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**(2007) 03 BOM CK 0022**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 901 of 2006**

Ashad Ullah Khan and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 13-03-2007

**Acts Referred:**

**Citation :** (2007) 3 ALLMR 768 : (2007) 4 BomCR 343

**Hon'ble Judges :** Joshi A.H., J; Chavan R.C., J

**Bench :** Division Bench

**Advocate :** S.S. Sanyal, for the Appellant; M.M. Sudame, for the Respondent

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## Judgement

Chavan R.C., J.—By this petition, six locomotive drivers working with the South East Central Railway challenge the order passed by the Central Administrative Tribunal on 20.1.2006 rejecting their Original Application No. 500 of 2005.

2. The petitioners were to be considered for promotion as drivers of passenger trains. Thirty-seven posts of such drivers were to be filled in from Nagpur Division. The petitioners along with other drivers were subjected to written tests held on 27th and 29th April and 2nd May, 4th May, 6th May and 12th May, 2005. A circular by the Railway Board required that 45 to 55% of the questions at such tests were to be objective type and the rests were to be descriptive. The petitioners were subjected to tests on 29.4.2005 and 4.5.2005 when 40% objective type questions were put. On 2.5.2005, however, 60% objective type questions were put and this is how the petitioners claim to have been discriminated. The petitioners, therefore, filed Original Application before the Central Administrative Tribunal, which rejected the application holding that no mala fides had been alleged and that there was bound to be some fluctuation if written tests were conducted on six different dates. Aggrieved thereby, the petitioners are before this Court and assail the order passed by the Central Administrative Tribunal.

3. The petition was admitted for expeditious hearing on 4.8.2006. On behalf of

respondents No. 1 to 3, the Railway Administration, an affidavit and a return have been filed justifying their decision. It was stated that the circular from the Railway Board prescribed that objective type questions should be set for about 50% of the total marks for the written test. These guidelines were not mandatory and, therefore, the ratio of objective and subjective type questions could have fluctuated within the prescribed range. There were no mala fides and, therefore, there was no injustice caused to the petitioners. It was further pointed out that the percentage of empanelment candidates examined on 2.5.2005, when 60% objective type questions were put, was only 69.56%. empanelment of 90% candidates out of those tested on 29.4.2005 when 40% objective type questions were put, indicates that there was no injustice on account of the different testing procedure. The respondents, therefore, pray for dismissal of the petition.

4. By Civil Application No. 1704 of 2007, the respondents sought early hearing, contending that there were large number of vacancies of Drivers and the administration was finding it difficult to operate Mail and Passenger Express trains, since the promotions were stalled by the order of this Court dated 4.8.2006. We have, therefore, heard the learned Advocates for the parties on the merits of the petition.

5. There is no dispute that the circular of the Railway Board prescribed that objective type questions were to be put for about 50% (in the range of 45 to 55%) of the total marks of the written test as has been reproduced by the Central Administrative Tribunal in para 4 of its judgment. Thus, the circular not only suggests that objective type questions should be about 50% of the total, but also prescribes a range from 45 to 55%. The Tribunal rightly held that all Goods Drivers could not be taken off duty for examination on one day and that the examination had to be conducted on different dates. Therefore, the Tribunal was also right in observing that some fluctuation was bound to be there if written examination was held on six different dates. But the Tribunal failed to see that the fluctuation travelled far beyond the range prescribed in the Railway Board's circular from 45 to 55%.

6. It is substantially not in dispute that on five of the six dates of the examination, the percentage of objective type questions was 40%, whereas on 2.5.2005, it was 60%. The contention of the respondents that this did not prejudice the candidates by referring to the percentage of the empanelment, is fallacious. Empanelment depended not only upon the result of the written test, but other factors like service record, etc. If a comparison has to be made, only the result of the written test held on different dates would have to be compared. Annexure 1 to the respondents' return dated 21.12.2006 shows that the percentage of candidates, who passed on 2.5.2005, when 60% objective type questions were put, was 95.83%, since 23 out of 24 candidates passed. It is true that on 6.5.2005, when 40% objective type questions were put, 9 out of 10 candidates passed with a percentage of passes of 90%. But on 29.4.2005 and

4.5.2005, when 37 and 25 candidates respectively were examined, only 10 and 6 candidates cleared, bringing down the percentage of passes to 27.02 and 24 respectively. On 27.4.2005, when 12 candidates were examined with 40% objective type questions, cleared, bringing down the percentage of passes to 58.33. Thus, it cannot be said that higher number of objective type questions had not created any imbalance. The candidates examined on 2.5.2005 had decidedly a better chance of clearing the examination because of the higher number of objective type questions. In view of this, the order of the Central Administrative Tribunal cannot be sustained.

7. However, we do not see as to why the entire examination should be scrapped. It would be enough if the candidates, who were examined on 2.5.2005, are subjected to written test again with 40% objective type questions so that the test, which they appear at, is similar to the test to which the other candidates were subjected.

8. In view of this, we quash and set aside the examination of 24 candidates held on 2.5.2005 and direct that these candidates should be subjected to a fresh written test with 40% objective type question. The result of the selection process shall be arrived at afresh by substituting the earlier marks of these candidates by the marks, which these candidates may obtain at the test to be now held.

9. Rule is made absolute in above terms. However, there shall be no order as to costs.