

Central Administrative Tribunal  
Principal Bench

OA No. 3873/2012

Order Reserved on: 03.12.2015  
Order Pronounced on: 21.12.2015

**Hon'ble Mr. A.K. Bhardwaj, Member (J)**  
**Hon'ble Dr. B.K. Sinha, Member (A)**

Anil Kumar Mahato  
S/o Ram Prasad Mahato  
R/o K-518, Street No.12,  
Som Bazar Road,  
Raja Puri, Uttam Nagar,  
New Delhi-110059

-Applicant

(Applicant in person)

VERSUS

1. Through Managing Director,  
Delhi Metro Rail Corporation Ltd.  
13, Metro Bhavan, Fire Brigade,  
Lane, Barakhamba Road,  
New Delhi-110001
2. Vikas Kumar,  
General Manager-Operations,  
Delhi Metro Rail Corporation Ltd.  
13, Metro Bhavan, Fire Brigade,  
Lane, Barakhamba Road,  
New Delhi-110001
3. Karan Singh,  
ED (HR)  
Delhi Metro Rail Corporation Ltd.  
13, Metro Bhavan, Fire Brigade,  
Lane, Barakhamba Road,  
New Delhi-110001
4. Digambar Singh Tomar,  
Employee Code 6859  
Delhi Metro Rail Corporation Ltd.  
13, Metro Bhavan, Fire Brigade,  
Lane, Barakhamba Road,  
New Delhi-110001

-Respondents

(By Advocates: Shri R.N. Singh for respondent nos. 1 to 3  
Shri H.D. Sharma for respondent no.4)

## ORDER

**Dr. B.K. Sinha, Member (A):**

The applicant, in the instant OA, is aggrieved with the action of the respondent nos. 1 to 3 in not selecting him for the post of Assistant Manager (Operation) in the ST category by intentionally giving him low marks, i.e., 26.6% marks in the oral interview in LDS 2012 despite having scored high marks, i.e., 66% in the written paper.

2. The applicant has prayed for the following reliefs:-

- (a) To quash the Speaking order dated 05.11.2012 passed by the Managing Director of DMRC.
- (b) To quash the result dated 07.06.2012 for the post of Asstt. Manager Operation in ST category.
- (c) To quash the appointment of the Respondent No.4 for the post of Asstt. Manager operation in ST category.
- (d) To order the appointment of applicant after calling the records of exam including the marks in written, marks of seniority, marks of higher qualification, marks of ACR and original ACR etc. of candidates in ST category and declare the applicant fit and suitable for the post of Asst. Manager operation in ST category with all the prior monetary and service benefits, and arrears.
- (e) To order to make a suitable panel for the appointment of Asst. Manager Operation in ST category.
- (f) To allow OA with cost.
- (g) To pass such other and further orders which their lordships of this Hon<sup>ble</sup> Tribunal deem fit and proper in the existing facts and circumstances of the case.+

3. During the course of the arguments, the learned counsel for the applicant submitted that the applicant has been working

as SC/TO in the DMRC since 2005. He appeared for the post of Assistant Manager (Operation) in response to an advertisement issued for Limited Departmental Competitive Examination (LDCE, for short) and was not declared successful.

4. The applicant learnt subsequently from the RTI inquiry that he had scored very high marks in Paper-1 and Paper-2. In Paper-1, he had scored 28.5 out of 40 marks, i.e., 71.25% and in Paper-2, 9.75 marks out of 20 marks, i.e., 48.75%. He had scored 38.25 out of 60 i.e. 63.75% in total of Paper-1 and Paper-2. Further, the applicant had also scored full marks in qualification and ACR was relatively very good i.e. 13 out of 15. The applicant was not provided the marks of respondent no.4, who is the junior most in the ST category and should have been awarded zero marks out of five marks in the seniority as per the formula that the senior most candidate is allotted five marks and the junior most gets zero marks.

5. The applicant had challenged the selection process vide OA No. 2675/2012. Thus, it is an admitted position that the issue of the applicant's seniority qua the private respondent no. 4 is subject of litigation in a separate OA before the Tribunal. The applicant feels that he has been discriminated against on account of deep-rooted bias. This Tribunal, in OA No. 2675/2012, had directed the respondents to examine his representation and pass a reasoned order. The respondents,

vide the speaking order dated 05.11.2012, had rejected the plea of the applicant. The applicant has now challenged the reasoned order. For the better understanding, we reproduce the Chart showing the marks obtained by the applicant received by him under Right to Information Act, which reads as under:-

Name of Candidate	Employee No.	Marks obtained in paper-I	Marks obtained in Paper-II	Marks obtained in interview	Marks obtained in qualification	Marks obtained in seniority	Marks obtained in ACF
Anil Kumar Mahto	6750	28.5	9.75	04	05	1.15	13

6. It is the case of the applicant that he has no grievance insofar as written part is concerned as having scored 63% marks, but his grievance is regarding the marks allotted in interview i.e. 4 out of 15 marks, whereas others in the ST category have been awarded more marks in the interview irrespective of lesser marks obtained by them in the written part. Therefore, the applicant submits that he has been meted with bias attitude while awarding marks in the interview that too when one of the members of the Interview Board was absent/left the room.

