

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

**Original Application No.021/486/2018
with OA Nos.021/0277/2018 & 021/0431/2018**

Date of CAV: 17.09.2018

Date of Pronouncement: 18.09.2018

OA No. 486 of 2018

Between:

C. Amruthaiah, S/o. C. Narasimha, aged 58 years,
Occ: Senior Section Engineer (Works) (Group C),
O/o. The Principal Chief Engineer,
South Central Railway, Rail Nilayam, Secunderabad.

... Applicant

And

1. The Union of India, Rep. by the Chairman,
Railway Board, Ministry of Railways, Rail Bhavan,
New Delhi – 110 010.
2. The General Manager, South Central Railway,
Rail Nilayam, Secunderabad.
3. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
4. The Principal Chief Engineer,
South Central Railway,
Rail Nilayam, Secunderabad.

... Respondents

Counsel for the Applicant ... Mr.K.R.K.V. Prasad, Advocate

Counsel for the Respondents ... Mr. S.M. Patnaik, SC for Railways

OA No. 277 of 2018

Between:

M. Praveen Kumar, S/o. M. Krishna Murthy,
Aged about 48 years, Occ: SSE/P.Way/PAU,
South Central Railway, Purna, Nanded Division.

... Applicant

And

1. The Union of India,
Represented by General Manager,
South Central Railway,
Rail Nilayam, III Floor, Secunderabad – 500 071.

2. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad-500071.

... Respondents

Counsel for the Applicant	...	Mr.K. Sudhakar Reddy, Advocate
Counsel for the Respondents	...	Mr.N. Srinatha Rao, SC for Railways

OA No.431 of 2018

Between:

1. P. Lakshmi, W/o. P. Chandraprakash,
Aged about 56 years, Occ: SSE, DRM(W)/SC's Office,
South Central Railway.
2. A. Kannan, S/o. T.S. Arumugam,
Aged about 54 years, Occ: SSE/P.Way/TMS/HQ PEC/OC/SC,
South Central Railway.
3. S. Anantha Rao, S/o. Gangaram,
Aged about 54 years,
Occ: SSE/Drg, O/o. Chief Admn Office (Construction),
South Central Railway.
4. P. Pratap, S/o. Brahmanandam,
Aged about 53 years, Occ: SSE/Works/MLY,
South Central Railway, Secunderabad Division.
5. J. Rama Naik, S/o. Laxma Naik,
Aged about 52 years, Occ: SSE/P.Way/BMO,
South Central Railway, Hyderabad Division.
6. T.M. Sathyabama, W/o. L. Karunakar,
Aged about 56 years, Occ: SSE/ PCE's Office,
South Central Railway.
7. K. Srinivasa Rao, S/o. Purnananda,
Aged about 48 years, Occ: SSE/P. Way,
South Central Railway, Secunderabad Division.
8. A.B. Prasad, S/o. A.V. Krishna Rao,
Aged about 55 years, Occ: SSE/PCE/OL/Office,
South Central Railway.
9. KDRK Varma, S/o. Subbaraju,
Aged about 56 years, Occ: SSE/Dy CE/C/I/SC,
South Central Railway.

10. S. Chandrahas, S/o. Ramaiah,
Aged about 57 years, Occ: SSE/PCE/OL/SC,
South Central Railway.
11. A. Rama Raju, S/o. Venkat Raju,
Aged about 58 years, Occ: SSE/CAO/Con/SC,
South Central Railway.

... Applicants

And

1. The Union of India,
Represented by General Manager,
South Central Railway,
Rail Nilayam, III Floor, Secunderabad – 500 071.
2. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad-500071.

... Respondents

Counsel for the Applicant	...	Mr. K. Sudhakar Reddy, Advocate
Counsel for the Respondents	...	Mr. S.M. Patnaik, SC for Railways

CORAM:

Hon'ble Mr. B.V. Sudhakar, Administrative Member

Hon'ble Mr. Swarup Kumar Mishra, Judicial Member

COMMON ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Administrative Member }

OA 486/2018 is filed against the Railway's refusal to cancel the written exam conducted on the strength of notification dated 26-07-2017 for drawing a panel for promotion to the Group B post of Asst. Divisional Executive Engineer the results of which were declared vide Lr. No.SCR/P-HQ/Gaz/263(a)/W3/2017/70% dated 19.1.2018 mainly on the ground that the pattern followed in the examination is in variation to that prescribed in the Railway Board guidelines for holding such examination.

2. The OA Nos. 431 & 277 of 2018 have also been filed by similar applicants seeking cancellation of the exam along with certain other pleas.

