

(2023) 10 CAT CK 0030

In the Central Administrative Tribunal

Case No : Original Application No. 255 Of 2023, Miscellaneous Application No. 287, 298 Of 2023

Tej Singh Jatav

APPELLANT

Vs

Union Of India, Through Notice To Be Served Through,
General Manager, Western Railway, Churchgate, Mumbai ?
400020 & Ors

RESPONDENT

Date of Decision : 20-10-2023

Acts Referred:

Citation : (2023) 10 CAT CK 0030

Hon'ble Judges : Dr. A.K.Dubey, Member (A); Umesh Gajankush Member (J)

Bench : Division Bench

Advocate : S S Chaturvedi, R.R. Patel, V. V. Goswami

Final Decision : Dismissed

Judgement

Dr A K Dubey, Member (A)

1. Aggrieved by the Memorandum dated 17.08.2023 (Annexure-A/1) declaring the panel of candidates who were successful in the LDCE (20% of quota) for promotion to the post of Junior Engineer (Tele) in level 6 of the pay, which did not include the applicant's name, the applicant has preferred this OA

2. Applicant's contention is about question No.38 of the LDCE Paper 1 to which the first answer key as well as the revised answer key denoted wrong answer due to which he stood to lose. Further, he contends that in APAR for 2019-2020, his overall grading was "Good" which was not communicated to him but was included in APAR verification which stood to his disadvantage.

2.1 After the written test of LDCE, respondents published the list of candidates who had qualified it, vide memorandum dated 11.07.2023 (Annexure-A/5). The applicant's name appeared at S.No.6 in this list. This Memorandum advised the candidates to submit their Award Certificates issued by Railway Authorities. Vigilance clearance too was called for. However, when the final list came out by

way of the impugned Memorandum dated 17.08.2023 (Annexure-A/1), the applicant's name was not there in it. The applicant feels that he stood to lose due to answer key showing wrong answer option to the question No.38 and inclusion of 2019-2020 APAR which, being 'Good', was not communicated to him.

2.2 The applicant contends that the first answer key published on 06.06.2023 mentioned option 'B' as answer to the question No.38 of the LDCE paper No.1 (Annexure-A/11). The applicant besides others objected to it and thereafter, a corrigendum dated 21.06.2023 (Annexure-A/11 Colly) was issued showing option 'D' as the correct answer. The applicant contends that both the answer options were wrong due to which he stood to lose the chance.

3. When the matter came up before us for the first time on 23.08.2023, the counsel for the applicant submitted that though the list was out vide the impugned memorandum, promotions were not effected as of then and the candidates had not been sent for initial training. It was on this submission that by way of ad interim relief, respondents were directed to keep further action on the impugned order in abeyance.

4. Respondents filed their reply mainly contending that the first list of qualified candidates vide memorandum dated 11.07.2023 (Annexure-A/5) clearly mentioned that the final panel would be declared after due procedure and merely passing the test did not give any right to anyone for final empanelment or consequential benefits and in this Court, the claim of the applicant is not admissible or sustainable. Regarding the answer key, respondents had, by way of letter dated 06.06.2023 (Annexure-A/11), given an opportunity for submitting representation against it. On getting these representations, remarks of paper setters were called for in the light of which corrections in the answer key were advised vide letter dated 21.06.2023 (Annexure-A/11 Colly). The reply informs that after due process, the applicant could not make it to the select list. Reliance by the applicant on the guidelines for awarding marks issued by the Modern Coach Factory, Rae Bareilly dated 14.12.2021 (Annexure-A/8) is to be controverted as that order by the Modern Coach Factory and not by the Railway Board because of which it is not applicable to all the Railways.

4.1 The reply relies on the office note dated 31.08.2023 (Annexure-R/2) which discloses that apropos of this OA, the respondents asked the question setter to examine the issue of answer to the question No.38. It is contended by the respondents that the corrected answer key notified vide Memorandum dated 21.06.2023 (Annexure-A/11 Colly) showed the right answer. However, in the final procedure, the applicant could not make it.

4.2 Regarding APAR, the reply contends that APARs of the applicant for the year 2020-21, 2021-2022 and 2022-2023 were taken into account, being the last 3 years' APAR. Thus, APAR for 2019-2020 had no reference here, and the applicant's contention that it has been used to the applicant's disadvantage is ill founded and baseless.

