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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.536 of 1993 decided on 19.2.1999.

Name of Applicant : Shri Ahmed Kabeer

By Advocate : Shri P.M. Ahlawat

Versus

Name of respondent/s Union of India & another

By Advocate : **Shri R.L.Dhawan**

Corum:

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the -No
other Benches of the Tribunal.

N. Sahu
(N. Sahu)
Member (Admnv)

19/2/99

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.536 of 1993

New Delhi, this the 19th day of February, 1999

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Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Mr. N. Sahu, Member(Admnv)

Shri Ahmed Kabeer S/o Shri Allauddin,
Aged: 36 years, working as Senior
Welfare Inspector at Delhi, Sarai
Rohilla, Delhi In the office of
Divisional Railway Manager, Northern
Railway, Bikaner (Rajasthan)

- APPLICANT

(By Advocate Shri P.M.Ahlawat)

Versus

Union of India through :

1. The General Manager, Northern
Railway, Baroda House, New Delhi.

2. The Divisional Railway Manager,
Northern Railway, Bikaner

RESPONDENTS

(By Advocate - **Shri R.L.Dhawan**)

O R D E R

By Mr. N. Sahu, Member(Admnv)

This Original Application is directed against the order dated 15.2.1993 which has selected one Shri Basant Lal and Shri Harshvardhan Nangal for the post of Chief Welfare Inspector (hereinafter referred to as 'the CWLI') grade Rs.2000-3200 whereby the applicant is superseded by his juniors.

2. A vacancy occurred in the post of CWLI on 1.6.1991 which was filled up by promoting one Shri Sita Ram Tripathi on adhoc basis. The second post became vacant on 7.4.1992. The applicant had been working as a Welfare Inspector in the grade of Rs.1400-2300 with effect from 30.8.1985. He was promoted as Senior Welfare Inspector (hereinafter referred to as "the SWLI") in the grade of Rs.1600-2660 with effect from 7.8.1990. The

selection for filling up two vacancies of CWLI in the grade of Rs.2000-3200 was held on 28.10.1992 in the office of the Divisional Railway Manager (in short 'DRM) at Bikaner. The selection was conducted on the basis of viva voce test only. The applicant was a candidate but his grievance is that Shri Harshvardhan Nangal, who is junior to him and who had not even completed two years service in the grade of Rs.1600-2660 had been empanelled by declaring him 'outstanding'. He is aggrieved because his seniority and his good performance had been ignored. He further alleges that as Shri Harshvardhan is the Branch Secretary of URMU, the Selection Board had been influenced by the Union.

3. He also feels aggrieved that Shri Basant Lal, the senior most SWLI and the applicant, who is next to him in seniority were not promoted on adhoc basis.

4. The learned counsel for the applicant cited the following decisions - (i) Ashok Yadav Vs. State of Haryana, AIR 1987 SC 454, in which their Lordships had held that 25% of marks allotted for interview is excessive and only 12.25% of the total marks need to be allotted for viva voce. (ii) Mohinder Sain Garg Vs. State of Punjab and others, JT 1990 (4) SC 704, wherein it was held that allocation of 25% marks for viva voce is excessive. (iii) Ajay Hasia and others Vs. Khalid Mujib Sehraradi and others, (1981) 1 SCC 722, wherein their Lordships had held in a Constitution Bench decision that 33 1/3% of total

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marks earmarked for interview is excessive. He contends that this being the legal position, allocation of 70% of marks for the interview in this case is held to be unreasonable and unconstitutional.

5. After notice, the respondents submit that in a selection post seniority cannot be the determinative criterion. The respondents relied on the rules for selection of the post of the CWLI. It is clearly written that *viva voce* is the only method by which the selection has to be done for the post. They have allotted 50% marks for *viva voce*, 15% marks for seniority, 15% marks for the service record and 20% marks for leadership and academic qualifications. Normally in all selections only 15% marks is allotted to *viva voce* and 35% marks to written test but as the rules directed that the selection be conducted by way of *viva voce* only, they have diverted the 35% marks for written test to club it with *viva voce*. Under the existing instructions, if a candidate secures 80% marks in the selection, he is treated as 'outstanding'. He has to be given jump over his seniors by 50%, i.e. if a candidate has secured 'outstanding' and there are four persons senior to him, he should get jump over 2 of his immediate seniors. As Shri Harshvardhan Nangal secured more than 80% marks in this selection, he was placed in the panel at serial no.2 as per the rules. It is submitted that prior to June, 1990 the applicant was not eligible to appear in the selection because he was working in the grade of Rs.1400-2300 at that time. The Selection Committee consisted of 3 JAG

officers for adjudging the performance of the candidates for placement of their names on the panel for two posts of CWLI in the grade of Rs.2000-3200. Selection earlier to this date could not be held because of the dispute regarding seniority between reserved and general candidates.

