

(2005) 03 J&K CK 0014
In the Jammu And Kashmir High Court
Case No : Review (LPA-SW) No. 28 Of 2003

Rakesh Kumar Kalra and Another	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 16-03-2005

Acts Referred:

Citation : (2005) JKJ 204 Supp

Hon'ble Judges : Permod Kohli, J and S.K.Gupta, J

Bench : Division Bench

Advocate : Sunil Sethi, P.S.Chandel, Advocates appearing for the Parties

Judgement

Gupta, J.—Through the currency of this petition, review has been sought by the petitioners in respect of the order passed by the Division

Bench in case LPA (SW) No. 492/2002, entitled Rakesh Kumar Kalra and Anr. versus Union of India and Ors., on 07042003 on the following

grounds:

(i) That the Hon'ble Division Bench while deciding the LPA has not returned findings on the aspect that the private respondent Gursharan Singh

was not eligible at all as he was only having 1 year service in the grade as against required qualification of 2 years service. The said plea was taken

before the LPA Bench in groundf at page 4 and was urged before the court, has not been decided.

(ii) That the plea of the petitioners that conducting of two tests on two different occasions by the respondents was only to facilitate the candidates

on the first occasion by putting them easier questions and relaxing rigors of test has not been answered by the Hon'ble Division Bench.

(iii) That the plea of the petitioners that they could not appear in the test on the

first occasion, but they were not relieved by the duties by the respondents and were made to appear in the 2nd test only has not been considered by the Hon'ble Division Bench and an impression has been carried out by the Hon'ble Division Bench as the petitioners had their own choice to decide to appearing the 2nd test instead of first Test.

(iv) The further plea of the petitioners that as per policy of the respondents, there could have been only one member of the Selection Team from

the reserved category but in the instant case, all the members of the selection Board were members of the reserved category, has also not properly

been appreciated by the Hon'ble Division Bench.

(v) That the Hon'ble Division Bench has also failed to appreciate the fact that the question papers, which were put, were not as per guidelines and

the fact of the question papers being contrary to the guidelines was sufficient by itself to annul the selection process which has been initiated on the

basis of said question papers. The petitioners have collected circumstances and the instances wherein in the past, the respondents at their own have

cancelled the examination when the question papers were found to be not of the pattern as provided by the guidelines

2. The plea of the petitioners that the paper, which was set, was contrary to the statutory guidelines issued by the respondents, is well founded, as

is apparent from the statute, which provides 50% of the paper has to be set in objective form. A reference to the statutory rules reveals that there

is a scope of some deviation, but deviation cannot be to the extent of altogether ignoring the setting of the paper in objective type paper. In the

instant case, only one question was put in objective type and that too was optional and practically means that absolutely no weightage was given to

the statutory requirement in fixing the paper in objective type to the extent of 50%. This important fact has skipped the consideration of the Court

while deciding the appeal vide judgment dated 07042003. Added to this fact is the fact that on earlier occasion also, when the paper was set

contrary to the statutory guidelines, whole of the selection was cancelled vide letter dated 391997 produced by the petitioner also is annexed with

the review petition.

3. Even in the instant selection, it is evidently clear that the paper for the written test, which has been set in the present case, is also contrary to the

statutory guidelines, as per the minutes of the Board meeting and whose authenticity has not been disputed by the respondents. If that be the

position, the plea of petitioners is well founded that the whole of the selection process is vitiated because of the noncompliance of the mandatory,

statutory guidelines of fixing the nature of questions in objective type to the extent of 50%. Further reference relevant in this context may be made

is the copy of the Railway Board's letter No. E(NG) I/83/PMI/65 (PNM/NFIR)) dated 17.04.84 dated 451984, which reads as under:

Sub: Selection Postwritten examination as part of the selection process
Introduction of Objective type of questions. In the PNM Meeting held

between the National Federation of Indian Railway men (NFIR) and the Board on 16/17.9.1987 stated that in the older age group the capacity of

the employees to answer written papers gets reduced though they have adequate knowledge of work gained through the experience etc. Thus

junior employees tend to score over their Seniors in the written test held for selection posts. They therefore suggested that the qualifying marks

prescribed for being eligible to be called for viva voce test and also the overall pass percentage of marks for being empanelled, might be reduced.

