

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.850/2015
MA No.803/2015

Reserved on: 13.11.2018
Pronounced on: 16 .11.2018

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)

1. Kishan Pal Singh, Aged about 49 years,
S/o Sh. Udai Singh,
R/o 51, Railway Dispensary, Kishan Ganj,
Delhi – 110 007.
2. Nand Kishore, Aged about 55 years,
S/o Sh. Ram Prasad,
R/o L-15/B, Loco Shed, Kishan Ganj,
Delhi – 110 007.
3. Rajender Prasad, Aged about 48 years,
S/o Sh. Rang Lal Sharma,
R/o 300/12, Railway Colony, Shakur Basti,
Delhi – 110 034.
4. Sanjay Kumar Yadav, Aged about 39 years,
S/o Sh. Ganga Prasad Yadav,
R/o M-11, Railway Colony, Lal Bagh,
Shahdara, Delhi – 110 032.
5. Sanjeev Kumar Prasad, Aged about 39 years,
S/o Sh. Dasai Prasad,
R/o H.No.422, Pkt.13, Sec.A6,
Narela, Delhi – 110 040.
6. Surender Singh
S/o Sh. Bhajan Singh,
R/o 111/15, Railway Colony, Kishan Ganj,
Delhi – 110 007.
7. Bachhi Ram, Aged about 48 years,
S/o Sh. Devi Dutt,
R/o 33A/3, Railway Colony, Daya Basti,
Dehi.Applicants
(All applicants are working as Senior Hospital Attendant)

(By Advocate: Sh. M.K. Bhardwaj)

Versus

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, State Entry Road,
New Delhi.
3. The Chief Medical Director,
Northern Railway, Baroda House,
New Delhi.
4. The Senior Divisional Personnel Officer,
DRM Office, Northern Railway,
New Delhi.
5. The Chief Medical Superintendent,
Divisional Hospital, S.P. Mukherjee Marg,
Delhi-110 006.
6. Karan Singh s/o Sh. Ram Nath,
7. Ajay Kumar Pal s/o Sh. Ram Dayal
8. Satya Narayan Ram s/o Sh. Dharam Dev.
9. Kishan Kumar s/o Sh. Moti Lal
10. Ram Karan s/o Sh. Siya Ram ...Respondents
(Respondent nos. 6 to 10 are working under Respondent No.3, service
of Respondent No.6 to 10 through Respondent No.3)

(By Advocate: Shri Kirpa Shankar Prasad)

ORDER

Hon'ble Ms. Aradhana Johri, Member (A):

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For the reasons mentioned in this MA filed by the applicants for joining together, it is allowed.

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2. The applicants are Hospital Attendants in different Health Units under Divisional Railway Manager, Delhi. They appeared for the selections for the post of Dresser Grade-III/OT Assistant, but did not successfully pass the written test. The methodology of the test was written test and trade test to adjudge the professional skill/ability. Training was also to be imparted to eligible candidates for the post of OT Assistant. Since the applicants were not selected, they have filed this OA.

3. It is the contention of the applicants that at the request of the Union, the Competent Authority relaxed the stringent conditions for promotion to the post of Dresser Grade-III/OT Assistant in the Central Hospital to holding trade test and viva voce but after giving 15 days training to Group-D staff eligible for consideration. Despite this, for the vacancies in the Divisional Hospital, written test was scheduled. In 2011, in the Central Hospital the post of Dresser Grade-III/OT Assistant was filled on the basis of seniority-cum-fitness. The applicants have contended that being the senior-most, they should have been considered for promotion to the post of Dresser Grade-III/OT Assistant. Further, even the request of 15 days training and making selection by trade test and viva voce was not

considered. They have also stated that as per their performance in the written test, they should have been declared as qualified. Hence, they have sought the following reliefs:-

- “(i) To declare the action of respondents in not making promotion to the post of Dresser Grade-III/OT Assistant in Divisional Hospital as per the seniority as done in Central Hospital in 2011 as illegal, arbitrary and direct the respondents to consider the applicants for promotion to the post of Dresser Grade-III/OT Assistant as per seniority and pass necessary orders of promotion to the aforesaid post from due date.*
- (ii) To quash and set aside the final select list dated 12-15.01.2015 (A-1) and direct the respondents to get the answer sheets of applicants and selected candidates checked by independent authority/Central Govt. Hospitals, if required on declining the relief No.1.*
- (iii) To allow the OA with exemplary costs on the respondents.*
- (iv) Any other or further relief which the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”*