However, central theme is the cancellation of exam. Counsel for the applicants in these OAs has pleaded about the conduct of the exam and the need to annul it. Therefore, we in the Tribunal are issuing a common order combining these two OAs with the OA 486/2018.

3. The brief facts of the case are that in OA No. 738/2017, the applicant in OA 486/2018 challenged the notification dated 26.07.2017 and integrated seniority list dated 18.07.2017 based on which zone of consideration for calling the candidates for the written exam was fixed, on the grounds that juniors to the applicant were placed above him in the zone of consideration by following the policy of reservation in promotions. The Tribunal on consideration directed the respondents to allow the applicant to participate in the selection, but not to finalize the results until further orders of this Tribunal. The applicant appeared for the exam held on 12.11.2017 and the result was announced on 19.01.2018 wherein the name of the applicant does not figure. A supplementary exam was also conducted on 8.12.17 to accommodate the absentees in the main exam on 12.11.17. Incidentally, the Railway Board through its letter dt.28.11.2016 has specified that the paper setter should set the question paper with objective type questions having multiple choice questions and numbering of indicative answers for written examinations held for promotions from Group C to Group B. The question paper set for the exam held on 12.11.2017 wherein question No.1 carrying 30 marks had questions with fill in the bank questions which is a deviation from the pattern as per the Railway Board instructions. The respondents also conducted an exam for Asst. Personnel Officer (APO) Group B on 25.2.2018 on the same lines as done in the above case deviating from the stipulated pattern. The exam was, however, cancelled due to objections raised by the candidates that the paper was not set as per Railway Board instructions

since it incorporated fill in the bank questions instead of objective type questions with multiple choice answers. A fresh exam *was then* conducted for the APO on 7.4.2018 by setting the questions paper as per Railway Board instructions with objective type questions with multiple choice answers. Being aware of this development, the applicant has represented to the 2nd respondent to cancel the written exam held for ADEN selection as there too the same mistake of fill in the blank questions being asked instead of objective type questions with multiple choice answers. Despite the representations, the respondents did not act although they acted promptly in respect of the APO exam. Therefore this OA.

4. To elucidate, the contention of the applicant is that the Railway Board circular dated 28-11.2016 contains consolidated guidelines for personnel officers/ paper setters and evaluators of questions papers of written examination held as part of 70% selection/ 30% LDCE for promotion from Group C to Group B posts. As per this letter the paper setter should set “objective type questions which would include only multiple choice questions and numbering of indicative answers to these questions.” In complete variation to the above pattern, the paper set on 12.11.2017 (A-8) for promotion to the post of ADEN contains fill in the blank questions as part of the compulsory question No.1 for 30 marks. Same method was adopted in supplementary exam held on 8.12.17 as well. The exam for APO which was conducted on 25.2.18 contained fill in the blank questions (A-10) and it was cancelled vide Lr. No.SCR/P-HQ/Gaz/262(a)/Gaz/P9/70% quota/2018 dt. 15.3.2018 of the Principal Chief Personnel Officer and a fresh question paper was set on 7.4.18 where the Railway Board instructions were complied by setting objective type questions with multiple choice answers. The applicants contend that the Railway Board Lr. dt. 18.6.13 insists that a specific acknowledgement may be taken from the Selection Committee Members

acknowledging the fact that they have gone through the guidelines in regard to conduct of departmental selections issued from time to time and have followed them in the particular selection for which the proceedings are being drawn. Further, Railway Board lr. dated 16.10.2017 (A-6) reiterates that the Selection Committee members should be clearly instructed to follow the comprehensive policy guidelines in regard to conduct of departmental selection so as to make the selection process fair and transparent. The letter also makes it compulsory that an undertaking should be obtained indicating that the selection committee members have gone through the instructions issued. The applicant has also drawn the attention to Sl. circular No. 31/09 dated 12.3.09 which states that in case of any procedural irregularities noticed in the selection procedure, then the selection has to be cancelled. It was further clarified in the said letter that once an irregularity is noticed then all the exams related to the selection whether it is main or supplementary, etc should be cancelled. The applicant claims that despite clear instructions from the Railway Board to cancel exams where irregularities were noticed, yet the respondents are not taking action is incorrect. The applicant also states that he appeared in the exam because of the direction of this Tribunal in OA NO. 738/2017.

