

**Central Administrative Tribunal
Principal Bench**

OA No.2695/2014

New Delhi, this the 6th day of November, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A. K. Bishnoi, Member (A)**

1. Shri Iswar Swaroop Bharti
Age 45 years,
S/o Late Mewa Lal
R/o 16-D-4, Railway Colony,
Punjabi Bagh,
Delhi.

2. Shri Jatin Gill
Age 24 years
S/o Shri Hans Raj Gill
R/o 78/2, Railway Colony
Kishan Ganj
Delhi 110 007.

.... Applicants.

(By Advocate : Shri Vishvendra Verma)

Vs.

1. General Manager
Northern Railway
Baroda House,
New Delhi.
2. Chief Personnel Officer
Northern Railway
Baroda House,
New Delhi.
3. Chief Commercial Manager
Northern Railway,
Baroda House,
New Delhi.
4. Director/CS
IRCTC, Corporate Office
New Delhi.
5. GGM/HRD
IRCTC Corporate Office
New Delhi.

6. GGM/HRD/IRCTC
7th Floor, Bank of Baroda Building,
16 Parliament Street,
New Delhi. ... Respondents.

(By Advocate: Shri Kripa Shankar Prasad)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

Though the OA is filed by two applicants, arguments are advanced only in respect of the 1st applicant and it is stated that the 2nd applicant has chosen to argue himself. However, he did not appear.

2. The 1st applicant joined the service of Railway as Khallasi, and at present he is working in Indian Railways Catering & Tourism Corporation (IRCTC). A Khallasi can be considered for promotion to the post of Ticket Examiner (TE) depending on the performance in the written examination conducted for that purpose. Similar facility is available for the post of Commercial Clerk (CC), to the extent of 33-1/3% under promotion quota. There again, the selection is on the basis of performance in the written test.

3. The respondents initiated steps for promotion to the post of TE, as well as CC in the year 2013. The written examination for the post of TE was conducted on 24.02.2013. The applicant secured 45.9 out of 85 marks in the written test. He was awarded 5 out of 9 marks for the

qualification held by him, 3 out of 5 marks for record of service, and his aggregate was 53.90. The written test for the post of CC was held on 05.10.2013. The applicant secured 28.05 marks in the written test conducted for 85 marks and was awarded 9 out of 15 marks for qualification, and the aggregate is 37.05.

4. During the course of selection, the applicant and various others were subjected to medical test and were also given the vigilance clearance. The name of the applicant, however, did not figure in the list of selected candidates for the post of TE. He made various efforts to know the reasons thereof, and since he was not satisfied with the information obtained under the RTI Act, 2005, he filed this OA with a prayer to direct the respondents; (a) to provide the entire list of selected candidates along with marks and (b) to peg up his marks to 100 instead of 99 marks and (c) to direct the respondents to select him to the post of TE or CC on the basis of marks secured by him in the written test.

5. The applicant contends that it was only on finding that he was selected to the post of TE that he was sent for medical examination and was given the vigilance clearance. He submits that the action of the respondents in not including his name in the list of selected candidates is without any basis. It is also stated that the information

furnished by the respondents at various stages is inconsistent and there is arbitrariness in the process of selection.

6. The respondents filed the counter affidavit. It is stated that the applicant appeared in the examination conducted separately for the post of TE on the one hand, and CC on the other, and that his case was also considered by the DPC on the basis of the marks secured by him. According to the respondents, 4 posts of TE were reserved for SC candidates and on finding that there are many SC candidates, it was decided initially to consider who secured more than 60% marks, but later the case of the applicant was also considered. It is stated that the meritorious SC candidates were appointed and the applicant who secured less than 60% marks was not selected. It is also stated that as regards the post of TE also, the applicant did not come up to the level of selection.

7. We heard Shri Vishvendra Verma, learned counsel for the applicant and Shri Kripa Shankar Prasad, learned counsel for the respondents.