5. Reply has also been filed by the private Respondents No. 3 to 8, mainly contending that the applicant's averments are based on apprehension about inclusion of APAR for 2019-2020 and the answer to the question No.38 in paper 1 that he has disputed. The list of qualified candidates in the Memorandum dated 11.07.2023 (Annexure-A/5) clearly mentioned that the final panel would be declared after due procedure. And indications about the due procedure too have been given there. It is only after the due procedure that the final panel has been taken out vide Memorandum dated 17.08.2023 (Annexure-A/1) and this again mentions that the final panel is provisional and is subject to outcome of the ongoing litigation/court cases. Similarly, the issue of APAR for 2019-2020 is merely on surmises and conjectures as the applicant has not shown how it had affected his result as far as final panel is concerned.

6. Respondents No.3 to 8 filed MA No.287 of 2023 seeking modification in the order dated 23.08.2023 saying that due to assumption and apprehension raised by the applicant, the persons in the panel who have legitimately made it to the final selection list have been deprived of the initial training which could affect their future seniority.

7. Rejoinder has been filed by the applicant, mostly reiterating the grounds taken in OA. In particular, the rejoinder contends that the railway board's letter RBE No.97/2011 dated 24.06.2011 (Annexure-A/7) has not been addressed in the reply by the respondents. Further, it reiterates that the APAR for 2019-2020 has been counted to his disadvantage. Besides, it disputes yet again the answer to the Question No.38 and places reliance on the Hon'ble Apex Court's judgment in Dev Dutt vs Union of India for the APAR issue and on the judgment of PB in OA 207/2013 dated 21.05.2013 for the answer key issue.

8. After completion of pleadings, the MA No.287/2023 was put to argument on 05.10.2023, and the order was reserved while posting the OA for final hearing on 11.10.2023. Accordingly, the OA came up for final hearing on 11.10.2023.

9. Counsel for the applicant reiterated the grounds and submitted that the APAR for 2019-2020 was included in the procedure of selection to his disadvantage. She vehemently submitted that the revised answer key too was wrong and the examinee ought to have considered it in that perspective. She placed reliance on the Selection Policy Guidelines dated 14.12.2021 (Annexure-A/8) of the Modern Coach Factory, Rae Bareilly to drive home the point that the applicant was entitled to get 6 marks for service record being without any adverse entry and 4 marks for graduation (BA, B.Ed.) which was denied to him. She relied on the reply given to her under RTI Act, 2005 dated 14.07.2023 (Annexure-A/13) which reveals that the applicant got 22.8 marks for service record; 14 marks for the APAR and 65.27 marks in the final merit list. She contended that in the scheme of marking, there was no question of total marks in decimal and hence this too was a ground to impugn the final selection list. In this context, she submitted that the para 11.4 of the guidelines for the personnel officers and members of the selection boards for conducting selection for promotion to posts classified as Selection –

Serial Circular No.320/99 (updated) Annexure-A/14) was to be referred to .

10. Learned counsel for the answering respondents averred that the applicant could not make it to the final selection list since he could not achieve the cut off marks prescribed for it. Regarding the issue of correct answer to the Question No.38 of Paper 1, she vehemently submitted that candidates were given due opportunity to represent against the answer key and after that the answer key was modified vide letter dated 21.06.2023 (Annexure-A/11,Colly). She argued that it was the expert's opinion which was accepted and it cannot be infringed with administratively. She further averred that after this Tribunal's order on 23.08.2023, respondents vide note dated 31.08.2023 (Annexure-R/2) directed the question setting officer to examine the issue and offer his remarks. Respondents have also placed on record the authorized literature about DTMF based remote control system (Annexure-R/3) to argue that revised answer key notified on 21.06.2023 incorporated the correct option. The basis of the applicant's claim that the revised key too was wrong in the Train Traffic Control subject Code ST49, a publication by the S&T Training Centre, Sabarmati (Annexure-A/11 Colly). However, respondent's contention is that the expert opinion about the revised answer key is based on the DTMF based Remote Control System literature (Annexure R/3). Counsel for the respondent reiterated that expert's opinion was not liable to be opined upon, by way of administrative process, and courts have mostly refrained from opining over an expert's advise, while accepting or rejecting it in course of its proceedings.

