

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 532 of 2017

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Samira Dehury, aged about 35 years, S/o Chihiru Dehury, at present working as Technician-II under SSE/CF/CRW/MCS East Coast Railway, resident of Quarter No. L/2/1, Type-II, Mancheswar Railway Colony, Mancheswar, Bhubaneswar-17, Dist. – Khurda.

.....Applicant

VERSUS

1. Union of India, represented through the General manager, East Coast Railway, E.Co.R. Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. Chief Personnel Officer, East Coast Railway, E.Co.R. Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
3. Chief Workshop Manager, Carriage Repair Workshop, East Coast Railway, At/PO Mancheswar, Bhubaneswar, Dist. – Khurda.
4. Workshop Personnel Officer, Carriage Repair Workshop, East Coast Railway, At/PO Mancheswar, Bhubaneswar, Dist. – Khurda.
5. Rasika Mohan Pattnaik, J.E.(W/S), East Coast Railway, Carriage Repair Workshop, At/PO Mancheswar, Bhubaneswar, Dist. – Khurda.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.S.K.Ojha, counsel

Heard & reserved on : 19.3.2019 Order on : 15.4.2019

ORDER

Per Mr. Gokul Chandra Pati, Member (A)

The applicant, in this OA, has prayed for the following reliefs:-

- "(A) To quash/set aside the provisional empanelment of Respondent No.5 vide memorandum dtd. 17.8.2017 under Annexure A/4.
- (B) And to quash/set aside the order sending the respondent No.5 for practical training dtd. 25.8.2017 under Annexure A/5.
- (C) And to quash the order of rejection dtd. 11.10.2017 under Annexure A/11.
- (D) And to direct the respondents to promote the applicant for the post of J.E.(W/S) against 25% DPQ(IMA) against the 5th vacant meant for UR candidate at par with other candidates.

(E) And to direct the respondents to grant all consequential and "financial benefits."

2. The applicant was initially appointed as Helper-II and is now working as Technician-II under the respondents. He had participated in the selection for the post of Junior Engineer (W/S) in PB-II with the GP of Rs. 4200/- against 25% promotion quota by selection and had appeared in the written test on 4.9.2016. 24 candidates were selected on the basis of the written test for 8 vacancies and the applicant's name was at serial number 22 of the list. Then the final list of 8 candidates was published in which the applicant's name is not there vide the provisional panel dated 17.8.2017 (Annexure-A/4). He is aggrieved by the fact that although the respondent No. 5 has secured less mark (66 out of 100) than the applicant (77 out of 100) in the written test, he has been included in the final select list.

3. It is the case of the applicant that the respondent no.5 who has been selected for the post is not only junior to the applicant, but he is also less meritorious. The applicant, being 5th in the merit, should have been selected finally instead of the respondent No.5 since as per the RBE No. 17/14 dated 6.2.2014, the panel should be arranged as per the merit. It is also stated that the respondents reduced total marks of the written test from 100 to 50 arbitrarily. The applicant had submitted a representation dated 23.8.2017 to the respondents which was rejected vide order dated 11.10.2017 (Annexure-A/11), impugned in this OA. It is stated in para 4.9 of the OA that the applicant's total mark would be 97 taking the total mark for the written test to be 100 and the mark of the respondent No.5 would be 90.

4. The official respondents have filed Objection to the interim relief and Counter opposing the OA. It is stated that if the plea of the applicant about wrong procedure for selection is accepted, then the entire selection will be affected for which the applicant should have made all selected candidates as parties. The judgments in the case of **Union of India vs. Subhramanyam, AIR 1976 SC 2408 and Bimala Devi vs. State of Himachal Pradesh, (2011) 1 SCC (L&S) 795** have been cited to argue that the applicant cannot challenge the procedure of selection after participating in it and failing to qualify. It is stated that the selection was done in accordance with the provisions in para 219 of the IREM Vol.-I (1989 edition) (Annexure-R/7) and the Railway Board instructions in the RBE No. 35/2006 (Annexure-R/6). It is stated that as per the above rules, the written mark has to be taken out of total 50, 15 marks on the basis of the ACR and 15 marks on the basis of the service records. As stated in para 2(F) of the Counter, the applicant's total marks was 58.5 as assessed by the selection committee, where as the marks secured by the respondent no. 5 was 59.5 for which the later was selected. Although the

weightage for the written test was 50, but the written test was conducted for 100 marks as it is not feasible to conduct the written test for 50 marks.

5. The respondent No.5 has also filed his Counter stating that as per the RBE No. 113/2009, for general selection posts, no marks will be awarded for seniority. It is stated that the applicant being senior to the respondent no.5 cannot be therefore given marks for seniority. It is further stated that as per the guidelines, total marks for professional ability (through written test) is 50 marks out of which the qualifying marks would be 30. Hence, it is necessary to reduce the written marks from 100 to 50 while preparing the merit list which has been correctly done in this case.

6. The applicant has filed Rejoinder denying the Counter filed by the respondent no.5. It is stated that the official respondents have taken the decision for the first time to reduce the written test marks from 100 to 50 and if the final panel is prepared on the basis of 100 marks of the written test, then in place of the respondent no.5 the applicant will be selected. No rule has been enclosed to prove that the written test mark would have to be reduced to 50 while preparing the final panel.

