

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 672/2017

Reserved on: 10.10.2019
Pronounced on: 16.10.2019

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)

Narendra Kumar Chandel S/o Shri Doulat Ram Chandel aged about 44 years (Ex.Trainee Section Engineer (Electrical) in the office of Sr. Divisional Electrical Engineer (TRS) Tuglakabad New Delhi, office of DRM West Central Railway – Kota) resident of ward number 17 Keshorai Patan District Bundi (Rajasthan).

...Applicant.

(Applicant in person)

Versus

Union of India,
Ministry of Railways (Government of India)

1. Through General Manager,
West Central Railway, Indira Market, Jabalpur (Madhya Pradesh) PIN -482001.
2. Divisional Railway Manager,
Office of Divisional Railway Manager, Kota Junction,
West Central Railway Kota (Rajasthan) , PIN-324002.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per: A. Mukhopadhaya, Member (A):

This Original Application, (OA), represents the third round of litigation in the present dispute between the parties.

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2. Briefly, the salient facts of the case are that the applicant was provisionally appointed as a Trainee Section Engineer (Electrical) by the respondents vide their letter dated 17.03.2008, (documents attached with Annexure A/30 refer), and thereafter sent for training vide office order dated 18.08.2008; (Annexure A/31). This office order stipulated that the applicant, on completion of 52 weeks of training, would have to pass a Retention Test, (RT), before he could be appointed on a regular basis. Simultaneously, the character verification exercise related to the applicant also commenced. The applicant however was declared to have failed the retention test vide respondents' letter dated 30.10.2009. In the meanwhile, on receipt of a report from the offices of the District Collector, Bundi and the Superintendent of Police, Bundi, the applicant was served with a show cause notice on 29.06.2010 in which he was accused of suppressing information about a criminal case pending against him. The respondents thereafter passed an order dated 07.09.2010 terminating the services of the applicant. Aggrieved by this, the applicant approached this Tribunal vide OA No.97/2012 which was decided vide order dated 27.08.2012, (Annexure MA/1), reinstating him in service as Trainee Section Engineer. In furtherance of this, vide letter dated 12.10.2012, he was again directed to undergo the aforementioned training. The applicant however

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failed the RT again after undergoing training, (as communicated vide respondents' letter dated 13.02.2013), and his services were terminated thereafter vide respondents' letter dated 03.05.2013; (Annexure A/3). Aggrieved by these decisions of the respondents, the applicant again approached this Tribunal vide OA No.710/2013 which was decided on 18.04.2017, (Annexure A/2), directing the respondents to conduct one more test for the applicant after giving him sufficient time to prepare for the same. This order also directed the respondents as under:

3. We also direct that examination will be given in the presence of some senior officers. If the applicant passes the retain test with 60% marks then he will be granted benefit otherwise he loses. Therefore we will fix a date with the consent of both the parties i.e. on 02.05.2017 at 10:30 AM at Division Office, Kota and applicant will be ready to face the examination on that day. Examination will be given by the applicant in the presence of some senior officers and the result will be published as early as possible but within two weeks thereafter. Applicant requests that the question paper formation must be as provided by the Railway Board circular. It is to be so.

3. Accordingly, the applicant sat for the RT yet again but was declared as having failed the same vide respondents' letter dated 15.05.2017, (Annexure A/1), which is the impugned order in this OA.

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4. In this OA, the applicant contends that the RT was not held as per the specific directions of this Tribunal in OA No. 710/2013, (Annexure A/2), in that the format of the question paper allotted less than 70% of the marks for objective type questions in direct violation of Railway Board RBE No.122/2003 Correction Slip No.3/2003, (Annexure A/16), which was required to be followed as per the Tribunal's aforementioned order of 18.04.2017. The applicant also states that the answer key of this RT, (Annexure A/8), is incorrect in many places, being at variance with the documents and manuals of the respondent Railways itself; (Annexures A/17 to A/20 refer).

5. Accordingly, the applicant now seeks the following relief from this Tribunal:

To declare pass to the applicant in the Final Retention Test which was held on 02 May, 2017 at Kota Division by the order of this Tribunal. The applicant requests to quash the order of his termination from service, (Annexure A/3) which was passed by the Rail Administration, Kota in arbitrary manner and without legal grounds. Rail Administration, Kota Division do not wait the final judgment of this Tribunal and illegally pass the order of termination from service of the applicant. Applicant requests to give order to the respondent Rail Administration to give full back wages from 18 August 2008 at present time to the current money value. Applicant requests to give order to the Rail Administration to give him permanent posting. The applicant

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requests to give order to the Rail Administration to give him promotional benefits from 18 August 2008 to up to now. Applicant requests to give order to the Rail Administration to change the zone from West Central Railway to North Western Railway or Northern Railway for the purpose to give him protection in future. Applicant requests to quash the order of result, (Annexure-1) which was prepared by Rail Administration, Kota Division on wrong answer key basis. Applicant further requests to declare Final Retention Test which was held on 02 May 2017 at Kota Division the first final retention test reason behind this is that Rail Administration willfully declare fail me in the two final Retention Test by preparing wrong answer key and Rail Administration disobey the order of Railway Board which was passed in relation to training. Applicant requests to give order to the Rail Administration for confirmation in his service from 18 August 2008 and give relaxation in passing marks upto 40% to SC/ST category trainees to protect the constitutional provision.

