

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

Original Application No. 287/2013
 With Misc. Application No. 290/00187/2018

RESERVED ON : 02.09.2019
 PRONOUNCED ON: 20.09.2019

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

Ugam Singh Sodha, Tech-II, T.No.10446, Shop No.14,
 Carriage Workshop, N.W.Railway, Jodhpur

...Applicant

By Advocate: Shri Dilip Vyas

Versus

1. The Union of India through the General Manager, North Western Railway, Jaipur
2. Chief Workshop Manager, North Western Railway, Jodhpur.
3. The Senior Personnel Officer, North Western Railway, Jodhpur
4. Shri Shiv Prasad Purohit, Tech.-II, T.No.11087, Shop No.8, Carriage Workshop, North Western Railway, Jodhpur.
5. Shri Sunil Kumar Tak, Tech.-II, T.No.11004, Shop No.11, Carriage Workshop, North Western Railway, Jodhpur
6. Shri Bhoma Ram Meena, Tech.-II, T.No. 11557, Shop No.8, Carriage Workshop, North Western Railway, Jodhpur.
7. Shri Subhash Kumar Yadav, Tech.II, T.No.11387, Shop No.12, Carriage Workshop, North Western Railway, Jodhpur.
8. Raj Kumar Meena, Tech.-I, T.No.11436, Shop No.18, Carriage Workshop, North Western Railway, Jodhpur.
9. Hari Singh, Tech.II Ticket No.11467, Shop No.12, Railway Workshop, Jodhpur.

10. Ganga Ram, Tech.II, Ticket No. 11010, Shop No.14, Railway Workshop, Jodhpur.

...Respondents

By Advocate: Shri Kamal Dave and Shri Salil Trivedi for resp. Nos. 1 to 3

None present for other respondents

ORDER

Per Mrs. Hina P.Shah

Earlier this Tribunal has allowed this OA along with OA Nos. 175/2012 and 226/2012 by a common order dated 22.11.2013 with the following observations:-

"17. We have considered the rival contentions of the parties and also considered the available record. It is an admitted fact that the working report for those officials, whose ACRs are not recorded because of being in a pay band below a certain slab, were called for from the competent authority and the competent authority prepared the working report for the last three years in a clubbed manner on the same date; whereas in the case of those persons whose ACRs were recorded, the ACRs for the last three preceding years which were written by the controlling authority year wise were considered. In our considered view, calling of the working report for the last three years written by the competent authority in a clubbed manner at the same time, cannot be said to be legal or fair procedure for evaluation of the paper screening. The respondent department adopted a strange process which is not only discriminatory but is also violative of fair and just service jurisprudence. Such a procedure adopted by the respondent department, if allowed, will cause heartburn amongst the senior officials and at the same time facilitate the authorities to adopt a pick

and choose policy in utter disregard to the concept of equality enshrined in Articles 14 and 16 of the Constitution. The employees, who are competing for a promotional/selectional posts should be tested on a uniform pattern without any undue advantage of fortuitous circumstances. The respondent department cannot justify their action of assessing one employee on the basis of his previous ACRs written and prepared on annual basis year wise, and the other by calling for working report with regard to his work and conduct prepared on the same day. In such a situation, an employee who had worked very hard during the last three years may have been assessed differently by the assessing officers, while the officer who is writing the working report may not be in a position to assess the working of junior employees for the last three years. His simply describing an official or his work as 'good' or 'outstanding' may jeopardize the service career of seniors or may not protect the rights of the junior officers. It appears that the Railway organization has adopted a discriminatory policy, which has resulted into unfair and arbitrary consequences, because subsequently in the year 2012, the Railway authorities themselves have modified the earlier procedure and now directed all the officials to prepare the working report of the concerned employees on year wise basis. Moreover, in all these OAs, earlier the answer paper were checked and evaluated as per the wrong answer key and subsequently the Railway department themselves constituted a Review Committee and as per the revised answer key the revised written test result was declared, which indicates that the written test too suffered from certain infirmities. We are in respectful agreement with the judgment of the Punjab and Haryana High Court instead of judgment passed by the Delhi High Court, and therefore, the entire process conducted by the respondents No. 2 & 3 for selection for the post of Junior Engineer Electrical against 25% in intermediate apprentice quota in pursuance to the Annexure-A/2 i.e. notification dated

