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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1769/2001

This the 23 day of May, 2003

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Gyan Chand S/O Shankar Dutt
J.E.-I, Drawing Office, CAO (Construction),
N.R. Kashmere Gate, Delhi-6,
R/O 5/9 Railway Colony, Sewa Nagar,
New Delhi-110003.

... Applicant

(By Shri Gyan Prakash, Advocate)

-versus-

1. Union of India through
Ex-Officio Principal Secretary,
Ministry of Railways and Chairman,
Railway Board, Rail Bhawan,
New Delhi-110001.
2. General Manager,
Northern Railway, Baroda House,
New Delhi-110001.
3. Divl. Railway Manager, N.R.,
State Entry Road, New Delhi-1.
4. Sri Surendra Kumar, S.E./D.O.P.,
C/O C.A.O. (Construction), N.Rly.,
Kashmiri Gate, Delhi.
5. Sri Ramesh Chand, J.E.-1/Drawing,
C/O Office of the Divl. Rly. Manager,
N.R., State Entry Road, New Delhi-110001.
6. Sri Rajeev Kumar, J.E.-1/Drawing,
Office of the Divl. Rly. Manager,
N.R., State Entry Road,
New Delhi-110001.

... Respondents

(By Shri V.S.R.Krishna, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant is aggrieved by his supersession by three
of his juniors in promotion to the post of Section
Engineer (Drawing) in the grade of Rs.6500-10500 vide
impugned order dated 21.5.2001 (Annexure A-1). He has
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also challenged the guidelines/rules providing for high percentage of marks for viva voce conducted for the aforesaid selection. He is also aggrieved by the constitution of the selection board stating that no Personnel Officer was kept on the selection board as per Rule 218(a) and 218(f) of the rules governing the promotion of Group "C" staff in the Indian Railways (Annexure A-3) Applicant has sought quashing of the selection and direction to respondents to hold another selection as per rules and law, with consequential benefits on selection. He has also sought striking down of Rule 219(g) of the Rules ibid and direction to respondents to review the scheme of examination/viva voce in terms of Government of India's instructions and law laid down by the Apex Court.

2. Respondents have stoutly opposed the contentions made in the OA.

3. The learned counsel of applicant has stated that in the selection three of his juniors, namely, S/Shri Surendra Kumar, Ramesh Chand and Rajesh Kumar were selected for promotion to the post of Section Engineer (Drawing). The post of Section Engineer (Drawing) is a Group "C" post in the grade of Rs.6500-10500. The rules governing promotion to this post are stated in Chapter-II Section-B of Indian Railway Establishment Manual (Vol.-I) (Annexure A-3). Under Rule 218(a) the selection board consists of not less than three officers one of whom should be a Personnel Officer and one of the members should be from a department other than that for which

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selection is held. The learned counsel stated that there was no Personnel Officer in the selection board who has to co-ordinate results under Rule 218(f). The learned counsel pointed out that the selection included viva voce carrying 15 marks while written test was conducted for 35 marks. Again, another viva voce carrying 20 marks was conducted for assessing personality, address, leadership etc. In this manner, viva voce accounted for 35% marks which is a very high percentage in case of promotion on a Group "C" post. The learned counsel relied on (1997) 9 SCC 151 : **All India State Bank Officers' Federation & Ors. v Union of India & Ors.**; and (1981) 1 SCC 722 : **Ajay Hasia & Ors. v Khalid Mujib Sehravardi & Ors.**, to contend that allocation of high percentage of marks for interview is arbitrary and unreasonable vitiating the process of selection.

4. On the other hand, the learned counsel of respondents rebutted the misconception regarding the constitution of the selection board stating that the Personnel Officer was a member of the selection board. As regards percentage of marks for viva voce, he explained that the professional ability consists of written test (35 marks) and viva voce (15 marks). To appear in the viva voce it is necessary to secure 60% marks in the written test with or without adding seniority marks on notional basis. After qualifying the written test the selection board examines the service record and CRs of the eligible staff and allot marks in different heads, i.e., viva voce, personality, leadership, academic qualification, service record and

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seniority. Those who secure 60% marks in professional ability (written and viva voce) and 60% in aggregate are placed on the provisional panel. He explained that viva voce was only for 15 marks and had been conducted in accordance with rules and regulations. He further stated that applicant having participated in the selection cannot turn around and object to the selection.

