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In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-3152/92

Date: 11.6.93

Shri R.C. Srivastava Applicant

Versus

Union of India Respondents

For the Applicant ----- Shri B.S. Mainee, Advocate

For the Respondents Shri H.K. Gangwani, Advocate

CORAM: Hon'ble Mr. J.P. Sharma, Member (Jud1.)
Hon'ble Mr. S.R. Adige, Administrative Member.

1. To be referred to the Reporters or not? *afes.*

(Judgement of the Bench delivered by Hon'ble
Mr. J.P. Sharma, Member)

The applicant has been working as A.S.M., Bareilly in Moradabad Division and a departmental selection for the post of Law Assistant was advertised vide notice dated 22.5.1989 by Headquarters Office, Baroda House, New Delhi. The applicant applied for the said post through proper channel. His name was also included in the field of eligibility among those candidates who were to be called for written examination. The case of the applicant had been that he had not been informed of the date fixed for the written examination and he represented for holding supplementary test for him. Being aggrieved by non-grant of the relief by the respondents, he filed earlier Original Application No. 2500/91 which is still pending disposal. In the meantime, by the order dated 2.5.1990, the

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applicant was working as A.S.M., was appointed to officiate as Law Assistant in the grade of Rs.1600-2660 purely on an ad hoc basis pending passing the selection and posted under D.R.M.(Delhi). The further selection for the post of Law Assistant (Grade Rs.1600-2660) was also notified and the written test for the same was held on 9.11.1989 and 16.11.1991. The applicant also took that examination by an order passed in OA-2500/91 on the MP-2528/92. The interim order directing the respondents not to declare the result of the applicant, was vacated and if he had qualified, he should have been allowed to appear in the viva voce test and the result would be subject to the outcome of that O.A. The applicant has since been also interviewed. After the interview, the panel has been declared by the Deputy C.P.O. (Headquarters) vide its order dated 27.11.1992. The name of the applicant does not find place in the aforesaid panel for the post of Law Assistant (Grade Rs.1600-2660). The applicant has filed the present application, aggrieved by that order and the question of the omission of his name from the panel in-spite of the fact that he has been working as Law Assistant for the last 2½ years.

2. The applicant has claimed the relief that his name be included in the panel dated 27.11.1992. As an interim relief, he also prayed that the respondents be restrained from reverting the applicant from the post of Law Assistant till the final disposal of this application. On 24.12.1992, an ex parte interim direction was issued in favour of the applicant directing the respondents not to revert him from the post of Law Assistant for a period of 14 days. This interim order continued till the final hearing in the matter on 4.6.1993.

3. We have heard the learned counsel for both the parties at length and also called for the record of the selection for the post of Law Assistant and perused the proceedings of the D.P.C. in the presence of the Counsel for the applicant. In the said selection, the allotment of marks has been as follows:-

I. Professional ability

(a) Written test	35 marks
(b) Viva voce test	15 marks
	50 marks C/F
	8/F 50 marks

II. Personality address and leadership and academic/technical qualifications

20 marks

III. Record of Service

15 marks

IV. Seniority

15 marks

Total: 100 marks.

An employee must secure not less than 60% (30 out of 50) marks in the professional ability and not less than 60% marks in the aggregate to be eligible to be empanelled. However, there is certain relaxation in the case of SC/ST employees, but that is not the case here. Further, no grace marks have to be awarded in individual cases. This mode of selection is not disputed by the parties. The applicant has secured 33 marks out of 50 in personality, address and leadership and academic/technical qualifications; record of service and seniority. However, in the professional ability, the applicant secured 24.15 out of 35 marks in the

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written examination and 5 marks in the interview out of 15, making the total to 29.15 out of 50. Since this was less than 60%, the name of the applicant did not find a place in the final panel declared of the successful candidates. There is also no dispute about this fact.

4. The contention of the learned counsel for the applicant is that those candidates who had already been working on an ad hoc basis for the posts for which the selection was held, should not have been declared unsuccessful only on the basis of marking in the viva voce test. Reference has been made to circular No.831-E/63/2X(E.IV) dated 19.3.76.

The same is reproduced below:-

"Sub.: Record Note of the meeting of the Deputy Minister for Railways and the Railway Board with the Headquarters of the Personnel Department of the Railway Administration held in New Delhi on 27.11.75.

A copy of an extract from the Record Note circulated vide Board's letter No.75-E(SCT) 15/48, dated 9.12.75 as received vide their office letter No.E(NG) I-75PMI/264, dt. 25th Jan., 1976 is reproduced below:-

"2.2 Panels should be formed for selection posts in time to avoid ad hoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on ad hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment."

The learned counsel for the applicant has reinforced his arguments on the basis of a decision of a Division Bench (Principal Bench) in OA-1278/89 decided on 11.7.1989 and Shri Kishan Lal Gulati Vs. Union of India & Ors. He has also relied upon the authority of the Calcutta Bench, C.A.T., Mohini Mohan Datta Vs. Union of India and Others reported in A.T.R. 1987, Vol.II, C.A.T. 517. A reference has also been

made to the authority of Ahmedabad Bench of C.A.T., A.T.R. 1989, Vol.I, C.A.T. 96 - Abdul Wahab Khan Abdul Ghaffar Khan Vs. Union of India and Others. Reliance has also been placed on a decision of Jugal Kishore Anand Vs. Union of India and Others, OA-3193/92 decided on 16.4.1993. We have considered all these authorities cited by the learned counsel for the applicant.

5. The basic question in this case is whether the applicant is entitled to be empanelled on the basis of the result of the selection. The applicant, though obtained about 69% marks in the written examination; in the interview, he got just 33.73% marks. The Tribunal cannot sit in judgement over the award of marks by the D.P.C. or selection body. A perusal of the tabulation of the marks obtained by the candidates who have taken the Law Assistant selection, goes to show that the award of marks in the interview out of 15 ranges from $2\frac{1}{2}$ to 11 . It is not the case of the applicant that there was any bias against him by any of the members of the selection body or that they acted in a mala fide manner. In view of this, the Tribunal cannot, in its decision re-appreciate the award of marks in the *viva voce* to various candidates. If the applicant had obtained one more mark in the interview, he would have qualified for the empanelment, making his total marks obtained in the Professional ability to 30 out of 50. But the circular under which the examination

has been conducted, clearly goes to show that no grace marks are to be awarded to the candidates.

6. Now, coming to the reference to the circular of 1976 relied on by the learned counsel for the applicant, it is not an order from the Railway Board. The circular quoted above clearly shows that it was a record note of the meeting of the Deputy Minister for the Railways and the Railway Board Headquarters of the Personnel Department of the Railway Administration held on 27.11.1975. This cannot have a statutory force. In the case of Shri K.L. Gulati (supra.), the Bench observed "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 higher post and holds it for a long period, should not be reverted from it 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." Shri K.L. Gulati was working as Assistant Superintendent in the Electrical Branch, Northern Railway, on ad hoc basis w.e.f. 28.5.1985. He had already worked for a period of 4 years when the selection for empanelment on regular basis was held from the feeder posts of Head Clerk on merit-cum-seniority basis. In the present case, the applicant was working as A.S.M. and was promoted on ad hoc basis only on 2.5.1990. Thereafter, he filed OA-2500/91, challenging not

holding of a supplementary test for him in the year 1990 on the basis of notice issued for departmental selection on 22/30 May, 1989. In the meantime, when the further notice was issued for selection for the post of Law Assistant in 1991, there was an interim direction that the applicant may take the examination proposed to be held by the respondents by the letter dated 23.9.1991, but the result of the applicant of the written examination shall not be declared. Thus, the applicant has been working on the post of Law Assistant under the interim directions of the Court, presumably because, as alleged in the earlier OA-2500/91, that the applicant was not informed about the date of written examination, held on the basis of the notice dated 22/30.5.1989. The authority of K.L. Gulati, therefore, cannot apply in the case of the applicant. Secondly, the Railway Board circular of 1976 has to be considered in the right perspective. The Division Bench who decided the case of K.L. Gulati in unequivocal terms, observed that a person who has worked on an ad hoc basis, has no vested right to be awarded high marks in the interview. So, the applicant cannot get any benefit of the observations made in the aforesaid judgement which is per incuriam.

7. Another fact is that in the present case, the selection to the post of Law Assistant (Grade Rs. 1600-2660)

is held on the basis of eligibility of the persons working in the feeder posts in the grade of Rs. 1400-2600. ASMs, Head Clerks, TTIs and persons of various other branches and disciplines are eligible for this post working in that grade on regular basis. The promotion of the applicant on ad hoc basis, as is evident by the order dated 2.5.1990, is only pending passing selection and it cannot confer on him any right because it is not a normal channel of promotion from the post of ASM to that of Law Assistant.

8. In the case of Mohini Mohan Datta (supra.), the petitioner was officiating as Chief Draftsman in the scale of Rs. 700-900 w.e.f. 1.11.1979. He was reverted to the post of Head Draftsman. His reversion was challenged. The reversion was not communicated to him by a formal order. The Bench considered the the question of reversion only in the light of the circular of 1976. The judgement does not disclose whether there was any selection and the applicant was not assessed by the Selection Board. In the case of Mohini Mohan Datta Vs. Union of India (supra.), the Bench also observed, "By reading that Annexure, we are of the view that once a candidate works on ad hoc basis satisfactorily, no reversion shall be made ordinarily, unless there are strong reasons for doing so." In the present case,

there are reasons that the applicant failed in the selection, not securing the qualifying marks of 60 per cent in the professional ability. In the case of Abdul Wahab Abdul Ghaffar Khan (supra.), reliance has been placed by the Ahmedabad Bench on the case of Mohini Mohan Datta (supra.) and observed that there are no materials placed on records to show that while considering the case of the petitioner for selection to the post of Junior Teacher, the competent authority had taken care to follow the aforesaid directions (to unquote circular of 1976), while in the present case, the applicant was considered by a duly constituted D.P.C. and not found fit in professional ability. The case of Jugal Kishore Anand (supra.) is absolutely on different facts where the relief prayed was for directing the respondents to give two opportunities to the petitioner in that case to take the examination for regular promotion as Law Assistant before reverting him to his substantive post and to protect his pay even in the event of reversion. The Bench, placing reliance on the Full Bench of the Tribunal in the case of Jetha Nand and Others Vs. Union of India, TA-844/86, decided on 5.5.1989, granted the relief to the applicant.

9. In view of the facts stated above, none of the authorities cited by the applicant helps him. The Hon'ble Supreme Court has considered the aspect of interference of Tribunal/

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Court with the recommendation of D.P.C. In the State of M.P. Vs. Srikant Chaphakar reported in 1993 (23 A.T.C., p.377), the Hon'ble Supreme Court observed in para.4 of the report as follows:-

"4. We are of the view that the Tribunal fell into patent error in substituting itself for the D.P.C. The remarks in the annual confidential report are based on the assessment of the work and conduct of the official/officer concerned for a period of one year. The Tribunal was wholly unjustified in reaching the conclusion that the remarks were vague and of general nature. In any case, the Tribunal outstepped its jurisdiction in reaching the conclusion that the adverse remarks were not sufficient to deny the respondent his promotion to the post of Deputy Director. It is not the function of the Tribunal to assess the service record of a Government servant and order his promotion on that basis. It is for the D.P.C. to evaluate the same and make recommendations based on such evaluation. This Court has repeatedly held that in a case where the Court/Tribunal comes to the conclusion that a person was not considered for promotion or the consideration was illegal then the only direction which can be given is to reconsider his case in accordance with law. It was not within the competence of the Tribunal, in the facts ~~and~~ of the present case, to have ordered deemed promotion of the respondent."

10. Regarding the allotment of marks in the interview or viva voce by the Selection Board, the matter came before the Hon'ble Supreme Court in the case of Indian Airlines Corporation Vs. Capt. K.C. Shukla and Others reported in 1993 (23 ATC 407). In this case, the Indian Airlines, aggrieved by the order of Delhi High Court promoting certain respondents, was challenged and the Hon'ble Supreme Court observed as follows:-

"2. Whether the decision of the High Court is well founded on various aspects shall be examined presently but the alternative relief granted by the High Court probably in an anxiety to be fair and just to those others who had been

selected by reducing the interview percentage to 12.5 per cent then working out proportionally the marks obtained by respondent on ACR evaluation and interview and directing to promote him as by this method he would secure the minimum required cannot be accepted as proper exercise of jurisdiction under Article 226. Adjusting equities in exercise of extraordinary jurisdiction is one thing but assuming the role of selection committee is another. The court cannot substitute its opinion and devise its own method of evaluating fitness of a candidate for a particular post. Not that it is powerless to do so and in a case where after removing the illegal part it is found that the officer was not promoted or selected contrary to law it can issue necessary direction. For instance a candidate denied selection because of certain entries in his character roll which either could not be taken into account or had been illegally considered because they had been expunged the Court would be within jurisdiction to issue necessary direction. But it would be going too far if the Court itself evaluates fitness or otherwise of a candidate, as in this case."

The Hon'ble Supreme Court further observed that the High Court appears to have been persuaded more by the arbitrariness of the Interview Board, particularly by some over-writing in the marks which were awarded against some of the officers and drew an inference that principally ^{it} was not fair. We do not find any justification for the same after a perusal of the records. Moreover, so far as respondent is concerned, the average marks allotted by all the four members, did not give an impression that either the marking was arbitrary or they were biased against him. The Hon'ble Supreme Court allowed the appeal and quashed the order of the Delhi High Court.

11. Coming to the case in hand, the applicant has been judged by the Selection Board on the basis of the performance in the interview. He has been given 33.1/3 per cent marks, while most of the candidates have been awarded much less. This Tribunal has no power to order for the award of more

marks, or that if the applicant has officiated on the post of Law Assistant for some period under the orders of the Tribunal, then it would not be just and fair that because of that officiation, he should be declared qualified in professional ability by giving him grace marks. It would not be unjust, unfair and inequitable, but would amount to review of the recommendations of the Selection Board by the Tribunal. The Tribunal, as said above, cannot interfere, nor can it assume the function of appellate forum.

12. In view of the above facts and circumstances, we find no merit in this application and the same is dismissed as devoid of merit. The interim order granted on 4.12.1992, is hereby vacated. The parties will bear their own costs.

Adige
(S.R. Adige)
Member (A)

Sharma
11.6.93
(J.P. Sharma)
Member (J)