12.7.2011 is quashed. Further, in the facts and circumstances of the case, we direct the respondent No. 2&3 i.e. Chief Workshop Manager, North Western Railway, Carriage Workshop, Jodhpur and Senior Personnel Officer, North Western Railway, Carriage Workshop, Jodhpur, to seek the instructions of the Railway Board for assessment of service record and paper screening based on criteria which is not discriminatory but is fair and wholesome and to re-assess the service record in a fair manner. "

2. A Review Application No.1/2014 in OA No.287/2013 was also filed by the Union of India and Ors.to amend the order dated 22.11.2013. The said Review Application was disposed of by circulation vide order dated 23.01.2014 with the following observations:-

"4. We have perused the Review application, the judgment under Review and also considered the contentions of the applicants. As regards the operative portion we never had any intention to quash the notification dated 12.07.2011 (Annex.A/2) itself, but only intended to quash the entire process conducted by the respondents No. 2 & 3 in pursuance of Annex. A/2 i.e. notification. But, inadvertently insertion of two commas, one after the words 'apprentice quota,' at page No.16 in line No.6 and another after 'in pursuance to Annex. A/2 i.e. notification dated 12.07.2011, in line No.7, got left out. We, therefore, order that comma at both these places be inserted and be read because our intention was only to quash the process and not the notification itself. So far as relying upon the Hon'ble Punjab and Haryana High Court judgment is concerned, we have relied upon the judgment of Hon'ble Punjab and Haryana High Court while considering the facts of the case, therefore, no

case or ground for any review on this point is made out.

5. In our judgment dated 22nd November, 2013 in Para-17, at page 16, line No.5, the words "for selection for the post of Junior Engineer Electrical" have been mentioned whereas the notification dated 12.07.2011 pertains to the post of junior Engineer Mechanical. Therefore, in para-17 at page 16, line No.5, the words "for selection for the post of Junior Engineer Electrical" may be read as "for selection for the post of Junior Engineer Mechanical."

6. Other grounds, raised in the review application touch the merits of the case and therefore, cannot be allowed in a review."

3. Thereafter, Writ Petitions were filed before the Hon'ble Rajasthan High Court at Jodhpur by the Union of India and private respondents and also by the applicant of this OA. In D.B. Civil Writ Petition No. 3671/2014- Union of India and Ors. v. Ugam Singh Sodha and Ors. with 7 other D.B. Civil Writ Petitions, vide order dated 17th March, 2015, the Hon'ble High Court in concluding para observed as under:-

"By considering the same, we are in absolute agreement by the conclusion arrived by the Hon'ble Punjab and Haryana High Court to the effect that the procedure adopted is not only discriminatory, but is alien to service jurisprudence and that will cause heartburn amongst the senior employees and at the same time facilitate the authorities to adopt pick and choose policy in utter disregard to the concept of equality enshrined in Articles 14 and 16 of the Constitution of India. The employees who are competing for a promotional post should be tested on

an uniform pattern without any undue advantage of fortuitous circumstances and in the instant matter the calling of special work reports extends an undue advantage to the members of Group 'D' service that being based on current work and conduct. In our consideration opinion learned Central Administrative Tribunal, Jodhpur Bench, Jodhpur after examining merits of the case rightly followed the law laid down by Hon'ble Punjab and Haryana High Court."

