

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO. 676/2013

Dated this the 5th day of January, 2018.

**CORAM:- HON'BLE SHRI ARVIND JAYRAM ROHEE, MEMBER (J)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)**

- 1) Shri Vilas Girdhar Patil,
Aged: 47 years,
Working as Technician under Chief Workshop Manager
Nasik Road, 422101
- 2) Mr. Baban Sakharam Shermale, aged about 47 years
working as Technician I, under Chief
Workshop Manager,
Nasik Road - 422101

...Applicants

(By Advocate Shri S A Deshpande)

Versus

- 1) Union of India,
The General Manager,
Central Railway,
CSTM, Mumbai - 400 001.
- 2) The Chief Workshop Manager,
Eklahra Road, Nasik Road - 422101.
- 3) Shri D.S. Govind, working as Technician - I,
under Chief Workshop Manager,
(Traction Machine Workshop), Nasik Road - 422101
- 4) Shri L D Khalane, working Technician - II,
under Chief Workshop Manager,
(Traction Machine Workshop), Nasik Road - 422101

5) Shri S K Adakmol, working Technician - I,
under Chief Workshop Manager,
(Traction Machine Workshop),
Nasik Road - 422101

...Respondents

(By Advocate Shri. V S Masurkar)

Reserved on :- 10.11.2017.

Pronounced on:- _____.

O R D E R

Per:- R. Vijaykumar, Member(A)

This application was filed on 01.11.2013 by two applicants working as Technician I under Respondent no. 2 of the Central Railways as Panchak, Nasik against selection made by the second respondent for the Ranker-promotional post of Jr. Engg. Grade PB-II, GP 4200 of three candidates in order of merit who are now cited as respondents 3, 4 and 5. When the hearing was taken up on the issue of interim relief on 02.01.2014, it was informed that the selected candidates are undergoing training and after declining to grant stay, it was ordered that the selection would be subject to the final outcome of the case.

2. The factual matrix of the case is that the Railways have issued guidelines in RBE No. 123/2006 on 30.08.2006 introducing objective type questions for the written test to be held as part of selection for promotion to posts classified accordingly which

includes the posts now assailed on the issue of selection. Based on the demand raised in the forum of PNM-AIRF that 50% objective type questions in written exam may be prescribed for selection in lower grades also, the circular modified the earlier proportion of 25% total marks for objective type questions in lower grades to 50% and also ordered therein:

“The opportunity is also taken to clarify that objective type questions besides including the type of questions in the form of 'multiple choice', 'filling up the blanks', ''tick 'true' or 'false'', ''right' or 'wrong'', 'match the following' may include questions requiring one word/line answer, 'yes' or 'no', 'naming', eg. 5 States, Railway, posts, grades etc. This is to avoid unnecessary rigidity in framing the questions.”

3. Based on these instructions a notification was issued by respondents in no. NK/TMW/P-126/JE dated 22.10.2013 for the formation of a panel for the post of J.E. and set out the schedule for the selection process including written test. The selection is specified as based only on written examination in which 60% marks are required for qualification without any relaxation for SC/ST candidates since this is a safety category post. The final ranking will be made on merit basis after adding marks for professional ability and record of service. The syllabus and question bank for the written examination is stated as enclosed at Annexure-A to the notification. The instructions to candidates specified that answers of all questions including Hindi

questions should be written only in Hindi or in English. But the question of Raj Bhasha can be answered in Hindi or in English. Further, it is also mentioned that "The Railway Board has decided that in the answers to objective type questions, no corrections of any type may be permitted". An illustrative list of possible corrections is also listed. The instructions included at no. 9. is:

"In partial modification of para 3.1 of Railway Board's Letter No. E(NG)/- 2006/PM1/18 Dt. 30.08.2006, it is also clarified that the terms objective type questions will not include questions of the following types:

- a) Multiple Choice Questions
- b) **Answer in 'YES' or 'NO'**
- c) Fill in the blanks.
- d) Match the following.
- e) Any other type of questions for which answer is to be given in one phrase/word."

4. The written examination was held on 13.09.2013 after a postponement from August and included 4 questions with sub-questions totaling 50 marks of true/false, expansion of abbreviation, multiple choice and matching type. 50 marks were allotted for essay/note type replies one of which was about Hindi Raj Bhasha Act, 1963 to be explained in detail and the other was about Leave Rules for class III employees, Factory Act, 1948 and Hours of Employment rules for Railway Employees working in TMW-MKRD. Based on this

written examination, six persons were found to have secured more than 60% qualifying marks which includes the three respondents, the two applicants and one Shri J. S. Pawar(SC). In this case, although there was no concession for SC/ST candidates, one post was reserved for SC and two available for unreserved candidates in this selection. The final panel announced, ranked respondent 3(SC) as 1st, respondent 5(SC) as 2nd and respondent no. 4(UR) as 3rd by which applicants were deemed to have been not selected. The selected candidates were accordingly sent for training. The applicants have challenged this selection and have sought the following reliefs:

- “1. The Honorable Tribunal may kindly be pleased to call for the records pertaining to the selection procedure, including answers books of the applicants and that of private respondents No. 3 to 5, so as to satisfy the comparative merit acquired by each of the candidates.
2. To quash and set aside the impugned select pannel of the promotion to the post of Junior Engineer(A-1).
3. To direct the respondents to allow the applicants to participate in the “Written Test” for promotion to the post of Jr. Engineer without insisting the age condition.
4. To direct the respondents to re-conduct the “Written Test” of the candidates by omitting the questions of the objective types etc. in accordance with direction given by the Railway Board.
5. Any other relief as deem fit to be granted by this Hon'ble Tribunal.
6. Cost of the application may kindly be saddled on the respondents.”

5. The applicants have primarily found fault with the written test segment of the selection process and have not contested the eligibility of any candidate or

of the marks allotted for service and professional ability. After expressing some doubts as to whether the list of successful candidates were as per merit or as per Roll Number, they have referred to the Indian Railways Establishment Manual (IREM) Vol-I which stipulates that the question papers for the written test should have practical bias. It should be designed to test the ability of the candidates to tackle the practical problem they are likely to face rather than their theoretical knowledge. They have also referred to the Railway Board's Circular at Supra dated 30.08.2006 which requires use of objective type questions in the written examination and to avoid unnecessary rigidity in framing the questions. The applicants refer to its working that it was "in partial modification of para 3.1..." and denies inclusion of the type of questions specifically directed to be included by the Railway Board in its RBE supra dt. 30.08.2006. They assert that the question papers were in contradiction to this exam notification and they were, therefore, surprised. They have also argued that Part B of essay/notes type questions included questions on Leave Rules, Factory Act, Hours of Employment Rules for Railway Employees which do not pertain to their day to day practical working. All of these caused them great surprise and they have been gravely affected because this was their

last chance to appear at the written test as they were completing 47 years of age and would thereafter be ineligible. They have also referred to the two members of SC who were selected against one vacancy for reserved candidate and that only one person from the general category was selected which is not correct because for the safety category post, there is no relaxation, except age relaxation for SC/ST candidates and they have, therefore, doubts if extra marks had been given to the reserved candidates to enable their selection.

6. The respondents have stated that the question paper was set strictly as per extant Railway Board guidelines and that while the result of the written test was published based on the Roll numbers, the panel is formed based on the final merit adding marks for the written test and record of service, in accordance with the rules. They have stated that the use of the word "not" in their notification at para 9 was a typographical error and that the Board's guidelines of 31.08.2006 will supersede all such instructions that are in contradiction. With regard to the knowledge required to answer the notes questions, they have stated that the post is of a supervisory nature and the incumbent should be aware of the basic rules of the Factory Act, Leave Rules, and Hours of Employment

Rules. With reference to the final panel, they have stated that the selection was strictly based on merit and as per norms set by the Railway Board and no concessional marks were given to the reserved candidates. With regard to the objections of the candidates on the conduct of written exam, the respondents pointed out that no complaints were made by the examinees before or during the conduct of the examination or even after, but applicants complained only after results as contained in the panel were declared. They have referred to the judgment of the Hon'ble Apex Court in **Ramesh Chandra Shah vs Anil Joshi & Anr. Reported in (2013) 5 SCALE 397**. By the ratio of this judgment, they state that the applicants are deemed to have waived their right to challenge the advertisement and the procedure of selection.

7. In the rejoinder, applicants have expanded their objections to the question paper by questioning the relationship of Hindi Raj Bhasha Act, 1963 in addition to knowledge of Factory Act, Hours of Employment, Leave Rules to professional ability and practical knowledge of the nature of work. As a result, applicants were deprived of the opportunity to show their professional ability and secured merit. They assert that they had no choice or alternative except to participate in the examination but they claim that

through their service union, an objection was filed in letter of All India SC/ST Railways Employees Association, TMW Extra Division, Nashik dated 08.06.2013 by which they mentioned under item one that syllabus and question bank for written exam which was stated as enclosed as Annex. A had not been supplied to anyone nor displayed on the notice board.

