

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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Regn.No.DA-1278/89 Date of Decision 11.7.1989.
Shri Krishan Lal Gulati ... Applicant.
Vs.
Union of India & Ors. ... Respondents.
For the applicant. ... Shri B.S.Mainee,
Advocate.
For the respondents ... Shri Inderjit Sharma,
Advocate.

CORAM: Hon'ble Shri P. Srinivasan, Administrative Member.
Hon'ble Shri T.S.Oberoi, Judicial Member.

JUDGEMENT (ORAL)

(Judgement of the Bench delivered by Hon'ble
Shri P.Srinivasan, Administrative Member).

This application has come up before us for admission with notice to the respondents. Shri B.S.Mainee, Advocate appears for the applicant and Shri Inderjit Sharma, Advocate for the respondents. Shri Inderjit Sharma has produced before us the records of the selection which is impugned in this application. After hearing counsel for both parties, we felt that the application ^{could} ~~can~~ be disposed of at the stage of admission itself.

2. The applicant is currently working as an Assistant Superintendent in the Electrical Branch, Northern Railway, at Delhi. He was promoted to this post with effect from 28.5.1985 and has been working in that post since then. The post of Assistant Superintendent is to be filled by promotion from the lower post of Head Clerk on merit-cum-seniority basis. Written test is held and the persons who qualify in the written test are called for interview and the combined result of the written test and the interview determines whether a candidate is suitable for promotion. Candidates securing 60% or more marks in the combined result are selected for promotion in the order of seniority. According to the clarifications issued by the Railway Board the marks obtained by a candidate in the written test should be

P. Srinivasan

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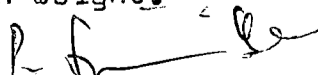
added to the marks awarded for seniority and if he secures 60% marks in the aggregate he is eligible for the interview. The applicant was given 15 out of 15 marks for seniority and he secured 17 out of 35 in the written test, thus aggregating 32 marks out of 50 in both together. This worked out to more than 60% and therefore, he was called for interview. For service record, he was given 8 out of 15 marks and for professional ability 8 out of 20 and in the interview he was awarded 6 out of 15, thus making an aggregate of 22 out of 50 marks. In all, he secured 54 out of 100 marks adding up the evaluation in all the sectors. Since it fell below 60%, he was not placed in the panel for selection.

3. Shri Mainee drew our attention to Railway Board's letter dated 25.1.1976 dealing with the subject of formation of panels of persons selected for promotion where the promotion is on merit-cum-seniority basis. The said letter states in para 2.2. "care should be taken to see while framing panels that employees who have been working in the posts on adhoc basis quite satisfactorily, are not declared unsuitable in the interview. In particular, an employee reaching the field of selection should be saved from harassment." Shri Mainee submitted that these instructions were rendered meaningless in this case. Even though, the applicant had secured over 60% in the written test taken alongwith ^Hthe seniority, he had been awarded such low marks in the interview i.e. 6 out of 15, as a result of which, his total marks were brought down below 60%. On the other hand, the applicant had been working in the higher post for well over three years, when the test was held in January and February, 1989 and reverting him from that post, would cause him harassment. In fact, on this ground itself, he should not have been given such low marks in the interview as well as for professional ability where he was marked 8 out of 20. The process of selection thus did not conform with the instructions of the Board which the respondents were bound to follow.

P. S. [Signature]

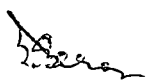
4. Shri Inderjit Sharma strongly opposed the contention of the learned counsel for the applicant and stated that the instructions of the Railway Board relied upon by Shri Mainee were only directory and not mandatory. They do not mean that in every case a candidate should necessarily be given pass marks irrespective of his performance in the interview. A balance had to be struck between the experience of the person and his ability, as disclosed in the interview. In view of this, Shri Sharma submitted that the selection should not be struck down.

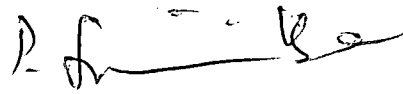
5. We have considered the matter very carefully. No doubt, the Railway Board's instructions cited by Shri Mainee do not say that a person who was working in the higher post should necessarily be given high marks in the interview but the intention is very clear that a person who has been promoted to a higher post and holds it for a long period, ^{or} ~~he~~ should not be reverted from that post by being awarded low marks in the interview for regular selection, unless it is the view of the authorities that he had not performed satisfactorily, in the higher post. In the present case, there is no controversy that the applicant had worked in the higher post from 28.6.1985 till the date of the test and is still working in that post i.e. for a period of nearly 4 years. There is no suggestion that his performance in the higher post was unsatisfactory. It is in these circumstances, that the instructions of the Railway Board should have been followed in spirit, while evaluating the applicant's performance in the interview. It did not have to be a strict assessment based entirely on his performance during the interview, because his case was somewhat special, in that he had shown himself capable of working in the higher post for three years. By the same token, in evaluating his professional ability, the fact that he had worked in the higher post for three years satisfactorily should have been given weight.



6. In short, we are of the opinion that the spirit of the instructions of the Railway Board relied on by Shri Mainee clearly made it obligatory on the part of the selection committee not to award the applicant such low marks in the interview test as to make his fall short of the required 60% in the aggregate. In our opinion, it was unfair and unjust to fail the applicant in the selection test. We, therefore, direct the respondents to add 6 marks to the aggregate obtained by the applicant, so that his total marks reach the figure of 60 and on that basis, place him in the panel of selected officers. We do not wish to interfere with the selection of other candidates made by the respondents, but the applicant should be adjusted against the next vacancy that may arise in the grade of Assistant Superintendent according to his seniority over those selected in the impugned test. If on the basis of the seniority so accorded he becomes eligible for promotion, ~~he will be eligible to the next higher post.~~ he should be considered for such promotion.

7. The application is disposed of on the above terms leaving the parties to bear their own costs.


(T.S. Oberoi)
Member (J)


(P. Srinivasan)
Member (A)