In the D.B. Civil Writ Petition No.3170/2014 filed by the present applicant Shri Ugam Singh, the Hon'ble High Court vide its order dated 17th March, 2015 has observed as under:-

"By a notification dated 12.7.2011 the Senior Personal Officer, North Western Railway, Carriage Workshop, Jodhpur initiated a process of selection for recruitment to the post of Junior Engineer (Mechanical) against ten vacancies pertaining to the intermediate apprentice quota. Several employees with regard to whom ACRs were maintained and with regard to whom special work reports were availed, faced process of selection and on qualifying written test their ACRs or special work reports, as the case may be, were assessed. A panel of selected incumbents was declared on 9.3.2012. In the panel aforesaid the petitioner was shown in the list of selected incumbents at serial No.5. Some of the persons who also faced the process of selection but did not find place in the panel aforesaid, assailed validity of the process of selection by way of filing original application before the Central Administrative Tribunal, Jodhpur Bench, Jodhpur. During pendency of original application the respondent railways revised the panel by issuing a fresh list of empanelled incumbents on 20.9.2013. The applicant was brought out from the panel and necessary information was given to him by communication dated

19.9.2013. Being aggrieved by modified empanelment he preferred an original application before the Central Administrative Tribunal and that came to be disposed of by judgment dated 22.11.2013. By judgment dated 22.11.2013 learned Central Administrative Tribunal considered the issue with regard to assessment of special work reports as agitated by some other similarly situated employees, but no finding has been given with regard to the cause of the petitioner pertaining to the authority to have modification of empanelment. (emphasis ours).

It is submitted by the learned counsel for the petitioner that the Tribunal should examine merits of the original application preferred by the petitioner independently.

From perusal of the judgment impugned it is apparent that the issue sought to be adjudicated by the petitioner before the Central Administrative Tribunal has not at all been considered. In the judgment impugned learned Tribunal has given its finding with regard to validity of the mode of assessment adopted while examining special work reports given by the competent authorities for the railway servant belonging to Group 'D' category. The Tribunal being failed to adjudicate the issue agitated by the petitioner, we deem it appropriate to set aside the judgment impugned to the extent that has been passed in original application preferred by the present petitioner. The matter is remanded to the Central Administrative Tribunal, Jodhpur Bench, Jodhpur for adjudication of the original application afresh on its own merits."

4. After going through the above orders passed in the Writ Petitions before the Hon'ble High Court, it reveals that the process of selection consists of two steps i.e. written test and assessment of Annual Confidential Reports or

special work report, as the case may be. The Hon'ble High Court upheld the view of the Tribunal with regard to validity of the mode of assessment adopted while examining special work reports given by the competent authorities for railways servants belonging to Group-D category, whereas for the issue with regard to the modification of empanelment which affects the right of the applicant is remanded for adjudication by this Tribunal. Therefore, the matter is required to be adjudicated afresh on this issue alone.

5. The applicant in the present OA has prayed for the following reliefs:-

- i. It is therefore prayed that show cause notice dated 13.4.2013 (Annexure/A-1) and amended answer key (Annexure/A-15) may kindly be quashed and set-aside. A declaration be made that the respondents are estopped from revising/amending the panel dated 9.3.2012, if needed by the respondents be directed to place on record the amended panel on record and the same may kindly be quashed and set aside. If necessary the criteria of awarding of grading with regard to working report be quashed being arbitrary discriminatory and without any guidelines giving unbridled and unfettered power to the authorities to do away with the merit of service record. Directions to be issued to the official respondents to re-assess the merit of service record of the applicant, other persons with zone of consideration vis-a-vis person in zone of consideration by following a just and fair criteria to

assess the paper seriously of the selection process. To issuing fresh panel and ground of selection and panel to the candidates including the applicant as Junior Engineer-II (Mechanical) if found suitable.

- ii. Any other favourable order which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.
- iii. The amended answer key (Annexure/A-15) may kindly be quashed and set aside.
- iv. Original Application filed by the applicant may kindly be allowed with costs.
- v. Each and every prayer made herein above is alternative and without prejudice to each other.
- vi. That the impugned letter dated 19.09.2013 and 20.09.2013 (Annexure/A-17 and Annexure/A-18) may kindly be quashed and set aside.

