applicant is very not convincing. The fact remains that the

meeting of the Staff Council took place on 23rd July, 2017 i.e. almost a week before the date of the exam. It is difficult to believe that the decisions arrived at during this meeting would not have reached the prospective candidates (i.e. between 23.07.2017 to 28.07.2017). Be that as it may, the fact still remains that the order clarifying the revised mark allocation was issued prior to holding of the exam. The change in criteria of doing away with the interview and giving 10% weightage for seniority was introduced by the respondents prior to the commencement of the selection process and not subsequently. Undoubtedly, it is the prerogative of the administrative department to decide (even better if it is done in consultation with the stakeholders as is the case here) what is in the best interest of its employees.

11. It is incorrect to say that the respondents modified the marks pattern arbitrarily. On the contrary, the change in selection process was a result of prolonged deliberations held between the Staff Council and the Management. In the larger interest of the employees, the respondents apparently thought it fit to give weightage to seniority, over interview. The ratio of the decision of the Apex Court in the case of **K. Manjushree** (supra) is not attracted in the instant case. The mandatory requirement specified therein is that “Rule of game cannot be changed afterwards and the change in

criteria has to be prescribed in advance." This condition was followed by the respondents.

12. In view of the aforesaid discussions, we find no reason to interfere with the impugned order issued by the respondents. The O.A. is accordingly dismissed being devoid of merit. No costs.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member(J)

/vinita/