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RESERVED

Central Administrative Tribunal, Allahabad.

Registration O.A.No. 27 of 1987

Vaidya Nath Misra Petitioner.
Vs.

1. Union of India
2. General Manager, N.E.
Railway, Gorakhpur Respondents.

CONNECTED WITH

Registration O.A.No. 60 of 1987.

Rajbanshi Prasad Petitioner
Vs.

1. Union of India
2. General Manager,
N.E.Railway, Gorakhpur Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

In these two petitions under Section 19 of the Administrative Tribunals Act, XIII of 1985, the petitioners challenge the validity of circular letter dated 29.4.1963 issued by the Railway Board laying down the procedure for promotion from class III to class II service and for a direction to the respondents that the petitioners be allowed to continue to hold their present posts and to treat them duly selected to the class II post of Assistant Operating Superintendent (for short AOS)/Assistant Traffic Officer (for short ATO) (group 'B') of the N.E.Railway.

2. The petitioner V.N.Mishra had joined the railway service in 1962 on his selection by the Railway Service

Commission and after getting four promotions, he was promoted on adhoc basis to class II post and posted as Station Superintendent at Barauni Junction of the N.E. Railway in July 1986. He along with other candidates appeared in the regular selection test for class II posts of ACS/ATO group 'B' in 1986. He had qualified in the written test but his name did not appear in the list of selected candidates declared on 9.1.1987 after the approval of the General Manager, N.E.Railway. His contention is that he had duly qualified even in the viva-voce test but the procedure adopted for selection by the Selection Board is illegal as the result was not declared on the basis of ~~gross~~ ^{avg average} marks but on the basis of qualifying marks obtained in professional abilities, record of service, personality, address, leadership and academic/technical qualification as per impugned circular dated 29.4.1963 of the Railway Board. It is further alleged that the allocation of marks according to the said circular is unreasonable, unfair, arbitrary and against the law and no marks for seniority have been prescribed under the said circular. He, therefore, wants that the said circular be declared illegal and unreasonable and he be declared duly selected. The petitioner has further alleged that the complete service record of the candidates called for interview was not summoned on the date of interview and as such, the selection made in the absence of such record is illegal. Placing reliance on the circular letter dated 9.12.1975 re-issued on 25.1.1976 copy annexure 1-A, it has been further contended that the Selection Board should not have declared the petitioner

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unsuitable in the interview as he was satisfactorily working on class II post after his adhoc promotion and selection made in contravention of these circular letters is illegal.

3. The other petitioner Rajbanshi Prasad belongs to a scheduled caste and his case is that he was selected as Traffic Operator in the year 1963 by the Railway Service Commission and after getting his promotion as Deputy Chief Controller in 1977, as Chief Controller grade II in 1979 and Chief Controller Grade I in 1980, he was promoted on adhoc basis to class II post as Assistant Operating Superintendent (General) Samastipur on 4.7.1985. He too had appeared in the selection for class II post of AOS/ATO group 'B' in 1986 but his name also did not find a mention in the panel declared after the approval of the General Manager on 9.1.1987. Besides the points raised in the other petition, this petitioner has further alleged that according to the letter dated 15.11.1983 of the Railway Board, SC/ST candidates have been given relaxation as a result of which lower limit of qualifying marks has been set at 3/5 of the qualifying marks excluding marks for the record of service based on confidential reports and he having secured more than 50% marks in the viva voce test should have been selected according to the said circular letter. It is also alleged by him that his service records were not available

before the Selection Board on the date of the interview and as such, the marks assigned to him in the viva-voce are without any basis and contrary to the spirit of above circular letter under which the selection was made.

4. Both the petitions have been contested on behalf of the respondents and in the replies filed on their behalf by the Deputy Chief Personnel Officer, N.E. Railway, Gorakhpur, it has been stated that the petitioners did not secure qualifying marks in the viva-voce test and as such, they could not be declared selected and their contentions to the contrary are not correct. No marks for seniority have been prescribed for the selection to class II post and as such, even in the selection held in the case of the petitioners no marks for seniority were reserved. Under the rules, the confidential reports of 3 years are to be seen at the time of selection and the said reports were available before the Selection Board on the date of interview and on the basis of the entries therein, the marks were given to the petitioners according to the rules. Other service record is not ^{material} maintainable and the contention to the contrary of the petitioners is not correct. The circular letter dated 25.1.1976 relied upon by the petitioners has been ~~subsequently~~ modified by the subsequent circular letter dated 9.8.1982 in which the Railway Board had clarified that the circular dated 25.1.1976 could not by-pass or supersede in any manner the rules contained in the Indian Railways Establishment Manual and the reliance placed by the petitioners on the said circulars is misplaced. The selection made in the present