6. In the rejoinder it is contended that Shri Harshvardhan was not eligible and qualified for promotion to the said post when the vacancy arose. On the main question of selection to the post of CWLI the rules on the basis of which the selection was made was stated to be irrelevant in the light of the Hon'ble Supreme Court decision. The applicant cited the following further decisions in the rejoinder -
(i) C.Sivadas and another Vs. Union of India and others, 1992(2) SLJ(CAT) 316, (copy placed on record)
(ii) V.S.Ananthanarayanan Vs. Union of India and others, 1992(2) SLJ (CAT) 210 (copy placed on record), Sant Ram Sharma Vs. State of Rajasthan and others, AIR 1967 SC 1910. By the above decisions the applicant places for consideration three principles enunciated in these decisions - (i) vacancies of various years cannot be clubbed in one year and select list may be made for yearwise vacancies, (ii) the outstanding grading cannot be given only on viva voce without a written test; and (iii) undue importance should not be given to viva voce and seniority is entitled to due consideration as the criterion for selection. Finally, it is contended that the applicant worked in a higher post and Shri

Harshvardhan worked in a lower post and, therefore, a comparative assessment of their performance is not proper.

7. In the case of Ashok Kumar Yadav (supra) the Hon'ble Supreme Court had held that when there is a composite test consisting of a written examination followed by a viva voce test, the number of candidates to be called for interview in order of the marks obtained in the written examination should not exceed twice or thrice the number of vacancies to be filled. In a composite written and viva voce test where 12.2% marks are allocated for viva voce for general category and 25% for Ex-service officer recommended for all State Public Service Commission, it was held that this pattern should be followed everywhere and a higher percentage would render the selection arbitrary.

8. In the case of V.S.Ananthanarayanan (supra) the Bench was considering the case of a post which is filled on the basis of a selection on promotion by holding only a viva voce test. In that case respondent no.3 was given "outstanding" and was made to supersede the applicant. The plea before the Bench was that an "outstanding" category cannot supersede in selection by viva voce only. The reason given by the Bench was that viva voce is a subjective test and, therefore, it would be grossly unfair to permit the selectors to give "outstanding" grading

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with the aforesaid attendant consequences of supersession. The Bench relied on Ashok Kumar Yadav's case (supra).

9. The second decision cited by the applicant was in the case of C.Sivadas (supra). The Bench was considering 50% marks provided for viva voce for professional ability. This was held to be an excessive percentage and was not upheld. The second point was clubbing of vacancies for many years and preparation of select list which was held to be irregular. We shall not consider the other aspects of this judgment.

10. We are of the view that subsequent decisions of the Hon'ble Supreme Court are available which do not support the stand in the above two decisions.

11. In the case of Harjinder Singh Sodhi Vs. State of Punjab, (1996) 6 SCC 322 = 1996 SCC (L&S) 1496 the Hon'ble Supreme Court had held that where no written examination was conducted, allotment of 50% marks for interview and 50% for the record was held to be not illegal. In the case of All India State Bank Officers' Federation Vs. Union of India, (1997) 9 SCC 151 = 1997 SCC (L&S) 1004 the Hon'ble Supreme Court was dealing with a case of promotion from Senior Management Grade Scale-V to Top Executive Grade Scale-VI in State Bank of India. The requirement of obtaining a minimum of 60% marks for interview as an eligibility criterion for promotion

was held to be neither arbitrary nor unfair nor unjust. The Hon'ble Supreme Court observed as under

"There can be no rigid or hard and fast rule that the interview marks can only be 15 per cent and no more. The percentage of marks for viva voce or interview which can be regarded as unreasonable will depend on the facts of each case. What the interview or viva voce marks should be may vary from service to service and the office or position or the purpose for which the interview is to be held. But the interview marks should not be so high as to give an authority unchecked scope to manipulate or act in an arbitrary manner while making selection. Where merit can be best judged by holding an interview, there such marks may be high but each case will have to be judged on its own facts."