6. In their reply, the respondents, while confirming that the applicant failed in the retention test in question for the third time after the intervention of this Tribunal, aver that his submissions with regard to the format of the question paper and the answer key being wrong/incorrect are without substance. They contend that as per rules, the termination of the services of the applicant after his having failed in the test the second time was eminently justified and seeing that he has failed the test the third time even after the intervention of the Tribunal vide its order of 18.04.2017, (Annexure A/2), no further intervention is warranted in the matter. As regards the specific averment of the applicant in

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para 27 of the OA that the answers to certain questions have been wrongly given in the answer key, (Annexure A/8), the respondents do not deny this allegation in specific terms; (para 27 of reply to OA refers). They merely state that the assessment of marks to be allotted to the applicant cannot be challenged without there being any malice alleged on the part of the examiner and that since the applicant has failed to allege any such malice he cannot challenge the marks given to him.

7. The applicant as well as learned counsel for the respondents were heard and the material available on record was perused.

8. The applicant, while reiterating the grounds laid out in his pleadings, drew the attention of this court to the question paper, (Annexure A/7), and pointed out that while the objective part of the paper, (Part A), contained 50 questions, each question was valued at one mark only, thus bringing the total marks to be awarded for answering the objective type questions to 50 out of a total of 100. He pointed out that part A should have been valued at 70 out of a total of 100 marks as required vide para (b) of the relevant Railway Board's circular, i.e. RBE No.122/2003 of

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10.07.2003; (Annexure A/16). He also drew the attention of this court to his specific averment in para 27 of the OA in which he had claimed that while he gave the correct answers to several questions, (examples given in the para), and that while the correctness of these answers are borne out by the Railways' own documents and manuals at Annexures A/17 to A/20, his answers were marked incorrect on the basis of the answer key at Annexure A/8 which was at variance with the documents and manuals of the respondents themselves.

9. *Per contra*, learned counsel for the respondents argued that the subject matter of the examination being of a technical nature, a determination as to whether the answers in the answer key, (Annexure A/8), were correct or not lay outside the sphere of expertise and thus even the jurisdiction of this court. He emphasised that the questions and answers had been framed by departmental experts and should be presumed to be correct. He also argued that in accordance with the rules and directions on the subject proscribing the re-evaluation of the applicant's answers, there remains no scope for judicial intervention in this matter on this count.

10. We have considered the pleadings and the arguments of the applicant as well as the learned counsel for the

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respondents and perused the record. While this court certainly does not profess to possess the technical expertise required in order to assess the correctness or otherwise of the answers provided in the answer key, (Annexure A/8), to the question paper of the retention test at Annexure A/7, it does not perhaps require specific technical expertise to notice that prima facie, as pointed out by the applicant, there appears to be some variance between the answers given at Annexure A/8 and the corresponding facts/provisions stated in the documents and manuals of the respondent Railways at Annexures A/17 to A/20 which would appear to require further examination by experts in order to arrive at a fair determination with regard to the applicant's claim. Also, a perusal of the instructions at the beginning of the question paper, (Annexure A/7), clearly shows that this admittedly allots a total of only 50 marks out of a total of 100 to the objective type questions in Part A whereas the remaining 50 marks are allotted to the essay type questions, (i.e. non-objective type questions), in Part B. This is clearly a violation of the respondents' own circular i.e. RBE No.122/2003 of 10.07.2003 at Annexure A/16, para (b) of which stipulates that the objective portion of the test has to carry **"at least 70% of the total marks"**. A perusal of this Annexure also shows that this circular relates to the post training examination in subjects connected with safety.

In their reply to the OA, (para 1), the respondents have themselves clearly stated that the post of SSE in TRS Department is a **"safety category post"**. Even otherwise, they have not specifically challenged the applicability of RBE No.122/2003 of 10.07.2003 at Annexure A/16 to the test in question. Consequently, even without the benefit of technical expertise, it appears clear that the format prescribed by the respondents' own circular, (RBE No.122/2003 of 10.07.2003 at Annexure A/16), directed to be followed by this Tribunal's order of 18.04.2017, (Annexure A/2), has not been followed in this case.

11. Given the above mentioned findings, we are of the considered view that the ends of justice would be met in this case with the following directions to the respondents:-

- i) The retention test taken by the applicant, (Annexure A/7), is quashed and cancelled. The applicant be permitted to take the test again with the question paper being framed strictly in accordance with the format prescribed in RBE No.122/2003 of 10.07.2003, (Annexure A/16), and framed by an expert committee whose

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membership shall include, (but not be restricted to), the following:-

(a) a representative/nominee of Research Design and Standards Organisation, (RDSO),

(b) a representative/nominee of the Commissioner for Railway Safety and

(c) a representative/nominee of the Indian Railway Institute of Electrical Engineering; (IRIEE).

ii) The expert committee constituted as above shall take care to ensure that the format of the question paper is strictly as prescribed in RBE No.122/2003 of 10.07.2003 at Annexure A/16 and that the questions framed not only lie within the matter covered in the training courses taken by the applicant but are also unequivocal in nature in that they are not capable of varying interpretation/answers. The committee shall also make suitable arrangements for supervision/invigilation.

iii) In the event of the applicant clearing/passing the aforesaid retention test framed by the expert committee as aforesaid, his order of termination from service dated 03.05.2013, (Annexure A/3),

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will stand set aside from the date of the order itself, i.e. 03.05.2013 and he will be granted all consequential benefits.

- iv) The whole exercise as detailed above shall be completed within a period of three months from the date of receipt of a certified copy of this order.

12. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/