7. Per Contra, the respondent no.1 has filed the additional affidavit wherein it is stated that the practice of awarding marks on combined seniority basis is being followed in several other organizations and constitutes a general practice. There is no precedent of segregating the candidates in different blocks based on their caste or religion for awarding the marks

towards their seniority in the feeder/relevant post. Further, it is for the competent authority or recruiting/selecting agency to design the mode of selection. The process of selection in the instant case is not contrary to any rule, binding instructions and the same has been applied to all candidates across the board. The respondents have further contended that when a high level committee has considered respective merits of the candidates assessed for promotion, it is for the Committee to select what norms they would apply and the courts are debarred from interfering with the same. For this, the respondents have relied upon the following judgments of the Honble Supreme Court:-

- (i) **UPSC Vs. HL Dev & Ors.** AIR 1988 SC 1069;
- (ii) **Dalpat Apasaheb Solanki Vs. B.S. Mahajan,** AIR 1990 SC 434;
- (iii) **Dr. Rajana Aggarwal Vs. UOI & Ors.** JT 1996(1) SC 462;
- (iv) **Nutan Arvind Vs. UOI & Anr,** 1996(2) SCC 488; and
- (v) **Anil Katiyar Vs. UOI & Ors.** 1997(1) SLR 153

8. The private respondent no.4 has also filed reply stating that the speaking order dated 05.11.2012 had been passed at the highest level by the Managing Director DMRC and is not open to any challenge in **Kranti Associates'** case 2010(8) SCC 496. All organizations of this kind follow the similar practice. The meet of the argument of the private respondent no.4 is that having once participated in the selection process,

the applicant cannot plead infirmity in the process. In this regard, the respondent no.4 has relied upon the decision of the Tribunal in the case of OA No. 1936/2012 passed on 05.10.2012, which has been confirmed by the Hon<sup>ble</sup> Delhi High Court in WP(C) No. 7281/2012 by an order dated 30.05.2012. He has further relied upon the decided case of the Hon<sup>ble</sup> Supreme Court in **Union of India & Ors. Vs. Vinodh Kumar & Ors.**, 2007(8) SCC 100.

9. We have carefully considered the pleadings and other documents submitted by the applicant as also by the respondents and have listened to the arguments of their respective counsels and on the basis of which the following issue is germane to a decision in this case:-

***Whether it is within the competence of this Tribunal to step into the shoes of the interview board and re-assess the applicant on the basis of his averments and whether such a process is feasible at all?***

10. It is undisputed that the post of Junior Executive in the grade of Rs. 20600-46500/- is a selected post to be filled up by the LDCE for which the advertisement had been issued. It has been stated by the respondent nos. 1 to 3 in the counter affidavit that the minimum qualifying marks for interview for general candidates is 60% in the written examination and 50% in case of SC/ST candidates against reserved

vacancies. In assigning marks of seniority, the senior most candidate was allotted 5 marks and the junior most zero marks. The marks of intermediate candidates were assigned in descending order of seniority proportionately. It is a case of the respondents that it was not possible to have a separate classification for SC/ST candidates. This has also been asserted in the speaking order, which has been extracted as under:-

2. The marks of seniority:

The marks of seniority were allotted on the scale of 5 to 0 in descending order of their position in the integrated seniority list of all candidates. The contention of Shri A.K. Mahato to allot marks of seniority community wise is untenable as such a system of awarding marks of seniority within the community is not adopted anywhere in Government. The Indian Railways also follow similar place of awarding marks on a combined seniority basis to all candidates irrespective of their community status. I do not find any infirmity on this count.+

We have, thus, no reason to question the same. We also take note of the fact that the applicant has been awarded full five marks under qualification head, while the private respondent no.4 has only been awarded four marks. The third ST candidate has also been given five marks, as he was B.Tec and MBA. We find that the respondents have followed a uniform practice of awarding four marks for Graduate and five marks for Post Graduate. Thus, we agree with the speaking order that there appears to be no ambiguity in awarding the marks of seniority.

11. We further find that the competent authority has considered the issue of bias and found that one of the members of the Selection Committee had gone out of the interview hall to attend the telephone call and joined back soon after within a couple of minutes. The selection is done by a committee of four senior officers, including one from SC/ST community and the awarding of marks is done by all the committee members unanimously. The selection to the post of Asstt. Manager (Operation) is an out of turn promotion for the candidates and not their regular promotion and considering the standing of DMRC, the selection committee tries to select only the best candidate for the job. It is pertinent to mention that once an employee is selected for the said post, he can rise up to HOD level in DMRC. The Screening Committee, while interviewing for the post of Asstt. Manager adjudges the candidate on the following attributes:-

1. Leadership qualifies and initiatives
2. Truthfulness
3. Confidence level
4. Communication skills
5. Knowledge of his area as well as general awareness.

The competent authority did not find any reason to differ with the marks awarded by the selection committee. The competent authority has also rejected the allegation that GM (Operation) being junior to the evaluating office of written



answer scripts, i.e., CGM/RS, as both the posts of GM and CGM in DMRC are of the same working level. The senior most GM(s) are designated as CGM and a special allowance is paid to them. Otherwise there is no difference between their powers and responsibilities.

