

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 713 of 1986
T.A. No.

6

DATE OF DECISION 27th February, 1987

Shri Jai Dev Sahai and others Petitioner

Shri B.S. Maine Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

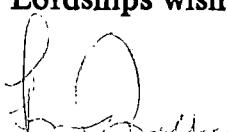
Shri Sanat Kumar Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H.P. BAGCHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?


(H.P. BAGCHI)
JUDICIAL MEMBER


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

Regn. No. OA 713/86

DATE OF DECISION: 27.2.87

Shri Jai Dev Sahai and others

....Petitioners

Versus

Union of India and others

.....Respondents

For Petitioners: Shri B.S. Mainee, Advocate

For Respondents: Shri Sanat Kumar, Advocate

CORAM: HON'BLE MR. S.P.MUKERJI, ADMINISTRATIVE MEMBER
HON'BLE MR. H.P.BAGCHI, JUDICIAL MEMBER

JUDGMENT:

The petitioners, Shri J.D. Sahai and three others who were working as Head Clerks in the Refund Section of the Northern Railway has moved this application under Section 19 of the Administrative Tribunals Act on 10.9.86 praying that the panel declared by the order dated 19.6.86, (Annexure 'A-2' to the petition) for promotion as Assistant Superintendent may be quashed and the respondents be directed to hold fresh selection by holding a written examination along with viva voce test or in the alternative hold selection on the basis of modified procedure. It has also been prayed that the applicant No.4 who could not appear in the viva voce test because of his being hospitalised should be considered for selection.

2. The brief material facts can be recounted as follows. The petitioners have been working as Headclerks in the Refund Branch since 1952. Petitioner No.1 was promoted on ad hoc basis as Assistant Superintendent with effect from 1.5.86. It appears that 10 vacancies were

under consideration in the grade of Assistant Superintendent (Rs.550-750). Of these 10 vacancies, two were in existence, 7 anticipated and cushion of one vacancy was also kept. 29 candidates were called for interview vide notice dated 7.4.86 (Annexure 'A' to the petition) in which the names of the four petitioners were included at Sl.Nos. 5,7,10 and 15. It may also be noted that whereas generally, the vacancies are to be filled through written test and/or *viva voce*, but in this particular case, by a specific order of the Chief Personnel Officer it had been decided that no written test should be held. Petitioners 1,2 and 3 having appeared in the *viva voce* test on 29.4.86 failed to qualify while petitioner No.4 could not appear in the test because of his indisposition. The petitioners have come ^{up} challenging the modality of selection process adopted by the respondents. They have indicated that by doing away with the written test, the selection board has been given an overwhelming discretion of rejecting or accepting a candidate inasmuch as out of the maximum marks of 100, 70 marks lie in the hands of the Selection Board, remaining 30 marks being allotted for seniority (15 marks) and record of service (15 marks). According to them, if the written test had been held, they would have definitely obtained more than 60% marks and by virtue of their seniority, they would have in any case come in the zone of appointment. The contention of the respondents is that it was within the discretion of the ^{Head of} Department to ^{do} away with the holding of the written test and since the petitioners did not qualify in the examination, the question of their selection does not arise.

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3. We have heard the arguments of the learned counsel for both the parties at length and gone through the documents carefully. We may dispose of the first objection taken by the learned counsel for the petitioners that the vacancies ^{arising} ~~being~~ out of restructuring, the modified relaxed procedure ^{for} promotion by seniority subject to rejection of unfit should have been resorted to. When it was brought to the notice of the learned counsel ^{for} ~~by~~ the respondents that the 10 vacancies arose out of normal course inasmuch 2 of them were in ~~exist~~ ^{existence}, 7 were anticipated and one was a cushion against anticipated vacancies, and the ^{vacancies} arising ^{due to} ~~already~~ restructuring had ^{been} filled in 1985, the learned counsel for the petitioner did not appear to insist upon this ground vigorously. We find no reason to dispute the averment made by the respondents that the vacancies existing and anticipated arose in the normal course and not as a result of restructuring of the cadre and reject the representation of the petitioners that the modified procedure should have been followed on that account.

