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In the Central Administrative Tribunal

Principal Bench: New Delhi

OA No.139/88

Date of decision: 23.10.1990

Shri Y.P. Ranga

....Applicant

Versus

Union of India & Others

....Respondents

Coram:-

The Hon'ble Mr. T.S. Oberoi, Member(J)

The Hon'ble MR. I.K. Rasgotra, Member(A)

1. Whether Reporters of local papers may be allowed to see the judgement? *yes*
2. To be referred to the Reporter or not? *yes*

I.K. Rasgotra
(I.K. Rasgotra)
Member(A)
12/1/1993

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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DATE OF DECISION: 23.10.90

SHRI Y.P. RANGA APPLICANT

VERSUS

UNION OF INDIA & OTHERSRESPONDENTS

ADVOCATES:

SHRI B.S. MAINEE FOR THE APPLICANT

SHRI INDERJIT SHARMA FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, JUDICIAL MEMBER

THE HON'BLE MR. I.K. RASGOTRA, ADMINISTRATIVE MEMBER

J U D G E M E N T

(DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, Shri Y.P. Ranga, Assistant Engineer, Western Railway has raised the issues regarding the conduct of selection. Examination for promotion from Group 'C' posts to Assistant Engineer Group 'B' in violation of Rule 205 of Indian Railway Establishment Manual (IREM), the non-observance of the instructions regarding scheduled castes, scheduled tribe candidates relating to promotion of the best among the failures for a period of 6 months as relevant at the time and the denial of the benefit of reservation to SC/ST candidates, as applicable to non safety categories in accordance with the rules applicable when the process of selection was initiated in 1979.

2. The facts of the case briefly are that the applicant was promoted as Assistant Engineer (Group 'B') on ad hoc basis w.e.f. 30.9.1980. He belongs to scheduled caste community. The respondent No.2 initiated the process of selection for regular appointment of Assistant

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Engineers vide notification dated 6th June, 1979 to fill up 70 vacancies for the year 1979-80. The examination was not held and the vacancies were increased to 107 vide notification dated 21.5.1981. The number of vacancies was revised as 100 vide notification dated 28.5.1982 in supercession of previous notifications. Finally the number was assessed as 106 vide notification dated 12.1.1983 in supercession of all previous notifications. The written test for the said examination was conducted on 30.10.1983 in accordance with the Rules inforce in 1983 for the vacancies which arose in 1979-80 onwards. The mainstay of the case of the applicant is that the allocation of marks for written test etc. as per Rule 205 of IREM is as under:-

<u>Factors</u>	<u>Max marks</u>	<u>Qualifying marks</u>
i) Professional ability	50	30
ii) Record of service	25	15
iii) Personality, address, leadership, & academic/Tech. qualifications.	25	15
Total:	100	60

Instead the respondent No.2 vide notification No.E. E(G) 1024/5/2 dated 12.1.1983 arranged the allocation of marks for the written examination for holding selection as under:-

	<u>Max. Marks</u>	<u>Qualifying Marks</u>
Paper I Professional and Technical subjects pertaining to Civil Engineering Deptt.	120	72
Paper II Establishment Accounts	15 15	9 9
Total :	150	90



While paper I was for a duration of 3 hrs, Paper II was for two hours duration in two parts carrying 15 marks each.

It has been contended that splitting of the professional ability paper into two papers viz. "professional and technical" subjects and "Establishment & Accounts" subjects was in contravention of the Rule 205 IREM. It has also contended by the applicant that if the examination had not been delayed unduly even in case of failure, he would have been considered for empanelment in accordance with the Railway Board's letter No.E(SC)74 CM 1534 dated 31-8-1974, which provided for selection of the best among those who failed to qualify but secured the highest marks, when requisite number of SC/ST candidates do not make this grade. The applicant believes that he had passed in the paper on professional and technical subject, but had failed only in the Establishment & Accounts paper. His contention therefore is that had the professional ability paper not been split up into professional and technical subjects and Establishment & Accounts subjects he would have been in the Select list either on merit or on the basis of concession available to scheduled castes in terms of Railway Board's letter of 31-8-1974. This concession was withdrawn vide Board's letter dated 23-3-1981, as per the extract below:-

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"The Board have now decided that Group 'B' posts in Civil Engineering, Mechanical Engineering Signal and Tele-communications, Electrical Engineering and in the Transportation (Traffic) Departments should also come under the purview of 'Safety category'. The scheme of promoting the best among failures will, therefore, not apply while filling the reserved vacancies in Group 'B' posts in these Departments."

Another grievance of the applicant is that he was not imparted 20 days pre-selection training as laid down in a series of Railway Board's letters, the last of which is dated 16-1-1982 (Annexure 16 of the application). Instead he was given only 18 days training, in the Zonal Training School, Bhusaval, Central Railway along with the general candidates.