5. The respondents resist the OAs. It has been contended that the applicants have participated in the written exam held on 12.11.2017 and supplementary exam 8.12.17 for promotion to posts of ADEN/AEN in Civil Engineering Department but failed in the said exam. While writing the exam, the applicants had no grievance about the format of the question paper. Only after they failed in the exam, they are now raising the issue of improper setting of the question paper instead of doing so, immediately after the written examination. As per the

judgment of the Apex Court in CA No. 6549/2014, HC Pradeep Kumar Rai vs Dinesh Pandey (2015) 11 SCC 493 wherein it has been observed:-

The appellant had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. Thus, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted.

6. *Per contra*, the respondents state that the Railway Board circular dated 28.11.2016 only provides guidelines for selection for promotion to Group B posts. The paper setter is expected to assess the knowledge and set the questions based on the guidelines, instructions and his own wisdom. The respondents claim that in case of APO exam objections were raised immediately and considering the same, the exam was cancelled. In the present case the applicant represented after failing in the exam and not at the time of appearing the exam. They also point out that another applicant who is party to the OA 738/2017 has withdrawn since he passed the exam. Therefore, the respondents contend that the claim of the applicant is an afterthought to gain advantage of developments which occurred in respect of the APO exam.

7. Counsel for the parties painstakingly and proficiently presented the case, and their arguments were extensive, eloquent and intelligent. Their submissions could be congealed into a nutshell as under:-

Counsel for the applicant:

8. The counsel for the applicant has stated that the Railway Board instructions are supreme. They have to be followed, particularly in the context of selections which are very sensitive and involve the future of the employees.

The Railway Board circulars cited have gone to the extent of clearly stating as to how the examination paper is to be set by the paper setter and also issuing strict directions that if any procedural irregularities are noticed in the selection procedure, then such selections should be cancelled lock stock and barrel. The Railway Board has also taken care to see that the selection committee members are fully aware of the guidelines involved in the selection procedure by stipulating the conditions that they should acknowledge/ give a signed undertaking that they have gone through the guidelines relevant. In the background of such vivid instructions from the Railway Board it is not understood as why the respondents are dilly-dallying in cancelling the exam conducted for post of AXEN/ ADEN despite the fact that they did cancel the Asst. Personnel Officer exam for improperly setting the question paper. Learned counsel for the applicant stated that the applicant is discriminated since the exam for APO was cancelled but did not apply the same decision in regard to the exam in which he has appeared. The applicant appeared in the exam not on his own volition but because of the interim order of this Tribunal in OA 738/17. In regard to the Supreme Court judgment the learned counsel for the applicant has stated that cancellation of the APO examination is liable to be questioned.

Counsel for the Respondents.

9. Learned counsel for the respondents on the contrary, drew attention of this Tribunal to Railway Board Circular dated 28.11.16 wherein it states that “guidelines may be kept in view while holding selections/ LDCEs for promotions to Group B posts. Learned counsel for the respondents states that the word “may” means that the paper setter has been given flexibility to set the paper and hence, framing objective type questions with fill in the blanks cannot be

construed as incorrect. Learned counsel tried to present the marks secured by the applicant, but it was strictly objected to by the counsel for the applicant on the ground that it cannot be material at this juncture of time. Counsel for the applicant has stated that if at all a discussion on the marks secured by the applicant is to be made, then it should not be confined only to the applicant, but all the candidates who appeared in the exam. Learned counsel for the respondents has laid emphasis that the applicant is raising objection about the question paper set only because he failed in the exam, otherwise he would not.

10. Learned counsel for the respondents has drawn attention to para 6 of the observations made in Civil Appeal No. 6549/2014 of the Hon'ble Supreme Court wherein it is stated that appellants in the case after participating in the interview challenging the interview after they were unsuccessful in the interview cannot be allowed. The present case is fully covered by the observations of the Supreme Court. The Senior Standing Counsel appearing for the respondents has claimed that the applicant claim is a fancied litigation of appearing at the exam and then coming to the tribunal crying foul. Unless a prejudice is established there cannot be any corrective action. In the present case, no such prejudice arose till the entire selection process was completed and therefore, any intervention thereof, is uncalled for.

Rebuttal of counter by the Counsel for the applicant:

The counsel for the applicant rebutted by stating that the Hon'ble Supreme Court has clearly stated that guidelines are to be followed, but not to be violated, vide its judgment in *Moni Shankar Vs. Union of India & Anr*, 2008 (3) SCC 484.