12. The reliance on Ashok Kumar Yadav's case (supra) is not appropriate. Ashok Kumar Yadav's case dealt with selection of candidates in a composite written test and viva voce. In the present case before us, there was no written test and selection was done only on viva voce. Secondly, Ashok Kumar Yadav's case and Ajai Hasia's case (supra) are cases dealing with initial recruitment to posts through a competitive examination. The case before us is a case of promotion. It is common knowledge that there is no inherent fundamental right to promotion. There is only a right of consideration to promotion. Promotion is a benefit conferred on the deserving under the service rules. The rules for promotion are spelt out as in this case. The persons in the zone of consideration have to fulfil the eligibility criterion for consideration and the consideration can be only in accordance with the rules. The Hon'ble

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Supreme Court had laid down certain principles relating to maximum marks for viva voce only when there is a composite test of a written examination followed by a viva voce test and that too in the case of an initial recruitment. The contention canvassed before the Hon'ble Supreme Court was that in comparison to the marks allotted to the written examination the proportion of the marks allocated to the viva voce test was exceedingly high and that introduced an irredeemable element of arbitrariness in the selection process so as to offend Articles 14 and 16 of the Constitution. The Hon'ble Supreme Court cited an earlier decision given by it in Liladhar Vs. State of Rajasthan, AIR 1981 SC 1777 with approval.

"25...Glenn Stahl proceeds to add that "no satisfactory written tests have yet been devised for measuring such personnel characteristics as initiative, ingenuity and ability to elicit cooperation, many of which are of prime importance. When properly employed, the oral test today deserves a place in the battery used by the technical examiner." There can therefore be no doubt that the viva voce test performs a very useful function in assessing personnel characteristics and traits and in fact, tests the man himself and is therefore regarded as an important tool along with the written examination. Now if both written examination and viva voce test are accepted as essential features of proper selection in a given case, the question may arise as to the weight to be attached respectively to them."

13. The Hon'ble Supreme Court states that viva voce may be the only method by which personal characteristic such as initiative, ingenuity and ability to elicit co-operation can be judged.

14. Ajay Hasia's case on which reliance was placed was again a case of oral interview in addition to written test. In that case the Constitution Bench held that allocation of marks above 15% of the total marks for interview is arbitrary and unreasonable. ^{The Apex Court found that} In that case, holding an interview for only 2-3 minutes per candidate and asking irrelevant questions would vitiate selection. However, the Hon'ble Supreme Court cautioned by saying that a mere suspicion that some candidates secured admission by getting very high marks in viva voce though they got comparatively lower marks in written test will not establish malafides on the part of the selectors.

15. Mohinder Sain Garg's case (supra) is also a case of a competitive examination composing of written examination and viva voce where 25% marks for viva voce test were held arbitrary and excessive.

16. This is not a case of direct recruitment. This is not a case of a composite examination where written test is followed by viva voce. This is a case of promotion by selection. This is also a case where the selection process is governed by a statutory rule. The statutory rule enjoins that the selection be made only by interview. A Committee of three senior officers of the Junior Administrative Grade was constituted for this purpose. They have distributed the marks equally between confidential reports, seniority and professional ability. There is no allegation of malafide in this case. The

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reference made to Shri Harshvardhan's promotion by supersession because he was a union leader is unsubstantiated. A similar OA making an allegation against Shri Harshvardhan for an earlier promotion was withdrawn. As there is no material that the senior officers constituting the Selection Board were influenced by extraneous considerations, we cannot question their decision. That apart the Hon'ble Supreme Court had clearly held that the Tribunal has no power to sit as a Court of appeal on the findings of the selection committee. In fact the Supreme Court has held in the case of Madan Lal Vs. State of J&K, (1995) 3 SCC 486 = 1995 SCC (L&S) 712 as under -

"In the petition under Article 32 the Supreme Court cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge that they were given less marks though their performance was better. It is for the Interview Committee which in this case amongst others was consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee."

In this very same case the Apex Court has laid down that there is no right possessed by an unsuccessful candidate who had taken a chance to get himself selected at the impugned interview only because the result of the interview was not palatable



to him. In that case the Supreme Court rejected the petitioner's contention that the merit list of open category candidates recommended for appointment comprised majority of candidates belonging to one community and, therefore, was vitiated.

17. In view of the above decisions, we are unable to agree with the contention that conducting promotion by selection through viva voce which has given a high percentage of marks for professional ability is bad in law.