2. The matter has been considered by the Ministry of Railways. It will not be feasible to relax the rules in regard to written examinations (wherever

prescribed) for promotion to selection posts. However, it may be possible to combine questions requiring narrative answers with those of an

objective type. The advisability of introducing objective type questions has accordingly been considered, taking into account the views expressed

by some of the Railway Administrations. It has now been decided that wherever a written test is held for promotion to the highest grade selection

post in a category, objective type questions may be set for about 50% (fifty percent) of the total marks for the written test. The remaining questions

could continue to be of the (conventional) narrative type. It may be made clear here that figure of 50% for objective type of questions is intended

to be for guidance only; it should not be taken as constituting an inflexible percentage.

4. Further plea of the petitioners is that a junior person, namely, Gursharan Singh, private respondent¹², has been selected, who had one year's

service in the grade, which he was holding at the time of selection, whereas the requirement is of two years' service in substantive grade before the

date of examination. Compilation of selection procedure for nongazetted selections of Northern Railways issued by the Headquarters Office,

Baroda House, New Delhi, dated 21101999 clearly indicated in its column ""Eligibility for Empanelment"" that two years' service in the immediate

lower grade is a must at the time of actual promotion. The panel was kept alive for one year till Gursharan Singh, respondent12, completed two

years' eligibility, withholding the post for one year. It all has happened only because the mandatory and statutory instructions having not been

complied with while setting the question paper, leading the selection of such junior persons.

5. Mr. P.S. Chandel, learned Additional Standing Counsel for Central Government, appearing for the official respondents, when confronted with

this anomaly, which has taken place in the selection process, he could not justify in putting forth plausible explanation and has failed to satisfy the

Court. Looking from any angle, the case of the petitioners, in our view, is well founded and it can safely be said that the selection process has

wrongly been conducted and private respondent has wrongly been promoted. As such, the Court has reached a conclusion that the selection

process was wrong and, consequently, all such promotions deserve to be vitiated.

6. It was next contended by the petitioners that composition and nomination of the members of the Selection Committee was also in violation of the

Rules. The Railway Rules pertaining to the Compilation of the Selection procedure for nongazetted selections dated 21101999 provide that for all

selections, the Board shall consist of not less than 3 officers, one of whom shall be a Personnel Officer. Out of the three officers nominated, one

shall belong to SC/ST community. However, inclusion of SC/ST officers in the selection committee is not necessary when the selection is

conducted for unreserved posts and only general candidates are in the zone of consideration. But according to the petitioners, all the members of

the Selection Board were the members from reserved categories, which was in clear breach of the Railway Rules and the Policy formulated by the

respondents Union of India. On this count also, in our view, selection is bad and being in clear violation of the Railway Rules, deserves to be

vitiated,

7. Now the question will be as to what relief the petitioners will be entitled to, as

the promotions have been given to the private respondents long back. In such a situation, the law is well settled and the relief is required to be moulded in such a manner that the justice is done to all the parties. It will be late in the day to quash selection of all the respondents, when they have been promoted on the basis of selection, which is apparently illegal, and so has also been held by the Board. But so far as giving the relief to the petitioners is concerned, it is seen that petitioner2 was also not having the eligibility as on the date of submitting of the application form. As such, no relief can be given to her. Petitioner1 was having the eligibility and it is further contended by the learned counsel appearing for him that petitioner1 has been given promotion to the higher post during the pendency of the lis in subsequent selection, and a document produced in this behalf has been taken on record. This fact pertaining to the selection and promotion to the next higher post of petitioner1 has also not been disputed by Mr. P.S. Chandel, learned additional standing counsel for the respondents Union of India.

8. If that be the position, it will be in the fitness of things that the appeal filed by the petitioners is allowed and the relief is confined to petitioner1 only in view of his eligibility. The relief which can be granted now to petitioner1 would be only with regard to the promotion to the post of Chief Enquiry cum Reservation Supervisor, by giving effect of promotion to petitioner1 from the date the same was given by official respondents to other private respondents, with all monetary and consequential benefits. Petitioner1 will be entitled to be placed in the seniority list of Chief Enquiry cum Reservation Supervisors, qua the private respondents, at the same place where he was holding the seniority visavis the private respondents in the lower grade.

9. The Writ Petition and consequently the Letters Patent Appeal filed by the petitioners is allowed to the above extent.

10. The Review Petition is disposed of as such.