By way of relief, the applicant has prayed that respondent No.2 may be directed to include the name of the applicant in the panel notified on 12-11-1986 against one of the reserved vacancies and that the vacancies be filled according to the Rules in force in the years in which vacancies arose. Further the best among scheduled castes failures may be called for viva-voce test and lastly respondent No.1 may be directed not to deserve the reserved vacancies.

3. The respondents in their written statement have submitted that the present application viz. OA 139/88 filed by the applicant is a repetition

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of his earlier OA 1532/87 which was dismissed by the Tribunal vide order dated 5-1-1988. On merits, it has been contended that the Accounts & Establishment subjects cannot be termed a non-professional subjects, as an Assistant Engineer in the performance of his duty has necessarily to deal with Establishment & Accounts matters concerning Group 'D' staff. This is also apparent from Railway Board letter No.75E(STC)15/34 dated 12-8-1975 (Annexure A-12) wherein the Railway Board commended the practice followed on the South-Eastern Railway for giving pre-selection coaching on the South-Eastern Railway for giving pre-selection coaching to SC/ST candidates for emulation by the other zonal railways. The Establish & Accounts subjects are specifically included in the syllabus for the pre-selection coaching. It has further been contended that in the notifications dated 6-6-1979, 21-5-1981, 28-5-1982 and 12-1-1983 (Annexure A-21) issued by respondent No.2 regarding holding of examination for selection of AENs, it was clearly stated that one of the papers would be in two parts each carrying 15 marks. The examination was held on 30-10-1983, more than four years after the issue of the first notification regarding holding of examination. The applicant had thus sufficient notice of the Establishment & Accounts subjects being included in the examination as a separate paper. No objection was raised by the applicant at any point of time till the filing of this application. Regarding the delay in publication of the result the respondents have submitted that the same could not be declared because of a stay granted by a Civil Court of Gujrat State in a Suit filed

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filed by the some of the candidates. The said stay order was vacated in August, 1986 and the result of the examination was declared in September, 1986. It has also been averred that the applicant did not qualify in the written test and, therefore, his name did not figure in the list of candidates who qualified for viva-voce test. The contention of the applicant is that he failed only in the Establishment and Accounts subjects which do not involve safety aspect has been specifically denied by the respondents.

Regarding the pre-selection coaching training the respondents have contended that since the applicant was already working on ad hoc basis as AEN, in such cases pre-selection coaching is not required, as the candidates had gained sufficient practical experience of work. Nevertheless, the applicant was sent for training to Zonal Training School Bhusaval along with others. As the syllabus for training in the Zonal Training School on the Western Railway and in the Central Railway is the same, it was immaterial whether the applicant is sent to Udaipur or Bhusaval for such pre-selection training. It has further been contended that the scheme of promoting best among failures was not applicable to the post of Assistant Engineer as it was declared as a safety category vide Railway Board letter No.81-E(SCT)15/26 dated 23-3-1981 (Annexure A-15).

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4. Shri B.S. Mainee, learned counsel for the applicant submitted that, besides splitting of the professional ability paper in contravention of the Railway Board's directive, the respondents also bunched up the vacancies for the years 1979, 1980, 1981 and 1982. The learned counsel urged that bunching of vacancies contravenes the instructions contained in D.O.P. & A.R. notification dated 24-12-1980 and Railway Board's notification dated 9-4-1981. According to these instructions, if the selections are not held regularly and the vacancies are bunched, then the actual number of vacancies for each of the selections should be assessed separately and the candidates who would be within the field of consideration with reference to the vacancies to be filled at each selection starting with the earlier selection should only be considered for each selection and a panel prepared for each of the selection. The learned counsel also urged that the applicant should have been given the benefit of the special concession available to the scheduled caste, till it was withdrawn in 1981, as the process of selection had been initiated in 1979 relating to 1979/1980 vacancies.* Further the applicant, promoted as AEN in 1980 and since then he is continuously working in that post. He cannot be reverted after putting in 8 years of satisfactory service as Group B and that he was entitled to regularisation. Since the applicant has been empanelled in 1988 selection, his ad hoc service rendered prior to the empanelment should be reckoned for the purpose of seniority. **


*Y.V. Rangiah Vs. J. Srinivasa Rao, 1983 SCC 285
 Sh.S.M. Jain & Anr. Vs. Delhi Admn. ATR 1982 CAT.353
 Ms.Kusum Lata Saini Vs.U.O.I. & Ors. ATR 1987 CAT.220

**Devi Dutt Vs. U.O.I. & Ors. ATR 1981(1) CAT 578


5. Shri Inderjit Sharma, learned counsel for the respondents, in his written arguments has submitted that the instructions of the D.O.P. & A.R. and Railway Board regarding bunching of vacancies related to the selection made on the basis viva-voce test only, and that these instructions were not applicable to selections made on the basis of written test followed by viva-voce test. The learned counsel contended that if the Railway Board's instructions of 1981 were to be followed, this would have meant holding of four separate written tests in 1981, after working out separately which candidates were eligible in each of the four years and this would have resulted in a strange result. The learned counsel pointed out that even the preparation of a separate panel for each year on the basis of the written test, in accordance with the DOP/Railway Board's instructions, would not have helped the applicant, as he had not qualified in the written test itself.