5. Admittedly, though the post of Section Engineer (Drawing) is a Group 'C' post, it is a selection post for which selection board has to be constituted with three officers one of whom has to be Personnel Officer in terms of Rule 218. As per Rule 219(g) selection has to be made on the basis of overall merit. It is relevant to reproduce Rule 219 (f) to (j) relating to the procedure to be adopted by the selection board, thus :

"(f) The Selection Board will examine the service record and confidential reports (if kept) of the staff eligible. All the members of the Selection Board should independently assess the candidates under different headings of personality, leadership etc. and record the marks awarded by them in the mark sheet given to them and the same should be signed and handed over to the Personnel Officer who should average the marks given by members of the Selection Board and be responsible to compile the results on the basis of marks given by the members of the Selection Board. This evaluation chart prepared by the Personnel Officer should thereafter be signed by all the members of the Selection Board. The members nominated on a Selection Board should be advised clearly that there should not be any cuttings and over-writings in the proceedings of the Selection Board and serious objection of any cuttings and over-writings will be taken.

(g) Selection should be made primarily on the basis of overall merit, but for the guidance of Selection Board the factors to be taken into account and their relative weight are laid down below :-

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		Maximum Marks	Qualifying Marks
i)	Professional ability	50	30
ii)	Personality, address, leadership and academic qualification	20	"
iii)	A record of service	15	"
iv)	Seniority	15	"

Note (i) The item 'record of service' should also take into consideration the performance of the employees in essential Training Schools/ Institutes apart from the examining CR, and other relevant record.

(ii) Candidates must obtain a minimum of 30 marks in professional ability and 60% marks of the aggregate for being placed on the panel. Where both written and oral tests are held for adjudging the professional ability, the written test should not be less than 35 marks and the candidates must secure 60% marks in written test for the purpose of being called in viva-voce test. This procedure is also applicable for filling up of general posts. Provided that 60% of the total of the marks prescribed for written examination and for seniority will also be the basis for calling candidates for viva-voce test instead of 60% of the marks for the written examination.

(h) The importance of an adequate standard of professional ability and capacity to do the job must be kept in mind and a candidate who does not secure 60% marks in professional ability shall not be placed on the panel even if on the total marks secured, he qualifies for a place. Good work and a sense of public duty among the consciousness staff should be recognised by awarding more marks both for record of service and for professional ability.

(i) For general posts, i.e., those outside the normal channel of promotion for which candidates are called from different categories whether in the same department or from different departments, the selection procedure should be as under :-

(i) All eligible staff irrespective of the department in which they may be working who satisfy the prescribed conditions of eligibility and volunteer for the post should be

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subjected to a selection which should consist of both written test and viva-voce test; and

(ii) The Selection Board should call for viva-voce test all candidates who secure not less than 60% marks in the written test. The final panel should be drawn up on the basis of marks obtained in the written and viva-voce test in accordance with the procedure for filling selection posts.

(j) The names of selected candidates should be arranged in order of seniority but those securing a total of more than 80% marks will be classed as outstanding and placed in the panel appropriately in order of their seniority allowing them to supersede not more than 50% of total field of eligibility."

6. According to the learned counsel of applicant, 20 marks allocated for personality, address, leadership and academic qualification is also akin to viva voce. This increases the scope of discretion to the selection board as marks for viva voce added to these 20 marks add up to 35% marks. On the other hand, the learned counsel of respondents stated that viva voce is only for 15 marks which is a part of professional ability and marks allocated for personality, address, leadership etc. are part of the ACRs and not assessed on the basis of viva voce test.

7. In the case of **Ajay Hasia** (supra) selection by oral interview in addition to written test was held as valid but allocation of above 15% of the total marks for interview was held to be arbitrary and unreasonable. In the case of **All India State Bank Officers' Federation** (supra), requirement of interview marks representing only 25% of the aggregate marks was held neither arbitrary nor

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unfair nor unjust although it was also observed that there can be no rigid or hard and fast rule. The percentage of marks for viva voce or interview which can be regarded as unreasonable will depend on the facts of each case.

8. In the present case, we find that professional ability carried 50 marks out of which 15 marks were allocated to viva voce test. Personality, address, leadership and academic qualification can be assessed from the ACRs as these traits are assessed under different parts of the format for ACRs. 20 marks earmarked for this portion of the selection cannot be treated to be a part of viva voce. In our view, therefore, viva voce test for the selection in question carried only 15% marks which cannot be held to be excessive, arbitrary, unfair or unjust even when tested against the ratios of **Ajay Hasia (supra)** and **All India State Bank Officers' Federation (supra)**.

8. From the facts of the case, we also find that respondents had constituted the selection board in terms of the relevant rules. An Employment Officer had been kept on the selection board as Personnel Officer. Applicant's objection in this regard also is unacceptable.

9. The post of Section Engineer (Drawing) in the grade of Rs.6500-10500 is a selection post under the Rules (Annexure A-3) selection to which has to be on the basis of overall merit as stated in Rule 219(g). Juniors

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when eligible can overtake their seniors in selection conducted on the basis of merit.

10. Resultantly, we do not find any merit in the OA which must fail. The OA is dismissed, therefore. No costs.

V. Majotra

(V. K. Majotra)
Member (A)

V. Aggarwal

(V. S. Aggarwal)
Chairman

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