6. The applicant is mainly aggrieved of deletion of his name from the panel dated 9.3.2012. According to the respondents, the said panel was prepared on the basis of wrong model answer keys. On receipt of complaints against evaluation of answer sheets of written test, when it was found that there were errors in the model answer key given for the question paper for the written examination for selection to the post of Junior Engineer (Mech.) against 25% quota, the respondents decided to prepare correct answer key and re-assessed the answer sheets of written

test. On re-assessment of answer sheets as per revised answer key, there was change in the marks obtained by applicant as well as other participants and accordingly, name of the applicant was proposed to be excluded from the panel due to the less marks obtained by him. As such, he was given show-cause notice and after considering his representation, his name was excluded from the panel vide letter dated 19th September, 2013 (Ann.A/17). This letter also mentions that the applicant was provided the revised model answer key on 7.5.2013 and the photocopies of the answer sheets and the revised panel has been issued as per the order passed in OA No. 175/2012 dated 17.9.2013. It is not the case of the applicant that the revised answer key is not applied in a uniform manner for re-evaluation of the answer sheets of all the candidates who appeared in the selection. The applicant cannot claim as a matter of right to be retained in the panel if his name has been placed on the basis of a wrong answer key. The revised answer key was applied uniformly to all the candidates without any discrimination or favour. The respondents have also followed the principles of natural justice while revising the panel on the basis of correct answer key.

7. In this regard, we would like to refer some of the observations of the Hon'ble Apex Court in the case of **Vikas Pratap Singh & Ors. vs. State of Chhatishgarh & Ors.** (2013) 14 SCC 494 wherein the Hon'ble Apex Court in para 18 to 21 observed as under:-

"18. In respect of the respondent-Boards propriety in taking the decision of re-evaluation of answer scripts, we are of the considered view that the respondent-Board is an independent body entrusted with the duty of proper conduct of competitive examinations to reach accurate results in fair and proper manner with the help of Experts and is empowered to decide upon re- evaluation of answer sheets in the absence of any specific provision in that regard, if any irregularity at any stage of evaluation process is found. (See: Chairman, J & K State Board of Education v. Feyaz Ahmed Malik and others, (2000) 3 SCC 59 and Sahiti and Ors. v. The Chancellor, Dr. N.T.R. University of Health Sciences and Ors., (2009) 1 SCC 599). It is settled law that if the irregularities in evaluation could be noticed and corrected specifically and undeserving select candidates be identified and in their place deserving candidates be included in select list, then no illegality would be said to have crept in the process of re- evaluation. The respondent-Board thus identified the irregularities which had crept in the evaluation procedure and corrected the same by employing the method of re-evaluation in respect of the eight questions answers to which were incorrect and by deletion of the eight incorrect questions and allotment of their marks on pro-rata basis. The said decision cannot be characterized as arbitrary. Undue prejudice indeed would have been caused had there been re- evaluation of subjective answers, which is not the case herein. (emphasis ours).

19. In view of the aforesaid, we are of the considered opinion that in the facts and circumstances of the case the decision of re- evaluation by the respondent-Board was a valid decision which could not be said to have caused any prejudice, whatsoever, either to the appellants or to the candidates selected in the revised merit list and therefore, we do not find any infirmity in the judgment and order passed by the High Court to the aforesaid extent.

20. It is brought to our notice that in view of the interim orders passed by the learned Single Judge the appellants have now completed their training and have been in service for more than three years. Therefore the only question which survives for our consideration and decision is whether after having undergone

training and assumed charge at their place of posting the 26 appellants be ousted from service on the basis of cancellation of their appointment qua the revised merit list.

21. Shri Rao would submit that the case of these appellants requires sympathetic consideration by this Court, since the appointment of appellants on the basis of a properly conducted competitive examination cannot be said to have been affected by any malpractice or other extraneous consideration or misrepresentation on their part. The ouster of 26 appellants from service after having successfully undergone training and serving the respondent-State for more than three years now would cause undue hardship to them and ruin their lives and careers. He would further submit that an irretrievable loss in terms of life and livelihood would be caused to eight appellants amongst them who have now become over aged and have also lost the opportunity to appear in the subsequent examinations. He would place reliance upon the decision of this Court in *Rajesh Kumar and Ors. v. State of Bihar and Ors.*, 2013(3) SCALE 393 wherein this Court has directed the respondent-State to re-evaluate the answer scripts on the basis of correct model answers key and sympathetically considered the case of such candidates who, after having being appointed in terms of erroneous evaluation and having served the State for considerable length of time, would not find place in the fresh merit list drawn after re-evaluation and directed the respondent-State against ousting of such candidates and further that they be placed at the bottom of the fresh merit list.