7. We have heard learned counsels for the parties before us and perused the pleadings on record. Learned counsel for the respondent no.5 has also filed a written note of submission enclosing a judgment related to a criminal appeal in the case of Raj Bala vs. State of Haryana and others (2016) 1 SCC 454. The only dispute to be resolved in the case is on the total marks to be reckoned for the written test which was held for total of 100 marks. The applicant's stand is that since the written test was held for a total of 100 marks and there is no stipulation in the rules/guidelines/vacancy notification that the written test marks to be reduced from 100 to 50 for the selection in question, it has to be reckoned as 100 marks. The respondents aver that as per the stipulations of the para 219 of the IREM Vol.-I and the RBE No. 35/2006, the written marks to be reckoned should be out of total 50, although for convenience, the written test was held for total 100 marks.

8. The official respondents have referred to para 219 of the IREM Vol.-I which states as under:-

"219. Procedure to be adopted by Selection Board

- (a).....
- (b).....
- (c).....
- (d).....
- (e).....

(f) The Selection Board will examine the service record and confidential reports (if kept) of the staff eligible. A single evaluation sheet should be prepared to assess the candidates under the different headings of personality, address, leadership, etc to be signed by all members of the Selection Board. Corrections

in the evaluation sheet, if any, should be attested by all the members of the Selection Board. The members nominated on a Selection Board should be advised clearly that there should not be any cuttings and over-writings in the proceedings of the Selection Board and serious objection of any cuttings and over-writing will be taken.

(Railway Board's letter Nos. E(NG)I-99/PM1/15 dt. 26.7.99).

(g) Selection should be made primarily on the basis of overall merit, but for the guidance of selection Board the factors to be taken into account and their relative weight are laid down below: E(NG) I-69/PM 1-126 dt. 18-9-69

Factors/Headings	Maximum Marks	Qualifying Marks
i) Professional ability	50	30
ii) Record of service	30	-
iii) Seniority	20	-
Total	100	60

Note:- (i) The item 'record of service' should also take into consideration the performances of the employee in essential Training Schools/Institutes apart from examining CRs and other relevant records E(NG) I-72/PM 1/192 dt. 27-6-73

(ii) Candidates must obtain a minimum of 60% marks in professional ability and 60% marks of the aggregate for being placed on the panel. In a few cases where both written and oral tests are held for adjudging the professional ability, the written test should not be of less than 35% marks and the candidates must secure 60% marks in written test for the purpose of being called in viva-voce test. E(NG) I/72/PM-1/158 dt. 12-12-73 & E(NG) I/83/PM 1/65 dt. 5-12-1984, E(NG)I-

2000/PM1/41 dt.07.08.03 (ACS No.150) , E(NG)I-2007/PM1/10 dt. 6.11.2007)acs no. 196

(iii) The proviso in the Note (ii) above will not be applicable in respect of the ex-cadre posts where the employee retains his lien in the parent cadre and seeks advancement therein. E(NG)I-98/PM1/11 dt. 16.11.98(ACS No. 66), E(NG)I-98/PM1/15 dt. 26.07.99 (ACS No. 84)

(iv) In the case of selection for promotion as Motorman, distribution of marks amongst various headings in lieu of headings appearing in the table below para 219(g) shall be as follows:-

Factors/Headings	Maximum Marks	Qualifying Marks
1. Professional ability	50	30
2. Record of service	15	-
3. Seniority	15	-
4. Aptitude Test	20	Minimum cut off as may be decided by RDSO
	100	60

(Authority :- Railway Board's letter No. E(NG)1-2006/PM1/4 DT. 22.03.06 and 22.09.2006)-acs no.188

(h) The importance of an adequate standard of professional ability and capacity to do the job must be kept in mind and a candidate who does not secure 60% marks in professional ability shall not be placed on the panel even if on the total marks secured, he qualifies for a place. Good work and a sense of public duty among the consciousness staff should be recognised by a warding mere marks both for record of service and for professional ability.

(i) The names of selected candidates should be arranged in order of seniority but those securing a total of 80% or more marks(ACS NO.111) will be classed as outstanding and placed in the panel appropriately in order of their seniority allowing them to supersede not more than 50% of total field of eligibility. (ACS No. 66) E(NG) 1/76 PM 1-142 dt. 25-7-79, 30-10-79

(j) For general posts, i.e., those outside the normal channel of promotion for which candidates are called from different categories whether in the same department or from different departments and where zone of consideration is not confined to three times the number of staff to be empanelled, the selection procedure should be as under:-

(Authority: Railway Board's letter No. E (NG) I-2008/PM7/4 SLP dt. 19.06.2009 ACS No.209

(i) All eligible staff irrespective of the department in which they may be working who satisfy the prescribed conditions of eligibility and volunteer for the post should be subjected to selection which should consist of a written test and in a few cases viva-voce test also as indicated in sub para (a) of para 215. The various factors of selection and their relative weight will be as indicated below:- **(ACS NO. 66 &152)**

Factors/Heading	Maximum Marks	Qualifying Marks
(1) Professional ability	50	30
(2) Record Service	30	-
Total	80	48

NOTE:- (i) The assessment under heading (2) above will be governed by the provisions contained in Note (i) below para (g) above.