8. Therefore, they argued that they had been surprised by the contents of the question paper. They have questioned the orientation of the question paper which they say should have been testing their professional ability as the condition precedent as set out under rule 219 of IREM read with the Railway Board instruction of 30.08.2006 supra. The notes questions were therefore unconnected with their professional ability or practical knowledge. Further, they argued that the Jr. Engg. was required to work in the field and not within an office like a Gazetted Officer and there are three senior higher categories above the Jr. Engg. to supervise work. With reference to the judgment cited as precedent, they distinguish their case by stating that in this examination, it was notified that objective type questions will not be included, whereas such questions were actually included in the question paper.

9. In the Sur-rejoinder, respondents again assert

that the Railway Board instructions supersede all other instructions including notification issued by the respondent no. 2 which was admittedly a typographical error. They again assert that the post of Jr Engineer is a supervisory post and is responsible to manage the whole section consisting of several staff and therefore knowledge of rules as questioned in the paper was mandatory. Further, all Central Government employees including Railways should have the knowledge of Raj Bhasha and it is a mandatory question in all selections as per rules. They have asserted that the question paper is set strictly according to Board directions. With reference to the allegations that syllabus and question bank were not displayed nor issued to applicants, they assert that copies have been given to each of the candidates personally from the section and there is no practice of taking acknowledgment from the employees while handing over such papers. They state that the letter from the SC/ST Association dated 08.06.2013 is not from a Service Union but that, as and when grievances are received from any corner, they are addressed promptly which in this case, referred to non supply of Annexure A to exam notification. They have also replied to the same organization's letter dated 17.09.2013 in their reply dated 19.10.2013 which questioned 50% of the marks being set as objective type

questions, on questions being asked about store accounts and finance and on questions outside the syllabus. Respondents in their reply have confirmed that 50% marks for objective questions was as per Railway board instructions and that following 6th CPC, only two posts of JE and SSE were available, therefore knowledge of stores, accounts and finance was necessary. Further that questions were set strictly as per syllabus.

10. During preliminary hearing, doubts were raised and had been clarified by reference to the mark-sheet for written exam and final panel drawn up during selection and the original was produced before this Tribunal after which a copy has been retained on file. According to this panel, respondents 3,4 and 5 received 80, 81 and 75 marks in the written examination whereas applicants received 66 and 60 marks only. For the service record, respondents received 20, 18 and 22 marks while applicants received 18 and 20 marks. As a result, respondent no. 3 was ranked first with 60 marks, respondent no. 4 was ranked 3rd with 58.5 marks and respondent no. 5 was ranked second with 59.5 marks and was adjusted against the reserved vacancy. Applicant no. 1 received 51 marks and was ranked 5th while applicant no. 2 received 50 marks and was ranked

6th. Therefore, in a panel of 6 successful candidates, applicants were ranked at the bottom.

11. We have heard both the learned counsels and have carefully considered the facts and circumstances of the case, law points and contentions by parties in the case.

12. During the final hearing, the learned counsel for applicant has reiterated the various aspects of his application, his rejoinder and reply to the arguments of respondents in their submissions but learned counsel would argue that as a result of the wrong notification, applicants were misled and could not, therefore, prepare adequately for the examination and were therefore, not selected. The learned counsel for respondents has reiterated his written submissions and then argued with reference to the results in the written examination and the panel which showed that there was a clear advantage of the three selected candidates over the applicants. The post to which they were being promoted being of supervisory nature, basic understanding of their proposed job was necessary and they were tested accordingly.

Findings

13. Applicants have argued that the Railway Manual prescribes the basic rationale for conducting

examination as a condition precedent which is that the question paper for a written test should have a practical bias ie. it should be designed to test the ability of the candidates to tackle the practical problems they are likely to face rather than their theoretical knowledge. While this may be a debatable aspect of a written examination in a professional category, as respondents pointed out, the post to which candidates were proposed for selection was a supervisory category and therefore, some basic knowledge of the rules governing personnel supervised by them should be within their immediate knowledge and not to be left for reference through books etc. Since this is a comparative procedure where all the applicants have been similarly exposed and should have similarly gained such knowledge, it is to be expected that they cannot be masters of the subject nor should they be completely unaware. Therefore, they will receive marks based on their awareness as graded by the examiner and applicants can have no grievance on this basis. They might have had a grievance if a question was posed which was much more pointed and went into details regarding the relevant provisions of various Acts and Rules but that is not the case.

