

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5306 of 2017

1. The Union of India through the Chairman, Railway Recruitment Board, Muzaffarpur (Bihar).
2. The R.R.C.B., Ministry of Railway, Railway Board, New Delhi.
3. The Chief Operating Manager, N.E. Railway, Gorakhpur.
4. The Executive Director, Finance, Research Design & Standard Organisation, Manak Nagar, Lucknow - 226011.
5. The Secretary, Railway Recruitment Board, Muzaffarpur (Bihar).

... .. Petitioner/s

Versus

1. Rabindra Kumar Son of Ram Pravesh Singh C/o Sri Awadesh Singh, Mai Peon, Patliputra Post Office, Patna - 13.
2. Ashish Kumar Nirala Son of Sri S.N. Prasad resident of Village/Post Shankarpur, District - Munger (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. D. K. Sinha, Sr. Advocate Mr. Nishi Nath Ojha, Advocate
For the Respondent/s	:	Mr. M. P. Dixit, Advocate Mr. Sanjay Kumar Chaubey, Advocate Mr. S. K. Dixit, Advocate Mr. Shailendra Kumar, Advocate Mrs. Swastika, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 09-11-2017

The Union of India, Ministry of Railway and their functionaries are the petitioners in the present writ application. They have assailed the order, dated 23rd of November, 2016,



passed by the Central Administrative Tribunal, Patna Bench, Patna (“CAT” for short) in O.A. No. 871 of 2012. CAT has allowed the O.A. application and given a direction to include the private-respondents in the list of successful candidates by treating them to be qualified in the aptitude test. This is so, since the private-respondent have purportedly obtained the qualifying marks in the four tests, which were held and the 5th test, which was the test for aptitude was found to be ‘imaginary’.

The reason for the private-respondents to approach the CAT Bench, Patna was that they were excluded from the final panel notified on 29.03.2012 of successful candidates in the aptitude test held on 28.02.2012 and 27.02.2012.

The sum essence of the pleadings in the O.A. application was that pursuant to the employment notice of the Railway Recruitment Board, Muzaffarpur they appeared for selection on the post of Assistant Station Master and qualified in the written test for which the result was published on 25.01.2012. A call letter was issued on 21.02.2012 to appear and participate in the aptitude test, which was scheduled on 28.02.2012. They participated in the said aptitude test comprising of four tests. However, when the final results were announced their roll numbers were missing from the select list.



The private-respondents, therefore, filed representation and also sought information from the Railway authorities, when they were informed that out of five aptitude test, they have not secured the minimum qualifying marks of 40 in one test and that was the reason for their non-selection. The private-respondents, however, submit that they had obtained 99.33 and 87.33 marks respectively in the written test and they were deliberately shown to have failed on the spurious ground that there was a 5th test, which was held within the four tests, which was the actual aptitude test and this aspect was never clarified or indicated at any point of time either in the advertisement or during the process of selection.

The petitioners, i.e., Railways filed their written statement and tried to explain the concept of a 5th test embedded in the 4 tests, but obviously they were not convincing enough as to the concept. Therefore, the Tribunal held the failure of the private-respondents, i.e., the applicants to be based on imaginary 5th test and so the OA was allowed and that became the cause of action for the Railway authorities to approach the High Court.

Since there was not enough clarity in the written statement, which was filed before the CAT, the Court in larger interest of justice, decided to summon the authorities to explain the intricacies of the examination and the mechanism of evaluation.



One Shri G. K. Srivastava, Scientific Supervisor (Psychologist), appeared before the Court, who not only explained the concept. The test is an accepted practice and has been followed for a period of time and has been used for recruitment purposes mostly in private organisations earlier. However, looking at the efficacy of such a process of recruitment even the Railways and some governmental organisations have adopted the method and methodology for judging the aptitude of a candidate whether he is fit for the job in question or not. For this purpose questions are embedded in the 4th test and these are camouflaged deliberately to understand the true aptitude of a candidate keeping in mind the technical nature of the job, for which the recruitment was required to be made. When the evaluation is done, the questions, which are embedded or implanted in the 4th test are also evaluated and the answer given to those questions, which are directed towards testing the aptitude of a candidate are also evaluated and a minimum of 40 marks is required to be obtained by a candidate in the said aptitude test over and above the qualifying marks, which a candidate is expected to acquire in the other tests, which are held. Naturally, since it is a psychological test, a lot of candidates do not understand the finer nuances and the object behind such evaluation and they made a hue and cry that they despite earning very good



marks in the other four papers they have been shown to have failed, which is uncalled for decision on behalf of the Railways as per them.

When such explanation was offered at the bar to which the Court is well satisfied a plea was taken on behalf of the private-respondents that rule of the game has been altered during the process of selection and, therefore, such a process cannot be incorporated or introduced. There was no indication about the same in the advertisement or in the call letter. In this regard a reliance has been placed on a decision rendered in the case of *The State Bank of India & others versus Praveen Kumar, reported in 2017 (4) PLJR 170*.

Such a plea on behalf of the respondents is a misplaced kind of plea because the recruitment process is not limited only to the advertisement, but there are a series of guidelines and circulars, which have also been issued by the Railway authorities and is available in the public domain. The Railways authorities have brought those circulars on record in the affidavits, which have been filed at the instance of the Court. Since those circulars and details were not made available to the Tribunal, therefore, the Tribunal could not understand the finer nuances as to how evaluation of a 5th test could be actually culled out from the 4th test, which was held for recruitment on the post in question.



Since certain posts require certain attributes and inclination, therefore, these are modern psychology test, which is required to be conducted to know the aptitude of a person going to be recruited, whether he is fit for the job and the assignment, which is going to be conferred about him. Since the responsibilities are of technical nature, which requires efficient running of the Railway system and these are scientifically proven way of testing a psychological aptitudes as well as the understanding of person's inclination to handle such technical job, the concept of culling out marks from within the aptitude test and getting 40 per cent marks for qualification is not a mystery any more. The details of the question and the answers have also been brought on record and the evaluation and the marks, which has been obtained by the private-respondents are part of record now.

We do not find that there is any mischief or mala fide in non-selection of the two candidates on the post of Assistant Station Master, because they have not earned the minimum 40 marks in the aptitude test in the evaluation of the 4th paper, where the questions have been embedded and are not separately identified. The action cannot be said to be in any manner arbitrary or irrational. The non-selection of the private-respondents on the post, is because of their failure to beget 40 per cent marks in the



psychological test or aptitude test, which is not any imaginary concept and the Tribunal to that extent committed a wrong, allowing the OA and directing appointment of the two applicants, i.e., the private-respondents on the post of Assistant Station Master.

It is also made clear that the two respondents have not attributed any kind of mala fide against the present petitioners i.e., the Railways and a large number of persons have been selected by using the same method and methodology and, therefore, the two respondents cannot knit-pick on the method and methodology adopted for the selection. Neither the Tribunal nor the private-respondents have been able to understand the concept and the nuances of the evaluation and, therefore, much hue and cry was raised and, unfortunately, even the Railways were a little casual in their approach in filing the written statement and, therefore, they could not also prevail upon the Tribunal in explaining the method and methodology of evaluation, which led to the error in allowing the O.A.

It is also of significance that the challenge to the selection has been made after participation in the selection process, which also comes in the way of maintaining any proceeding against the selection / non-selection.



The writ application, therefore, is allowed. The impugned order, dated 23.11.2016, passed in O.A. No. 871 of 2012, by the Central Administrative Tribunal, Patna Bench, Patna is set aside.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

skm/-

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