8. On verification of the complaints against evaluation of answer sheets, the respondents found that there were errors in the model answer key given for question paper held on 26.2.2012 for selection to the post of Junior Engineer (Mech.). The respondents as per the instructions on the subject, prepared correct answer key and re-assessed the answer sheets of written test held on 26.2.2012. On reassessment of answer sheets as per correct model answer key, the applicant obtained 59.0 marks out of 80 marks. The last candidates of unreserved category got 61.25 marks. Therefore, his name was deleted

from the previous panel, which was prepared on the basis of wrong answer key. In these circumstances, if error in the model answer key was noticed and the same was corrected and accordingly, undeserving candidates were identified and in their place deserving candidates were included in the select panel, then no illegality would be said to have been crept in the process of re-assessment. But the fact also remains that the applicant has no role in placement in the panel, if the evaluation of answer sheets has been done on the basis of the wrong answer key. Though his name earlier appeared in the panel and he has also participated in the training, but he has not joined the post of JE (Mech.). The said selection was challenged by the candidates whose name did not appear in the select panel. This Tribunal vide order dated 22.11.2013 found the criteria adopted by the official respondents for assessment of ACRs and special work reports as arbitrary and directed the official respondents to seek instructions from the Railway Board in this regard. But since we are dealing with the issue only with regard to deletion of name of the applicant from the earlier panel, which was based on wrong answer key adopted by the respondents and in the light of the ratio propounded by the Hon'ble Apex Court in *Vikas Pratap*

Singh (supra), the decision of the official respondents cannot be said to be arbitrary or discriminatory. Therefore, no relief can be granted to the applicant so far as deletion of his name in the panel prepared on the basis of erroneous answer key is concerned.

9. Further, the re-assessment of answer sheets on the basis of revised answer keys was for all candidates who appeared in the written examination and not only for the applicant. The Hon'ble Supreme Court pointed out, in the case of **H.P. Public Service Commission vs. Mukesh Thakur** in Civil Appeal No. 907 of 2006 vide judgment dated 25th May, 2010 that if there was a discrepancy in framing of the questions or evaluation of the answer, it would be for all the candidates appearing for the examination and not for respondent no.1 only. So far as the question whether it is permissible for the court to take upon itself the task to examine discrepancies and inconsistency in question paper and evaluation thereof assigned to examiner-selection board, the Hon'ble Supreme Court held that the court cannot take upon itself the task of statutory authority. Therefore, we are of the view that no interference is called for with regard to the issue of modification of empanelment.

10. Needless to add here that pursuant to the direction of this Tribunal vide order dated 20.11.2013 as upheld by the Hon'ble High Court, the Railway Board vide letter dated 14th March, 2018 (Ann.A/19) addressed to the General Manager (P), North Western Railway, Jaipur has advised to call the special appraisal reports in respect of all the candidates declared qualified in the written test for obtaining consent from them and accordingly vide letter dated 5.4.2018 (Ann.A/20) the respondents have sought consent of the applicant. Subsequently, vide letter dated July 18, 2018, the Railway Board has also issued instructions advising the General Manager, NWR, Jaipur that the selection for the post of J.E. (Mech.) may be adjudged without taking into consideration the marks of ACR/Working report as a one time exemption from the rules/instructions and the General Manager (P), NWR, Jaipur has also issued letter dated 27.7.2018 accordingly to the Chief Works Manager, NWR, Jodhpur. Both letters of the Railway Board suggest different yardsticks for the selection in question. It appears that the respondents have not fixed the uniform criteria for this selection so far. The respondents are required to test the employees on an uniform pattern without any undue

advantage and in that process if the applicant's position changes subsequently while making selection by adopting a common yardstick to the post of Junior Engineer (Mechanical) pursuant to notification dated 12.7.2011, his case is required to be considered as per his position.

11. With these observations, the OA stands disposed of with no order as to costs.

12. In view of the order passed in the OA, no order is required to be passed in MA No.187/2018, which stands disposed of accordingly.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

R/