3. The respondents have contested the claim of the applicants. They have stated that as per Instructions contained in GM/P L.No. 831-E/MED/IV/PC/EIIBII/L dated 06/2002, it was decided that candidates of all categories eligible for promotion to the post of Dresser Grade-III/OT Assistant would continue to be eligible for consideration by selection. This was a selection post and, as such, any of the following methods could be followed to fill up the post

1. *Written Test & Viva Voce.*

2. *Trade Test (Professional ability) and viva voce*
3. *Viva voce only.*

The mode of selection of above three could be decided by MD/NR/CH NDLS depending upon the background of the persons. Accordingly, in pursuance of the Instructions, referred to above, it was decided that viva voce was not prescribed as a condition and written test and trade test to adjudge the professional skill and ability was to be held. It was also decided that 15 days training should be given to all eligible candidates. Accordingly, 15 days training was given to all eligible candidates in two groups of 15 candidates each at Divisional Hospital, Delhi and vide letter dated 02.07.2014 (Annexure R-3), circular of training, names of candidates called for training and the training schedule have been submitted by the respondents. The respondents have gone on to say that the applicants did not qualify the written test, and having appeared in the test, they cannot question its validity after failing therein. They have also cited various rulings to this effect. The respondents have further added that selections have already been done as per the prescribed criteria and therefore the applicants' claim deserves to be dismissed.

4. Heard Sh. M.K. Bhardwaj, learned counsel for the applicant and Sh. Kirpa Shankar Prasad, learned counsel for the respondents.

5. On a perusal of the General Manager, Northern Railway letter No.961-E/004/EHBH dated 21.02.2008 (Annexure R-2) written to Medical Director, Northern Railway, Central Hospital, New Delhi, it is clear that viva voce is not prescribed for the candidates for selection to the post of Dresser Grade-III/OT Assistant, and as such, the written test and trade test to adjudge the professional skill/ability is to be held. It has also been clarified in this letter that MD/NH/CH/NDLS has to decide the method of trade test and written test depending upon the background of the persons etc. As contended by the respondents, it is also apparent that method of selection can be decided by MD/NR/CH/NDLS and accordingly all eligible candidates were given equal opportunity in the said selection process.

6. Further, the applicants participated in the process but did not qualify the written exam. The relevant portion of respondents contention in the reply is reproduced hereunder:-

*“Having appeared in a test, one cannot question its validity after failing in the test or finding himself unlikely to pass. There is no estoppel against challenging the rules of examination even after appearing the test. **Om Parkash vs. Akhilesh Kumar [AIR 1986 (SC) 1043].***

*In the case of **Ramesh Chandra Shah & Ors. vs. Anil Joshi & Ors. [2013 (2) AISLJ (SC) 377]** the Hon’ble Supreme Court **after considering the case of Manak Lal vs. Dr. Prem Chand [AIR 1957 (SC) 425]; Dr. G. Sarna vs. University of Lucknow [1976 (3) SCC 585]; Om Parkash Shukla vs. Akhilesh Kumar Shukla [AIR 1986 (SC) 1043]; Madan Lal vs. State***

of J & K [1995 (3) SCC 486]; Manish Kumar Shahi vs. State of Bihar [2010 (12) SCC 576] and Vijender Kumar Verma vs. Public Service Commission, Uttarakhand & Ors. [2011 (1) SCC 150] has held as under:-

“By having taken part in the process of selection with full knowledge that the recruitment was being made under General Rules, the respondents had waived their right to question the advertisement or methodology adopted by the Board for making selection and the Ld. Single Judge and Division Bench of High Court committed grave error by entertaining the grievance made by the respondents.”

7. The ratio laid down by the Supreme Court is that having appeared in a test, one cannot question its validity after failing in the test and finding himself unlikely to pass.

8. From a perusal of the record, it is clear that trainings were held for all eligible candidates and all eligible candidates were given equal opportunity to upgrade their skills.

9. In view of the above discussion, we are of the view that due opportunity was given to all eligible candidates in the selection for the post of Dresser Grade-III/OT Assistant. The applicants have not been able to prove any bias or defects in the entire process of selection. Admittedly, the applicants participated in the process and were unsuccessful and, therefore, they cannot now challenge the process itself.

10. The OA is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(V. Ajay Kumar)
Member (J)

/Naresh/