12. In the case of **Nutan Arvind Vs. UOI & Another** (supra), the Hon'ble Supreme Court has held as under:-

¶ The DPC which is a high level committee, considered the merits of the respective candidates and the appellant, though considered, was not promoted. It is contended by learned counsel for the appellant that one K.S. Rao was the officer at the relevant time to review the performance of the appellant whereas in fact one Menon had reviewed it. The latter was not competent to review the performance of the appellant and to write the confidentials. We are afraid we cannot go into that question. It is for the DPC to consider at the time when the assessments of the respective candidates is made. When a high level committee had considered the respective merits of the candidates assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority. The DPC would come to its own conclusion on the basis of review by an officer and whether he is or is not competent to write the confidentials is for them to decide and call for report from the proper officer. It had done that exercise and found the appellant not fit for promotion. Thus we do not find any manifest error of law for interference.

13. Further, we find that this Tribunal in OA No. 1936/212 decided on 05.10.2012 has held as under:-

¶ .Though the applicant secured more marks in the written examination, he could not get sufficient marks in the interview to enable him to secure the top position in the merit list. However, another candidate Shri Pushpendra Pratap Singh Sengar has secured more marks in the overall merit. When a post is advertised for direct recruitment by open competition, it is only the most meritorious candidate who would be selected and

appointed. The applicant has also not substantiated his argument that, being a surplus employee, he should have been given preference over others in the matter of selection. Moreover, if the applicant had any such objection, he should have challenged the advertisement itself. A candidate cannot challenge the selection procedure after he has participated in it and found not selected.+

The view of the Tribunal has been confirmed by the Hon<sup>ble</sup> High Court of Delhi in WP(C) No. 7281/2012 where the Hon<sup>ble</sup> High Court, while putting their seal of approval upon the decision of the Tribunal, had noted as under:-

%5. Though the petitioner has not said so, what he intends to plead is that manipulation has been done at the interview level. We cannot adjudicate upon the said aspect of the matter because by the very nature, the interviews are oral.+

14. Further we have taken note of the argument that once the candidate has taken part in the selection process, he is not entitled to question the procedures involved. The applicant being responsible office was expected to understand the implications of the process and to go in for the examination with his eyes open. Having once participated in the selection process, its procedure cannot be questioned. This is supported by the decision of the Hon<sup>ble</sup> Supreme Court in **Union of India & Ors. Vs. Vinodh Kumar & Ors.** (supra). In this regard, for the sake of clarity, we extract paras 18 and 19 of the decision:-

%8. It is also well-settled that those candidates who had taken part in the selection process knowing fully well the

procedure laid down therein were not entitled to question the same. [See *Munindra Kumar and Others v. Rajiv Govil and Others* - AIR 1991 SC 1607]. [See also *Rashmi Mishra v. Madhya Pradesh Public Service Commission and Others* \_ 2006 (11) SCALE 5]

19. In *Chandra Prakash Tiwari and Others v. Shakuntala Shukla and Others* [(2002) 6 SCC 127], it was held :

"32. In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status - the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr. Dhawan pertaining the doctrine of Estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It is a remedy which stands barred and it is in this perspective in *Om Prakash Shukla (Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors.* , a three Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise."

It was further observed :

"34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."

15. We have also considered the argument of malafide leveled against one of the members of the interview board,

who had left the room to attend the telephone call. We find that the concerned member has not been impleaded as a party, though the allegation of malafide has been brought against him. It would have been appropriate that he should have been impleaded as a party and given an opportunity to answer for himself. The issue of malafide has been dealt with comprehensively by this Tribunal in a number of OAs, i.e. OA No. 2808/2012, OA No. 4458/2013 and OA No. 1973/2014 where it has been held that a person against whom allegations of malafide have been made, should have an opportunity of being heard. Hence, the argument does not hold good.

16. In conclusion, we find that it is a fact that the applicant has scored high marks in written examination as compared to interview. However, these two processes are different and their objective is also different. In the interview, the objective is to test quality like leadership qualities & initiatives, truthfulness, confidence level, communication and knowledge of his area as well as general awareness. The system designed by the respondent organization is that there are four members, including SC/ST representative and marks are awarded unanimously. Hence, the question of bias is eliminated. Moreover, the Tribunal cannot step into the shoes of the interview board and re-assess the applicant on the basis of his averments. That has been ruled out totally under the orders of the Hon<sup>ble</sup> Supreme Court as cited in **UPSC Vs. HL**

**Dev & Ors., Dalpat Apasaheb Solanki Vs. B.S. Mahajan, Dr. Rajana Aggarwal Vs. UOI & Ors., Nutan Arvind Vs. UOI & Anr. and Anil Katiyar Vs. UOI & Ors.** (supra) nor this Tribunal find the allegation of malafide substantiated for want of impleadment and proof led to that direction. Hence, we find no merit in the Original Application and the same is dismissed with no order as to costs.

**(Dr. B.K. Sinha)**  
**Member (A)**

**(A.K. Bhardwaj)**  
**Member (J)**

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