11. Arguments of the learned counsel for parties were heard and documents perused.

12. The case in hand has to undergo the test of non-discrimination. Apparently, in one case (of APOs,) the examination was cancelled due to non observance of the guidelines. And, when judicial intervention is sought against the non observance of the very same guidelines in respect of the applicants, the Railways take shelter under the term “may” appearing in the relevant provisions, and gives sufficient latitude in not adopting the procedure laid down in the Guidelines. Here lies the hostile discrimination. Whatever good grounds are there to follow the guidelines in the case of APS examination, equally, like good grounds are available in the case of the technical examination as well. It is pertinent to mention here that both the examinations fall under the same category of promotion from Group C to Group B posts. If the cancellation of an exam is on the ground of irregularities having crept into an exam, as in the case of APOs exam, then the same principle should and necessarily be applied to the ADEN/AXEN exam as well. What is sauce for the goose is sauce for the gander as well. Otherwise, it would be an infringement of Article 14 tempered with Art16 of the Constitution. Further, the Hon’ble Supreme court vide its judgment in Union of India Vs. A.K. Pandey, reported in 2009 (10) SCC 552, in para 10(d) held that the word ‘may’ should be given a mandatory meaning, extract of which is reproduced hereunder:

“In other words, if the language of the statute, considered as a whole and with due regard to its nature and object, reveals that the legislature intended the words “shall” and ‘must’ to be directory, they should be given that meaning. Similarly, under the same circumstances the word ‘may’ should be given a mandatory meaning and especially where the statute concerns the rights and interests of the public, or where third persons have a claim de jure that a power shall be exercised, or whenever something is directed to be done for the sake of justice or the public good, or is necessary to sustain the statute’s constitutionality.”

Therefore, to sum up, the word 'may' used in the Railway Board Circular dated 28.11.2016 makes it mandatory to follow the guidelines stipulated therein for paper setter to set the questions paper.

13. As is seen from the details of the case, the Railway Board guidelines on conduct of the selection process are specific and luculent. It is trite that any guideline prescribed is for maintenance of uniformity and consistency and hence the guideline should be complied with in spirit and intent and not in breach. In the instant cases, the guidelines are that the question paper shall be set in with objective type questions having multiple choice answers. Logically, preparation by the candidates would be based on the above type of questions alone. The question paper set for main exam and supplementary exam for the ADEN/AXEN contained fill in the blank questions which is admittedly against the Railway Board instructions. Realising this folly, in one another exam conducted by the respondents in respect of Asst. Personnel Officer the exam stood cancelled. They conducted a re-examination with the question paper set as per the Railway Board guidelines. No justifiable reason emanates from the Respondents to show cause as to why the ADEN/AXEN exam be also not cancelled. The only reason that surfaces from the respondents' reply is that in case of APO exam objections rose immediately and in respect of ADEN/AXEN exam the objections were made only after the decision in regard to the APO exam was taken. This cannot be an acceptable reason or ground. In fact, once the respondents have held that holding of examination in any pattern other than that laid down in the guidelines is irregular, they ought to have suo-motu cancelled the examination conducted for ADEN/AXEN as well. That having not been done, the applicants have been forced to ignite the Tribunal jurisdiction.

An organization well versed in conducting massive recruitment and having an army of personnel dealing with selection processes should follow the procedure prescribed by the Railway Board without any exception. Any bonafide mistake should have been rectified rather than waiting for somebody to object. Thus, the argument that the mistake was not pointed out by the candidates in the ADEN/AEN exam immediately, lacks merit. It is the principle which is paramount and predominant. And, consistency is virtue, if not, then it would lead to discrimination among different groups of employees as is evident in the present case of favouring the APO candidates and disfavours of those who appeared in the AXEN/ADEN exam.

14. The candidate has every right to question a defective exam as per IREM Para 208.3 at any interval of time. In the present case, we see clear violation of the Railway Board guidelines. We also see a precedent of cancelling the APO exam for wrongly setting the question paper. That being so, there should not be any hesitation to cancel the ADEN/AXEN exam. Here we need to emphasise that the Hon'ble Supreme Court in *Prabhat Ranjan Singh & Anr Vs. R.K. Kushwaha & Ors*, in CA No. 9176 of 2018, in para 25 of its judgment, observed that IREM provisions have statutory force as they have been issued in exercise of powers vested under the proviso to Article 309 of the Constitution. As the Railway Board orders pertaining to the conduct of exams have invoked the provisions of the IREM, they have statutory force as observed by the Hon'ble Supreme Court. Therefore, the guidelines issued by the Railway Board are statutory in nature, which cannot be violated, which the respondents have done in respect of ADEN/AXEN exam.