4. In accordance with the prescribed procedure for filling the vacancies by selection, written test and viva voce are generally adopted. The break-up of 100marks for such selection is as follows:-

- (a) Professional ability : 50 marks
- (b) Personality, Address Leadership, Academic & Technical Qualification: 20 marks
- (c) Seniority : 15 marks
- (d) Record of Service: 15 marks

Total: 100 Marks

Items at (a) and (b) above covering professional ability as also personality etc carrying 70 marks can be assessed by a written test and/or viva voce.

Where written test is not held, these parameters are assessed on the basis of viva voce. The petitioners' contention that by doing away with written test, 70 marks have been assigned to subjective satisfaction of the interview board, which appears to us to be reasonable. But in accordance with the General Manager's (P) circulars of 14.2.63 and 3.7.63, the Head of the Department had been given the power to determine whether the written test and/or oral test will be held in such selection process. In accordance with sub-para (5) on page 8 of the Northern Railways publication entitled "Procedure for holding Selection and Rules regulating promotion to selection and non-selection post," 1967 Edition, the relevant provision on page 8 reads as follows:-

- "(5) Written test may also be held by the Selection Board for assessing the professional ability of eligible staff. The Head of Department shall determine posts in services under his control for which written test and/or oral tests will be held and the same notified for the information of the staff."

Since the discretion is given to the Head of the Department and the exemption order issued with the approval of the CPO on 27.1.86 was admittedly issued by the CPO who is Head of the Department, one cannot fault this exemption. We are not prepared to accept the blank statement made by the learned counsel for the petitioners that the exemption was given for the mala fide reasons of helping one of the candidates Shri Ramesh Prasad Sharma, who was

working in the C.B.I. on deputation and who never worked in the Refund Branch. This seems to be an afterthought as this ground was not taken by the petitioners in their representation on record. So long as the criteria of examination by interview are uniformly applied to all the candidates and so long as it is not fully established that there was collateral or mala fide reasons to deviate from the normal procedure, the test collectively held by three senior officers of the Railways cannot be questioned. Further, Shri Ramesh Prasad Sharma being junior to three of the petitioners, the petitioners would have easily been selected if they had obtained the minimum qualifying marks of 60% in the test. Also if there was any malafide intention there was no reason for all the three petitioners to be disqualified as even disqualification of one should have been sufficient to induct Shri Sharma. Two officers junior to Shri Sharma have also been selected. If there was any compulsion to induct Shri Sharma, the junior most should have been eased out.

5. We are impressed by the arguments of the learned counsel for the respondents that the petitioners having appeared voluntarily without any compulsion in the 'viva voce' test and having not represented against the validity of the test before participating in it, are now estopped from challenging the selection so made merely ^{because} they have not been selected. In Om Parkash Shukla Vs. Akhlesh Kumar Shukla, AIR 1986 SC 1043, it has been held that having appeared in a test, one cannot question the validity

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of the test through a petition when one finds himself not selected or not likely to be selected. We cannot help noting that in their representation dated 22.7.86(Annexure A-5 to the petition), the petitioners had not taken up the stand of selection being made on the basis of interview to be illegal and that a written test should be held. On the other hand, they have been pressing ^{for} the modified procedure of promotion by seniority by urging that the vacancy arose because of restructuring of the cadre.

6. In so far as petitioner No.4 is concerned, the learned counsel for the respondents agree that by not holding a supplementary examination, he has been deprived of his right of being considered because when the test was held, he was on leave due to sickness and was hospitalised. There are instructions ~~to this extent~~, according to which in such cases some vacancies must be kept reserved so that those who ^{not} could take the test for reasons beyond their control, ^{they} have a fair opportunity. Accordingly, insofar as petitioner No.4 is concerned, he should be subjected to a supplementary test on the same lines as the other candidates.

7. In the facts and circumstances of the case, subject to what has been stated above in respect of petitioner No.4, we see no merit in the application and reject the same. The interim orders passed on 20.11.86, 2.12.86 and 17.12.86 in this case will

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stand vacated. There will be no order as to
costs.

H.P.Bagchi
(H.P.BAGCHI) 27.2.87.

JUDICIAL MEMBER

S.P.Mukerji
(S.P.MUKERJI) 27.2.87

ADMINISTRATIVE MEMBER