8. It appears that the applicant is taking the post of TE on the one hand and the CC on the other hand as the one and as the same, or interchangeable. The fact of the matter is

that both the posts are separate and selection process for them is also carried out separately. The applicant was holding the post of Khallasi and according to the Recruitment Rules, a Khallasi is entitled to be considered for promotion to the post of TE depending on the performance in the written examination. So far as the post of CC is concerned, the promotion is restricted to 33-1/3%, which, again is subject to the performance in the written test. The applicant is under the impression that he was selected for the post of CC, on account of the fact that he was sent for medical examination and was also given the vigilance clearance. The record, however, discloses that once the eligible candidates were shortlisted, they were sent for medical examination and vigilance clearance was given. The selection was on the basis of performance in the test. The merits lists were forwarded to the DPC, and the actual selection has taken place at that stage.

9. The nature of steps taken by the respondents for promotion to the post of TE are indicated in para 4.6 of the counter affidavit. It reads as under:-

“4.6 That the contents of the para are wrong and incorrect hence disputed and denied. It is submitted that obtaining clearance of Vigilance department is pre-requisite in each case for consideration of placement of selection panel/promotion. Even though the applicant could not secure 60% marks in the written test for the post of Ticket Examiner Rs.5200-20200 + Grade Pay Rs.1900/- held on 24.02.2013, still he was considered

for DPC in “Relaxed Standard” being SC candidate to give him fair chance as per extent instructions. Accordingly he was sent for medical examination before consideration of DPC and clearance of vigilance Department was obtained. As already stated above the panel was prepared in order of MERIT as per instructions issued vide Railway Board’s letter No.E(NG)I-2008/PM7/4/SLP dated 19.06.2019. The applicant was considered for DPC alongwith other candidates who secured 60% and more marks in the written test to fill up 21-UR, 4-SC & 2-ST posts. As the applicant could secure only 53.90% marks in aggregate, he could not be placed on the panel of Ticket Examiner Rs.5200-20200+Grade Pay Rs.1900/- as a result of scoring lower position in MERIT. However four SC candidates who secured 60% or more marks in aggregate were placed on the panel against 4 reserved posts of SC in order of MERIT.

Marks obtained by the applicant (Shri Ishwar Swaroop Bharti) in the selection of Ticket Examiner under each head are as under:-

Marks in written test (out of 85)	Marks of Qualification (out of 09)	Marks of Record of Service (out of 5)	Marks of Award (out of 1)	Total Marks (Out of 100)
45.90	5	3	0	53.90

The applicant did not file any rejoinder contradicting this. Even in a reply in response to an application filed under RTI Act, 2005, the applicant was informed that he secured 45.90 marks in the written test, and aggregate of 53.90. Argument was advanced to certain extent about the one missing mark. The circumstances under which one mark is segregated are not stated. Assuming that one mark is awarded to the applicant, that would not make much of difference, and he remains below 60%. It is not in dispute that the candidates selected against the 4 reserved posts have secured more

than 60% marks and the aggregate marks of the applicant are just 53.90. Therefore, it cannot be said that the applicant was either selected at all, for the post of TE or that his non selection was illegal.

10. As regards the post of CC, the applicant himself stated that, apart from applying for the post of TE, he has also applied for the post of CC (para 5.6 of the OA). The examination for this post was conducted on 05.10.2013 and he secured only 28.05 marks in the written test against 85, and was awarded 9 out of 15 marks for qualifications. The manner in which the case of the applicant was considered was mentioned in para 4.7 of the counter affidavit. It reads as under:-

“4.7 That the contents of the para are admitted to the extent that the applicant No.1 has also applied for the post of Commercial Clerk in Grade Rs.5200-20200+ Grade Pay Rs.2000- against 33-1/3% Promotee quota and also appeared in written test held on 05.10.2013 along with applicant No.2 (Shri Jatin Gill) but qualified the same against “Best amongst failure” scheme securing only 33% marks being a SC candidate against reserved post of SC. Marks obtained by the applicant No.1 (Shri Ishwar Swaroop Bharti) in the selection of Commercial Clerk under each head are as under:-

Marks in written test (out of 85)	Marks of qualification (out of 15)	Total marks (out of 100)
28.05	9	37.05

Here again, the applicant did not file any rejoinder contradicting the statement made by the respondents.

11. Once it emerges that the non selection of the applicant for the post of TE or CC was on account of relatively less marks secured by him, it cannot be said that there is any illegality or infirmity in the selection process.

12. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

(A. K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/