15. As regards the contention of the Respondents that the Supreme Court judgment has held that the challenge to the process of selection should have

objected before awaiting for the result and not after the declaration of result and found failed, the applicant in OA No. 738 of 2017 approached this Tribunal in regard to inter se seniority which will affect the zone of consideration and the consequential impact in appearing at the examination by virtue of higher seniority having been granted to those promoted under reservation quota and by an interlocutory order, he was allowed to sit for the examination in which the Railway Board Guidelines have not been followed. The case of applicants in other OAs is to the effect that when examination for APOs has been cancelled on account of the same being in deviation from the pattern prescribed in the Guidelines, in respect of ADEN/AXEN as well, the exam should have been cancelled. The case in the Supreme Court is thus distinguishable.

16. A precedent would be the path finder for a vexatious issue like cancellation of exams. One such precedent which solves the riddle of whether to cancel the exam or not in the present OAs is seen in the observation of the Honorable Apex Court in (2010) 7 SCC 678 - East Coast Railway and another vs Mahadav Appa Rao and others, while dealing with a mirror image of the content being discussed in the present OAs. The issue in brief dealt by the Honourable Supreme Court is that the East Coast Railway held an exam for selection of a Chief Typist but was cancelled after results were announced, on complaints from unsuccessful candidates that the machines supplied were defective. Consequently a successful Candidate being aggrieved that his success has been frittered away seeded the OA 748 of 2006 in Central Administrative Tribunal, Hyderabad Bench which gradually grew and flowered with the fragrant observation of the Honorable Apex Court as under:

(32). *“The next question then is whether the selection should be finalized on the basis of the test held earlier or the matter be allowed to be re-examined by the authority in the context of representation received by it .*

In our opinion the later course would be more in tune with the demands of justice and fairness especially when a second test has been conducted in which all the in service candidates appeared. The result of this examination/test has not , however, been declared so far apparently because of the pendency of these proceedings.

(33) If upon due and proper consideration of the representation received from the candidates who were unsuccessful in the first examination, the competent authority comes to the conclusion that the test earlier suffered from any infirmity or did not give a fair opportunity to all the candidates it shall be free to pass a fresh order cancelling the said examination after recording such a finding in which event the second test conducted under the directions of the tribunal would become the basis for the selection process to be finalised in accordance with law. In case, however, the authority comes to the conclusion that the earlier test suffered from no procedural or other infirmity or did not cause any prejudice to any candidate , the second test /examination shall stand cancelled and the process of selection finalized on the basis of test held earlier”

Respondents need not look hither and thither but just abide by the Honorable Apex Court decisions word by word stated above, which they did in case of APO exam but hesitate to do so by taking the bull by its horn in respect of ADEN/AXEN exam. A perfect solution to an imperfect subject. The only difference is the defective type writers are replaced by the defective question papers in the present OAs. Principle remains the same. De facto, the Honorable Supreme Court Observation is the best pill to the ailing selection process which has been in coma due to the interim order of this tribunal order in OA 738 of 2017. The best solution offered by the cited observation is to conduct a surgery by cancelling the exam to remove the contagious effect of the defective organ of Compulsory question no1 which is totally diseased due to the virus of “fill in the blank questions” and transplant it with the healthy organ of Compulsory question no. 1 with multiple choice questions by conducting a re-exam. There can be no better remedy, though bitter for those who passed, but yet this is only way to the road to recovery from an issue which has been the thorn in the flesh for the respondents since 2017 onwards. Therefore this tribunal would intend to

direct the respondents to follow the luminous path laid by the Honorable Supreme Court in the form of observations pictified above.

17. Thus, dealing with the OA Nos. 431 & 277 of 2018, wherein the challenge is against the pattern of the examination for promotion to the post of ADEN/AEN on the ground that the same is not in tune with the prescribed norms, the applicants have made out a caste-iron case and as such, their applications succeed. The examination conducted is thus liable to be quashed, which we order accordingly. There shall be a fresh examination to be conducted on the basis and pattern of the Guidelines i.e. objective type questions with multiple option of answers. Those who had earlier participated in the examination, if again apply, should be permitted to participate in the examination without any restriction. The applicant in the OA No. 738 of 2017 shall also be permitted to take part in the examination. However, his candidature is provisional as originally ordered in the context of his contest in regard to interse seniority. Hence, OA No. 738 of 2017 shall be considered after the results of the examination are declared and if the applicant qualifies in the examination.

18. In the result, the OAs 486/2018, 431/2018 & 277/2018 are allowed. No order as to costs.

(SWARUP KUMAR MISHRA)
JUDICIAL MEMBER

(B.V. SUDHAKAR)
ADMINISTRATIVE MEMBER

Dated, the 18th day of September, 2018

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