

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-810/96
MA-1807/96

HON'BLE SHRI JUSTICE CHETTUR SANKARAN NAIR, CHAIRMAN
HON'BLE SHRI R.K. AHOOJA, MEMBER(A)

New Delhi, this 15th day of October, 1996.

Shri Veer Sen,
S/o late Shri Jagdish Parsad,
Head Clerk working Vice Superintendent
in the Office of Public Relations Office
(Commercial Department-Advertisement)
NDCR Building, State Entry Road,
New Delhi.

Applicant

(through Sh. B.S. Mainee, advocate)

versus

Union of India, through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.

Respondents

(through Sh. R.L. Dhawan, advocate)

The application having been heard on 15.10.1996
the Tribunal on the same day delivered the following:

ORDER

Chettur Sankaran Nair(J), Chairman

Dehors frills and embroidery, the short
question in this case is whether applicant has "ad hoc
service quite satisfactorily," thus gaining the benefit
of A-4 circular dated 15.11.1995. Under A-4, an
employee who has put in

"ad hoc service quite
satisfactorily is not to be declared
unsuitable in the interview."

2. While working as a Head Clerk, by A-2
order, applicant was required to discharge the
functions of Office Superintendent Grade-II. Later
regular process of selection and appointment to the
post of Office Superintendent Grade-II commenced.

Under the relevant rule - namely rule (219) of Indian Railway Establishment Manual Volume 1, marks are allocated- (i) 50% for professional ability (ii) 20% for personality address leadership and academic qualification, (iii) 15% for record of service and (iv) 15% for seniority. There is a further dichotomy in the 50% for professional ability, namely, 35% for written examination and 15% for viva-voce. It is the viva-voce, that proved fatal to applicant.

3. We have seen the proceedings of the Departmental Promotion Committee and applicant has obtained 64.2 marks in aggregate. In the 15% for interview he could get only 4 marks. But for that, he would have been head and shoulders above. Many of those with much lower aggregate marks have been selected and appointed.

4. The short question, as we have indicated earlier, is whether a minimum could be insisted on for the interview in the case of a person who attracts Annexure-4. According to learned counsel for applicant this cannot be insisted as in the light of A-4 circular:

"while forming panels who have been working in the posts on ad hoc basis quite satisfactorily are not declared unsuitable in the interview."

5. A-4 exempts those who function 'quite satisfactorily on an ad hoc basis' from the requirement of a minimum in interview. This position cannot be disputed, as it has been finally settled by the

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pronouncement of the Apex Court in Civil Appeal arising from S.L.P.No.9866 of 1993. After referring to the rules in extenso, the Supreme Court found that the above quoted passage in the circular though not a statutory rule, has force. Same is the view adopted by two learned Members of this Tribunal in OA-834/96. It follows that if applicant had been 'working satisfactorily on an ad hoc basis,' he will be eligible to get the benefit of the circular.

6. The further question is, was he or was he not, working on an ad hoc basis satisfactorily. According to applicant he has been, and according to respondents he has not been. This controversy must be resolved by looking at the language of Annexure A-2. Though A-2 is not very elegantly worded, the purport of it cannot be missed. For example, it states

"All Tour Programmes of CPI/SPI/Bill Posters/Khallasis will be routed through Sh. Veer Sen Supdt./CA... Similarly, all leave application of Bill Posters/Khallasis/CPI/SPI will also be routed through Supdt./CA... Supdt./CA will ensure that these Khalasis should be utilised."

7. Applicant is referred to, as Superintendent time and again. To our mind, A-2 clearly conveys the impression that applicant had been functioning as Superintendent on an ad hoc basis. When that is so, the benefit of A-4, namely, exemption from a minimum in the interview is available to him and when that is available to him, he will be eligible to be placed in the panel. It is nobody's case that performance of applicant as Superintendent was not satisfactory.


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8. In the circumstances, we direct the respondents to review the select list and consider the case of applicant for appointment exempting him from minimum from securing a minimum mark in the interview in the light of the decision of the Supreme Court. We make it clear that in the event of anybody having to go out of the select list as a result of this process, such person will be put on notice and his objections considered before final orders are passed.

9. We allow the application. Parties will suffer their costs.

Dated, the 15th day of October, 1995.


(R.K. Ahooja)

Member(A)


(Chettur Sankaran Nair(J))
Chairman

/vv/