(ii) In the case of selection for promotion to the post of Asst. Loco Pilots (Diesel/Electric) and ASMs, the distribution of marks amongst various headings in lieu of headings in the table below clause (i) of sub-para (j) shall be as follows:- (ACS NO. 149 &183)

Factors/Headings	Maximum Marks	Qualifying Marks
1. Professional ability	50	30
2. Record of service	30	-
3. Aptitude Test	20	Minimum cut off as may be decided by RDSO
Total	100	60

(Authority Railway Board letter No.(E(NG)I2002/PM1/31 dt. 22.08.03) & (E(NG)I- 2006/PM1/4 dt. 22.03.06)

(ii) In a few cases where both written test and viva-voce test are held to assess the professional ability of the candidates, all those who secure not less than 60% marks in the written test should be called for viva-voce test.

(Authority Railway Board letter No.(E(NG)I-200/PM1/41 dt. 07.08.03) acs no.150

(iii).....

(k).....

(l).....

(m)....."

From above, it is clear that as per the para 219 of the IREM Vol.-I, the maximum written test marks to be considered for the selection for different category of promotional Group C posts is specified to be 50. In the vacancy notification dated 24.2.2016 (Annexure-A/1), it is seen that the following has been mentioned as the eligibility conditions and selection procedure:-

"Eligibility conditions for the post of JE (W/S) against 25% Intermediate Apprentices Quota :

- a) the serving employees working in Mechanical department of CRW/MCS having qualification of ITI Act Apprenticeship pass in the relevant grade or 10+2 in science stream with three years regular service in skilled grade (Technicians) as on 31.1.2016.
- b) The upper age limit for SC/ST employees is 52 years and 47 years for General/OBC candidates as on the date of notification.
- c) The candidates must have satisfactory service records with respect to application of work attendance and General Conduct.

Note: 03 years training period given to matriculate recruited to fill up the post of skilled artisans is not to be counted as service for appearing departmental selection, But 06 months training given to matriculate with ITI and Act Apprentices shall be counted as service for the purpose of appearing departmental examination.

Selection procedures : Written test, Verification of Service Records and ACRs of last 03 years."

9. Admittedly, total written test mark for the selection in question was 100. The para 219 of the IREM has different criteria for promotion of different category of employees. For transparency, the selection criteria should have been clearly and unambiguously spelt out in the vacancy notification (Annexure A/1) for clear understanding of the candidates. It is noticed that in this selection, the vacancy notification at Annexure-A/1 was ambiguous, since no where it is mentioned that for selection in question, total written test marks would be reckoned as 50 although it was conducted for 100 marks. It was also not mentioned in the vacancy notification that the criteria of selection would be in terms of the specific para and sub-para of the para 219 of the IREM Vol.-I. As far as the present selection is concerned, the applicant has secured 77 marks out of 100 in the written test compared to 66 secured by the respondent no.5 which implies that the professional ability of the applicant is better than the respondent no.5. But when the weightage of the written test was reduced to 50 marks in final selection and the respondent no. 5 was given more marks for ACR and service records that the applicant by the selection committee, in the final list the respondent no.5 was included and the applicant could not be included in spite of securing higher marks in the written test.

10. Learned counsel for the respondent No.5 has cited the judgment of Hon'ble Apex Court in the case of Raj Bala (supra) in which the issue was the quantum of punishment for a criminal offence. The cited case is factually different from the present OA for which the cited judgment is not applicable for the present OA.

11. In view of the discussions above, we are of the considered view that the assessment of the applicant and the respondent No.5 needs to be reviewed by higher authorities in the interest of justice. Hence, the order dated 11.10.2017 (Annexure-A/11 or R/12), rejecting the representation of the applicant, is set aside and quashed and the respondent No. 1 is directed to review the assessment of both the applicant and the respondent No.5 made by the selection committee in the selection in question and take an appropriate decision as to whether the provisional panel dated 17.8.2017 (A/4) needs to be revised. The respondent No.1 is also directed to pass an appropriate order after his review to decide between the applicant and the respondent No.5, who should be included in the panel for the post and to communicate the order to

all concerned within six weeks from the date of receipt of a copy of this order. It is noticed that vide order dated 30.10.2017, this Tribunal had directed the official respondents not to process the case of the respondent No.5 for promotion to the post of J.E. (W/S) pending disposal of the OA. The respondents are now directed not to process promotion of the respondent No.5 till the respondent No.1 has not passed his order after reviewing the case in accordance with this order. The order dated 30.12.2017 of this Tribunal stands merged with this order. It is made clear that except for the promotion of the respondent no.5, the respondents are at liberty to promote other selected candidates as per the panel dated 17.8.2017 (Annexure-A/4) as per provisions of the rules.

12. The OA is allowed in part in terms of para 11 above. No cost.

(SWARUP KUMAR MISHRA)

MEMBER (J)

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath