

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.  
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Date of Decision: 2. 3. 92

OA 1059/92

S.N. VIYAS

... APPLICANT.

Vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).  
HON'BLE SHRI S.R. ADIGE, MEMBER (A).

For the Applicant

... SHRI G.D. BHANDARI.

For the Respondents

... SHRI K.K. PATEL.

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI S.R. ADIGE, MEMBER (A).)

The grievance of the applicant Shri S.N. Viyas, Head Goods Clerk, Northern Railway, is that he was not included amongst the six candidates called for the viva-voce test on the result of the written test held for the post of Commercial Inspector (CMI), Grade Rs.1400-2300 on 26.3.92, although he was the seniormost of the 29 candidates, who had competed. He contends that if his seniority were taken into account in addition to his performance in the written test, his position would be high enough for him to be called for the viva-voce test and he has averred that it is the irregular non-consideration of his seniority, that has denied him the opportunity of being called for the viva-voce test.

We have heard Shri G.D. Bhandari, learned counsel for the applicant, and Shri K.K. Patel, learned counsel for the respondents.

In this connection, Rule 219 (g)(ii) Indian Railway Establishment Manual Volume-I is relevant and is reproduced below:-

"Candidates must obtain a minimum of 30 marks in professional ability and 60% marks of the aggregate for being placed on the panel. Where both written and oral tests are held for adjudging the professional ability, the written test should not be of less than 35 marks and the candidates must secure 60% marks in written test for the purpose of being called in viva voce-test. This procedure is also applicable for filling up of general posts. Provided that 60% of the total of the marks prescribed for written examination and for seniority will also be the basis for calling candidates for viva-voce test instead of 60% of the marks for the written examination."

Similarly Rule 219 (h)(i) of the Indian Railway Establishment Manual Volume-I lays down that;

"for general post i.e. those outside the normal channel of promotion for which candidates are called from different categories whether in the same department or from different departments, the selection procedure should be as under:-

(i) All eligible staff irrespective of the department in which they may be working who satisfy the prescribed condition of eligibility and volunteer for the post should be subjected to a selection which should consist of both written test and viva-voce test; and

(ii) the Selection Board should call for viva-vace test all candidates who secure not less than 60% marks in the written test. The final panel should be drawn up on the basis of

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marks obtained in the written and the viva-voce test in accordance with the procedure for filling selection."

In paragraph 2 of Railway Boards letter No.E(NG)I-8-PMI-65/ (PNM/NFIR) dated 5.12.84 (on record) regarding determination of eligibility for interviews where the written exam is a part of the selection procedure, it has been laid down that 60% of the total of the marks prescribed for written examination and for seniority should also be the basis for calling candidates for viva-voce test/interview instead of 60% of the marks of the written examination alone. It has been clarified that the assignment of marks for seniority at the stage of determining eligibility to be called for viva-voce test/interview will be on notional basis. For those who are actually called for interview, marks for seniority will be awarded again with reference to their relative seniority in accordance with the existing procedure and practice. In other words, once a candidate has been called for interview on the basis of modified procedure, the normal selection procedure will be followed for the remaining part of the selection. If a person is eligible to be called for interview on the basis of written test alone he will continue to be so eligible even if, by reason of his being junior he does not secure minimum of the 50% of the sum of the marks for written test and those for seniority.

These instructions, however, were partially amended by Railway Boards letter No.E(NG)I-8-PML-65/(PNM/NFIR) dated 28.1.88 (on record), wherein it has been stated that

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as difficulties were being experienced in observing instructions for calling candidates for viva-voce test in selection to general and ex-cadre post on the basis of 60% of the marks for both written examination and seniority, it had been decided that notional marks for seniority should not be considered for deciding eligibility for viva-voce test in respect of;

(i) Ex-cadre, where the employee retained his lien on the parent cadre and sought advancement therein.

(ii) General posts like Welfare Inspector and Law Assistant etc. where employees of different departments and categories were considered but after induction, they could seek advancement only in the new cadre.

Thus, the question build down to whether the post of Commercial Inspector is a general post or not. Shri Bhandari has drawn attention to the applicants reply to the affidavit submitted by the respondents wherein it has been stated that the post of Commercial Inspector, as the very name indicates belongs to the Commercial Department, which is filled from the Feeder category of Commercial Clerks, further categorised into Goods Clerk, Parcel Clerk and Booking Clerk and therefore cannot be categorised as a general post like Welfare Inspector or Law Assistant. Moreover the contents of the circular dated 28.1.88 (supra) cannot override the provisions of Rule 219 (g)(ii) Indian

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Railway Establishment Manual Vol:I (supra). These averment have not been successfully rebutted by Shri Patel during arguments, and under the circumstances, it must be held that the post of Commercial Inspector is not a general post like Welfare Inspector or Law Assistant. In that view, the applicant's notional seniority must be taken into consideration in addition to his performance in the written examination to determine his eligibility for being called for the viva-voce test.

In the result, this application is allowed and the respondents are directed to take into consideration the applicant's notional seniority in addition to the marks obtained by him in the written examination dated 26.192 for the purpose of determining his eligibility for being called for the viva-voce test. No costs.

*S.R. Adige*  
( S.R. ADIGE )  
MEMBER (A)

*J.P. Sharma*  
( J.P. SHARMA )  
MEMBER (J) 2.5.23