10.1 Learned Standing Counsel further submitted that the APAR for 2019-2020 was not taken into account; the three years' APAR that were taken into account were for the years 2020-2021, 2021-2022 and 2022-23. Regarding marks in decimal, she submitted that the guidelines for the selection boards (Annexure-A/14) stipulate in Note (3) to para 8 that decimal marks should be corrected to the first decimal and should not be rounded off. Evidently, marks could be in decimal. The cut off marks for merit position was 66.14 whereas the applicant achieved 65.27. The learned Standing Counsel also averred that the guidelines for the selection boards were relevant here and not the Rae Bareilly Modern Coach Factory's guidelines.

11. Learned counsel for the respondents No.3 to 8 also submitted that the six successful candidates who made it to the panel had been adversely affected due to mere apprehension and conjectures of the applicant. He argued that not permitting the successful candidates, to go for initial training was fraught with the danger of having consequence of affecting their seniority in the promotion grade. He reiterated that the APAR for 2019-2020 was not taken into accounts as informed in the reply by the answering respondents and hence that ground was not tenable. Regarding revised answer, the matter was clear once again in view of the fact that the representation against the first answer key was invited and acted upon, resulting in the revised key notified on 21.06.2023. Finally, the marking for the APARs and the service records were all normative as specified in

the guidelines for the selection board and hence on the face of it, it was not discretionary. Finally, about the decimal, the counsel argued that it was evident from the paper 1 (Copy placed by the applicant at Annexure-A/11) that although the examination was for 100 marks, answer scores were moderated to provide for 50 marks for written examination to be combined with the marks for record of service etc. In this process, marks in decimal could not be ruled out, and that is why even the guidelines prohibited the rounding off the decimal marks, the counsel argued.

12. Heard the counsel for the applicant and the respondents. It is clear that the main grounds to impugn the panel for promotion in the Memorandum dated 17.08.2023 were (i) inclusion of APAR for 2019-2020 in APAR verification which was not communicated to the applicant (ii) the answer to the question No.38 of Paper-1 was wrong in notification dated 06.06.2023 and continued to be wrong even in the revised notification of the answer key dated 21.06.2023 and the correct answer was not given as option in this question and (iii) how the overall marks of 65.27 obtained by the applicant could be in decimal when scheme of scoring did not have any room for marks in decimal. The reply of the respondent No.1 & 2 clearly mention that the APAR for the year 2019-2020 was not taken into account and it was the APARs for year 2020-2021, 2021-2022 and 2022-2023 that were taken into account. Regarding correct answer to Question No.38 of Paper 1, records before us show that the first answer key notified on 6.6.2023 was revised after receiving representation against it and it was notified on 21.06.2023. The applicant too had represented. When impugned by the applicant, the answer to Question No.38 of Paper 1 of the said LDCE was referred to the paper setter for examination and remarks. Result of this reference has not been placed on record. The last issue is about the marks in decimal. It is clear from records that the Paper-1 was for 100 marks. There was yet another paper. These two papers together were taken as written examination. Then in accordance with the stipulation in Para 11 of the Guidelines for the Selection Board (Annexure-A/14), particularly para 11.4, the marks obtained in the written test are moderated to the admissible 50 or 35 marks, as the case may be, for the written portion. Similarly, clear stipulation are there in the sub heading "record of service." Because of moderation of written examinations' marks, the possibility of decimal marks cannot be ruled out. This, coupled with the stipulation in the prescription Note 3 to para 9.3 about treating the decimal marks and Not rounding it off makes it amply clear that it is possible to get marks in decimal number. Finally, the correctness of answers has to be determined on the basis of expert's opinion, particularly when the candidates were allowed to represent against any discrepancy in the answer key whereafter the answer key itself was revised and corrected with due procedure.

13. We have seen a reference to the question setter officer and his remarks have not been placed on record. We expect the respondents No.1 & 2 to bring the reference in the Note dated 31.8.2023 to the logical conclusion as per the extant instructions governing the issue and take further action accordingly. We are

refraining from entering into the domain of experts' opinion. We are of the considered opinion that we should not enter into the domain of experts' opinion. We note that the respondents themselves have been transparent in inviting objection to the answer keys and notifying the modified answer afresh.

In the factual matrix obtaining from the above exposition and records, we are of the considered opinion that the acts of respondents No.1 & 2 neither suffer from procedural irregularity nor are ultra virus the stipulations in the Guidelines for the Selection Boards for LDCs. In view of this, we do not find merit in the OA and accordingly, we dismiss the OA. The MA No.298/2023 is disposed of with the direction that further action on the Memorandum dated 17.08.2023 may resume and continue as per extant rules and accordingly, the interim stay dated 23.08.2023 stands extinguished.