18. With regard to the "outstanding" grading also we are of the view that this grading is given only to a candidate who has secured 80% and above. If we consider and uphold that the Committee of selectors had objectively given high marks to a deserving candidate, we cannot find fault with the rule as it is, which states that such a person can supersede. In all the promotions conducted by the UPSC bench marks are laid down and several bench marks are that where the official under consideration has consistently 'outstanding' grading, say, for five years or seven years, etc., he supersedes all his seniors and gets a place as number 1. This depends on the criterion laid down by the Selection Committee. Now, in this case, the criteria are laid down by the rule itself. We are, therefore, unable to hold that "outstanding" grading to Shri Harshvardhan was vitiated per se. We are unable to hold that Para 26 of Circular No. 99/86 relating to conducting of selections which states

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12. that while finalising the panel those candidates who secured 80% and above marks in the aggregate should be classified as "outstanding" and they be allowed to supersede only 50% of their seniors, is bad in law. On the contrary in UPSC selections where a candidate has consistently outstanding record according to the bench mark laid down by the selection committee, there are several instances where outstanding candidates have superseded hundreds of seniors and are kept on the top. We are, therefore, unable to hold that the instructions issued by the Railway Board are in any way contrary to any known canon of law. On the other hand such a criterion is very sensible and is a cardinal principle of public administration. If outstanding categorization does not get an edge over "very good" or "good", then no employee will benefit by such a categorization. If an employee is not benefitted by such a higher grading for excellent performance in his promotion, a categorization becomes meaningless, irrelevant and redundant. To say that an outstanding categorization should not get an edge or benefit of supersession over others having "very good" or "good" strikes at the very root of the concept of rewarding persons of proven merit. We are unable to subscribe to such a proposition.

19. We have carefully considered the submissions made by the rival counsel. It is for the rule making authority to decide the manner in which a selection can be made. There is no rule which prohibits selection by interview. In fact selection by

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interview is one of the very time tested and recognised methods. If the rules do not say that there need be a written test for selection, then no Court can impose that a selection should be made only through the mode of a written test. The Court cannot legislate and substitute itself to the rule making authority. In the present case as the rules mandate that the selection should be made only by *viva voce*, the respondents have distributed the maximum marks between service records, seniority and interview. They denied that they are influenced by the Union in making this selection. The Apex cases cited by the applicant are cases in which the rules never mandated that the selection should be made only through *viva voce*. Those were cases where to the exclusion of other categories of selection, the selectors have given primacy to interview and allocated an exaggerated portion of the total marks for this purpose. The Courts have, therefore, come down heavily on such a procedure. The case before us is one where the rule directs that the selection should be made by interview.

20. We have considered the written submissions of both the counsel. The allegation that there was undue influence by the Union has been denied and we do not find any merit or substance in the said allegation. In view of the law laid down by the Hon'ble Supreme Court in the cases of Madan Lal (*supra*); Major General I.P.S. Dewan Vs. Union of India, (1995) 3 SCC 383 = (1995) 29 ATC 579; Dalpat Abasaheb Solunke Vs. B. S. Mahajan, (1990) 1 SCC 305

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= (1991) 16 ATC 528; Nutan Arvind Vs. Union of India, (1996) 2 SCC 488 = (1996) 33 ATC 228; Kuldip Chand Vs. State of HP, (1997) 5 SCC 60 = AIR 1997 SC 2606, we do not think that that the decisions of this Court cited by the applicant, C.Sivadas" and v.S.Ananthanarayanan's cases (supra), can be considered to have laid down a good law. It is settled that no Court can substitute itself for the selection committee. The selection committee consisted of 3 JAG officers and we do not find any merit that the constitution of the committee is not in accordance with the rules. In view of the instructions at para 219(j) of the Indian Railway Establishment Manual, Vol.1 (Revised Edition - 1989) the names of selected candidates should be arranged in order of seniority but those securing a total of more than 80% marks will be classed as outstanding and placed in the panel appropriately in order of their seniority allowing them to supersede not more than 50% of total field of eligibility. There is nothing irrational about these norms and since these norms have been complied with, we cannot question the selection.

21. The first vacancy occurred on 1.6.1991 and the second vacancy occurred on 7.4.1992. The DPC took place on 28.10.1992. Shri Basant Lal, who was already SWLI Incharge was placed at serial no.1 and Shri Harshvardhan Nangal became no.2 on account of outstanding categorization. As the second vacancy occurred within 12 months of the first vacancy there was nothing wrong in the procedure adopted by the DPC

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in considering all the eligible candidates for the two posts together. We accept the plea taken that the DPC could not be held earlier to this because of seniority disputes. The respondents knew better about the situation of seniority than the applicant in this regard.

22. This selection is not impugned for malafides. There are only two posts and on the date of selection all the candidates were eligible. If Shri Harshvardhan was not eligible for the earlier vacancy, there was no dispute that he was eligible for the latter vacancy. When, therefore, the selection took place at a later date and he was found to be suitable, there is no merit in the grounds raised by the applicant.

23. In the result, the Original Application is dismissed. No costs.

Narasimha
(N. Sahu)
Member (Admnv)

Lakshmi
(Smt. Lakshmi Swaminathan)
Member (J)

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