14. On the aspect of the error in the notification as against the prescription laid out by the Railway

Board, we may read the notification in entirety where it specifies at instruction 8 that no correction should be permitted in answers to objective type questions. Instruction 2 refers to the Raj Bhasha and Hindi questions. Therefore, it is apparent that the instruction 9 bore an error and any contradiction will have to be seen with reference to the original Railway Board instruction. While examining the nature of this contradiction in the original circular of the Railway Board, dated 13.02.2009 relevant to this examination was noticed and referred in Bahri's IRE Rules & Labour Laws, 2012. The Circular RBE 29/2009 contained in RBE No. E(NG)1-2008/PM1/18 dt. 13.02.2009 reads as below:

"Circular Subject: Written Test for selection for promotion to the posts classified as 'Selection' within Group C'-Setting up of objective type questions – Disallowing corrections in the answers once indicated.

1. As the Railways are aware in terms of instructions contained in this Ministry (NG)I-2006/PM1/18 dated 30.08.2006 substituting the clause() after sub-para (c) of para 219 of Indian Railway Establishment Manual Vol.I,1989, in the written test held as part of the selection for promotion to the posts classified as 'Selection, objective type of questions should be set for about 50% (in the range of 45% to 55%) of the total marks for the written test. However, of late it is seen that the candidates in the written examinations while answering objective type questions mark either more than one answer or keep making correction in answers indicated earlier. This not only creates confusion but has also been objected during Vigilance Investigations.

2. The matter has accordingly been considered by the Board and it has been decided that in the answers to objective type questions, no corrections of any type may be permitted. In case any correction is made, that answer shall not be evaluated at all. The correction may be any one of the

following types (the list is illustrative and not exhaustive):-

- a) Cutting
- b) Overwriting
- c) Erasing
- d) Scoring off a ticked answer in multiple-choice and ticking another answer, and
- e) Modifying the answer in any way.

2.1 In partial modification of para 3.1 of this Ministry's letter No. E(NG)I-2006/PM1/18 dated 30.08.2006 it is also clarified that the term objective type questions will now include questions of the following types:

- a) Multiple choice questions
- b) Answer in yes or no
- c) Fill in the blanks (maximum four words)
- d) Match the following; and
- e) Any other type of question(s) for which answer is to be given in one word/phrase.

3. These instructions should be widely circulated so that all the staff concerned are fully aware of the implications of making corrections in their answers to objective type question(s): and these may also be made part of the instructions printed on the question paper and answer sheets so that there is no room for complaint from any candidate. The possibility of providing particular space in answer sheets for indicating answers to objective type questions may also be explored so that there is no room for candidates to answer a question at some other place after scoring off the same at one place in the answer book."

It becomes amply clear that respondents copied this circular into their notification but replaced the word "now" in para 2.1 preamble above with the word "not". Naturally, the Railway Board instructions shall supersede typographical errors. However, instruction 8 cannot be contradictory to instruction 9. The exam has also been conducted strictly on that basis. The respondents have also claimed that the syllabus and question bank as mentioned as Annexure-A, were handed over to all the candidates by the section and there seems to be no reason to doubt their affirmation in the circumstances. It is clear, therefore, that applicants were not surprised in any way by the nature of questions posed in the examination and they have only themselves to blame for the fact that they were not prepared and did not answer with the required degree of competence.

15. The respondents have also questioned the timings of the objections which have been made after the panel was published and in the case of the Association, just prior to declaration of results. If the applicants had any objection on the question paper and did not want to raise any issue at the time of the examination, they could have done so immediately after the examination and need not have waited for declaration of the panel of successful candidates. It is noted that the panel was published on 22.10.2013 after examination was held on 13.09.2013. It is also noted that respondents have fully replied to the SC/ST association in relation to their letter dated 17.09.2013 in respondents' letter no. NK.TMW.P.126.JE dated 19.10.2013, that all guidelines for the Railway Board for framing objective type and other questions have been strictly followed.

16. On the general issue of the nature of essay type, notes type or objective type questions that have been posed in an objective cum essay type examination of this kind, this Tribunal would ordinarily not intervene unless there are grave and obvious errors that arise on the question paper and the mode of marking adopted. In the present case, there is no such scope or need for any such intervention by this Tribunal.

17. The Hon'ble Apex Court's Judgment in Ramesh Chandra Shah V. Anil Joshi & Anr. goes against the applicant's case because they cannot consciously take part in the selection, appear in the written paper and then wait till the selection is completed before objecting to individual portions of the selection process. The opportunistic timings of the objections suggests that their objections are not quite genuine. In any case, in an examination where all have been treated equally on merit, and the applicants have scored the least among the six candidates for three ranker vacancies, they can have no case for reconsidering the selection.

18. In the circumstances, the application is dismissed and there shall be no order as to costs.

(R. Vijaykumar)
Member(A)

(A. J. Rohee)
Member(J)

ram./gm.