6. We have given our careful thought to the rival contentions and the record before us.

On a query from the Bench, the learned counsel for the applicant conceded that Establishment & Accounts subjects form part of the syllabus for the selection examination and that the questions on these subjects have always been included in the paper testing the professional ability. The applicant would have had no grievance if questions on Establishment & Accounts subjects were set as a part of the professional ability paper. It is not therefore the case of the applicant that questions from outside

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the syllabus have been set in examination. His only grievance seems to be arising from the fact that splitting up the 'professional ability' into professional & technical subjects and Establishment & Account subjects has rendered the examination more rigorous, resulting in the greater selectivity on merit. We also find that all the notifications issued for the examination from 1979 to 1983 have repeatedly stated that there would be two papers in the written examination, namely paper I, Professional & Technical subjects and Paper II Establishment & Account subjects. Further, Paper I was allotted 120 marks and Paper II set in two parts carried 15 marks each. Thus, there was no undue weightage allotted to Establishment & Accounts subject. If however, there was only one question paper including Establishment & Accounts, the applicant could have possibly avoided answering questions either on Establishment or on Accounts or both. This is however a hypothetical proposition, as, an ingenious examiner would take care of this aspect by arranging questions on various subjects in a format which would enable the examiner to test the knowledge of a candidate not only in the Engineering subjects but also in the Establishment & Accounts. Besides, having acquiesced in the system followed by the respondents within the broad framework laid down by the Railway Board, it is not open to the applicant to question the validity of that very system at this stage. Further the facade built so assiduously by the applicant in this respect stands demolished



by the fact that the applicant failed in the Professional & Technical subjects and not in the Establishment & Accounts, as alleged by him.

The second point raised relates to bunching of the vacancies for four years in contravention of the instructions. There is no doubt that the correct procedure is that:

- i) vacancies should be assessed separately for each due selection;
- i) employees within the field of consideration and eligible for each selection starting with the earlier one should be considered against that selection;
- i) a separate panel for each selection should be drawn;
- v) all panels so drawn should be consolidated by keeping at top the earliest selections panel and so on.

For this exercise, it is not necessary to hold separate examinations for each year when the selections are delayed for candidates in the field of consideration for each year. This can be taken care of by the Departmental Promotion Committee and ^{by} rearranging the panels initially yearwise and thereafter consolidating in accordance with the Rules, if the field of consideration is worked out yearwise. We therefore, order and direct the respondents to review the proceedings of the DPC for which the results were declared on/ ^{23rd September, 1986.} by assessing vacancies

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yearwise and fixing zone of consideration for each year to ensure that all eligible candidates coming within the zone are given equal opportunity.

The procedure outlined above will not affect the applicant, as he appeared in the examination held in 1983 but failed as he is stated to have been selected in the selection held in 1988, which followed that of 1983.

The third point agitated relates to counting of ad hoc service rendered by the applicant from 1980 to 1988, before he was empanelled for regular promotion. As observed earlier, the applicant had failed in the selection examination held in 1983, results for which were declared in September, 1986. Having failed in the examination which would have regularised his ad hoc service for the purpose of seniority, he cannot claim the seniority from 1980 when he was promoted on ad hoc basis. The period of continuous officiation of a Government servant has to be taken into account for determining seniority only after his appointment is regularised following the Rules applicable for substantive appointments. Normally, in this case, the applicant should have been reverted to the lower posts when he failed to make the grade in the selection for the post of Assistant Engineer (Group B). In fact, one of the interim reliefs prayed for by the applicant is that the respondents should be restrained from reverting him from the post of Assistant Engineer.


Be that as it may, with his failure to make the grade in the selection held in 1983 he cannot

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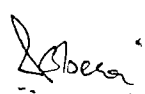
be granted this benefit, as such a course of action would place premium on his failure by giving him undue weightage in seniority over his contemporaries who passed selection examination held in 1983 and were appointed on regular basis thereafter. This would also not be in conformity with the principle of equality spelt out by Articles 14 & 16, as this would be tantamount to equating the two unequals as equals in violation of the equality clause.

Fourthly, his claim for extending him the benefit of the special concession which was applicable to scheduled castes candidates, till it was withdrawn in 1981 by the Railway Board also lacks justification; as, firstly, the examination was held in 1983 and, secondly, he failed to make the grade in the said selection.

4. In the facts and circumstances of the case, as discussed in the preceding paragraph, the application is disallowed and accordingly dismissed with no orders as to the costs.


(I.K. RASGOTRA)
MEMBER(A)

23/10/80


(T.S. OBEROI)
MEMBER(J)