

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

13

O.A.No.647/2003

New Delhi, this the 11th day of March, 2004

Hon'ble Shri V.K.Majotra, Vice Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

Shri Jai Narain Singh Rana
s/o Shri Dev Raj Rana
Junior Engineer Gr.I (Tele)
under Dy. Chief Singal and
Telecommunication Engineer (SW)
Northern Railway
New Exchange Building, Second Floor
DRM Office, New Delhi

..Applicant

(By Advocate: Shri B.S.Mainee)

Versus

Union of India through

1. The General Manager
Northern Railway
Baroda House,
New Delhi
2. The Divisional Railway Manager
Northern Railway
Allahabad (UP)

..Respondents

(By Advocate: Shri R.L.Dhawan)

O R D E R

Shri Shanker Raju:-

The applicant, through this OA, has sought review DPC for consideration of promotion for the post of Senior Engineer in the scale of Rs.6500-10500/-.

2. The factual matrix, as reflected, is that the applicant was lastly promoted as Junior Engineer in the year 1997. The next hierarchy of the post for promotion is Section Engineer which is to be filled by a selection process against 80% of the promotee quota.

3. Selection for nine posts was initiated by the respondents vide notification dated 23.4.2001. The

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applicant, as per seniority, was at Sl.No.2 in the order of seniority. On qualifying the written examination, the applicant stood at Sl.No.1 of the list.

4. The applicant was thereafter qualified for viva-voce fixed on 15.10.2001 and in the final result declared on 14.12.2001, his name has not figured. He preferred a representation and thereafter filed OA-110/2002 which was disposed of on 22.1.2002 with a direction to the respondents to pass a reasoned order.

5. In compliance thereof, the respondents passed an order on 17.4.2002 rejecting the claim of the applicant as he could not secure 60% marks in the professional ability which consisted of written and viva-voce.

6. Learned counsel of the applicant Shri B.S. Mainee challenged the process adopted by the respondents in the selection on the ground that the rules have been manipulated. The marks allotted to adjudge the professional ability, i.e. 15% for oral interview and 20% marks assigned to the personality and leadership ability is derailed from the personal interview of the applicant. It is in this conspectus stated that the applicant has been discriminated in the matter of awarding the marks, and the process adopted, on the face of it, is arbitrary.

7. Learned counsel of the applicant relies upon a decision by the Principal Bench of the Tribunal in Saroj Ghai v. The General Manager Northern Railway, New Delhi,

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1997 (1) ATJ 13 to contend that Rule 219 (g), which includes the oral test under the head of Professional Ability as also the personality test, has been held to be illegal.

8. Learned counsel also relies upon the decision of the Principal Bench in Pooja Rawail v. Union of India & others (OA-2050/95) decided on 12.1.2000 where on the basis of awarding lesser marks in viva-voce, the matter was remitted for review DPC.

9. On the other hand, learned counsel of the respondents Shri R.L.Dhawan justified his action by stating that once the applicant has appeared and failed, he is stopped from challenging the selection process.

10. According to learned counsel of the respondents, as per para 219 (g) of the IREM Volume I, out of 50% for written examination and viva-voce under the head Professional Ability, one, who does not secure 60% of the marks, is not eligible to be empanelled. Referring to Note- 2 of the IREM, he strengthens his plea.

11. Further relying upon the decision of the Apex Court in Orissa Small Industries Corporation Ltd. v. N.C. Mohanty, JT 1998 (9) SC 501, it is contended that the right of an employee is only for consideration. Once the applicant has been considered and his suitability has been adjudged, the present OA is not maintainable.

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12. Learned counsel of the respondents has also produced before us the proceedings of selection for the post of Section Engineer.

13. We have carefully considered the rival contentions of the parties and have perused the material placed on record.

14. As the record is not confidential and no privilege is sought, we find that out of 50% for professional ability, the applicant secured 22.40 marks in the written examination, whereas in the oral test, he was given only 6 marks out of 15. In the professional leadership, out of 20 marks, the applicant has been awarded 10 marks.

15. We also find that the persons having lessor marks in the written examination had been given more marks in the interview, like Shri O.P.Srivastava.

16. In Saroj Ghai's case (supra), the Tribunal, insofar as Rule 219 (g) (ii) is concerned, has observed as under:-

"11. On a perusal of the documents, the Tribunal have noted two specific shortcomings in the process of selection. Even though IREM itself provides for test to assess professional ability and for that purpose specifically provides as per clause 219(g) (ii) that professional ability will include oral test, such a holding of an oral to assess professional ability has not been spelt out in any order. It is also significant that there has been no specific oral test only for this particular purpose, though, the final assessment specific marks out of 15 has been made for this purpose. Learned counsel for the applicant stated that

there was no separate oral test but oral test assessment was made as a result of the performance in viva-voce which was held for assessing the personality and leadership ability as provided in clause 219(g). From the records, it is seen that the applicant has got 4 marks out of 15 in the oral test for assessing professional ability and 7 marks out of 20 in personality test. It is also beyond our comprehension as to how the same candidate should have obtained different percentage of marks under the head Professional Ability and under General Personality, arising from the same interview, unless the interview included specific separate tests to assess professional ability against which queries the candidate performed differently. This is not borne out from the records especially when the candidate has obtained 70% marks in the written test specifically to assess professional ability."

17. If one has regard to the above, we in conformity with the aforesaid ratio, find that there was no separate oral test and the performance is to be assessed as per viva-voce, which included personal leadership ability also, whereas the applicant secured 6 marks out of 15 in the oral test but was awarded 10 marks in the personality leadership. This is very strange that the same candidate has obtained different percentage of marks under the head Professional Ability' and General Personality which eliminated from the same interview. In the absence of any specific separate test to assess the professional ability, the aforesaid procedure is itself arbitrary and leaves a scope of invidious discrimination. Keeping in view the performance of the applicant in other test, the awarding of the marks in the oral test under the professional ability cannot be said to be fair.

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18. In the result, for the foregoing reasons, in agreement with the decision in Saroj Ghai's case (supra), the OA is partly allowed. The impugned order is quashed and set aside. The respondents are directed to reconsider the matter by a review DPC to be conducted within a period of two months from the date of receipt of a copy of the present order. If the applicant is found fit for promotion, he shall be given promotion from the date the immediate junior was given promotion, with all consequential benefits. No costs.

S. Raju

(Shanker Raju)
Member (J)

/sunil/

V. K. Majotra

(V. K. Majotra)
Vice Chairman (A)