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case does not suffer from any infirmity or illegality and there has been no discrimination against the petitioners. The petitioners were not selected because they did not qualify in the viva-voce test and their earlier promotion having been made merely on adhoc basis, they are not entitled to hold the present post after having ~~been~~ failed in the regular selection.

5. Rejoinders were filed by the petitioners reiterating the grounds taken by them in their main petitions and denying the correctness of the pleas taken by the respondents in their replies.

6. The main attack of the petitioners against the validity of the impugned circular letter dated 29.4.1963, copy annexure 3-A to the petition of V.N. Mishra, is that this circular did not reserve any marks for the seniority of the candidates and the allocation of marks under this circular is unreasonable, unfair arbitrary and against the law as the circular prescribes qualifying marks for professional abilities, record of service and personality, address, leadership and technical/academic qualification while the result should be based on the average marks secured by the candidates. In support of this contention, the petitioners have placed their reliance on L.V. Ashara Vs. Gujarat Public Service Commission (1984 SIR (3)- 4) in which it was held that higher percentage than the written test fixed for viva-voce test as qualifying marks is bad in law. Reliance was also placed on R.G. Prasad Vs. State of U.P. (1985 (2) SIR-287) in which it was held that the marks allotted for interview should be minimal to avoid chance

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of arbitrariness.

7. We have carefully considered the contention raised on behalf of the petitioners for quashing the impugned circular letter of the Railway Board laying down the procedure for the selection to class II posts but find ourselves unable to agree with the same. In Director General Telecommunication and another Vs. T.N. Peethambaram (1986 ATC-552), the Hon'ble Supreme Court had the occasion to interpret the Telegraph Engineering Service Recruitment Rules which prescribe that the minimum pass marks in the examination should be 50% for general candidates and the Hon'ble Court had taken the view that in the absence of the word 'aggregate' in the rule that word cannot be introduced under disguise of interpretation and since the rule does not specify different passing standard for 'each subject, the prescribed minimum passing standard must mean minimum in each subject as well as minimum in aggregate. According to this view of the Hon'ble Supreme Court, the Railway Board committed no illegality in prescribing 60% qualifying marks for each of the 3 heads under which the selection has been made in this case. For the sake of convenience, the relevant extract of the circular is reproduced below :-

"Selection Procedure

Marks should be awarded to candidates on the following basis :-

	<u>Max.marks</u>	<u>Qualifying marks</u>
Professional ability-	50	30
Record of service -	25	15
Personality, address, leadership and academic/technical qualification	25	15
Total	100	60

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The circular had prescribed 60% qualifying marks under each of the 3 heads, ^{which is permissible and} ~~and this could be~~ legal according to the view taken by the Hon'ble Supreme Court in the above-mentioned case.

8. In Lila Dhar Vs. State of Rajasthan and others (AIR 1981 SC-1777), it was held that 25% marks allotted to viva-voce under the rules does not render the selection arbitrary and violative of Articles 14 and 16 of the Constitution. In the instant case, more than 25% marks were not fixed for viva-voce test. 25% marks fixed for the service record cannot be treated under the head of viva-voce. Further, in Javid Rasool Bhat Vs. State of Jammu and Kashmir (AIR 1984 SC-873), it was observed by the Hon'ble Supreme Court that it is not for the Court ^{to} lay down whether an interview test should be held at all or how many marks should be allotted for the interview test. Ofcourse, the marks must be minimal so as to avoid charges ~~of~~ of arbitrariness but not necessarily always. There may be posts and appointments where the only proper method of selection may be by an interview test. In this way, the Hon'ble Supreme Court does not prohibit holding interview tests alone in proper cases.

9. The impugned circular under which the selection has been held was issued by the Railway Board under its rule making power vested in it under Article 309 of the Constitution. Such circular letters have the force of law and any attack ^{regarding} ~~on~~ the validity of rules or circular letters issued by the Railway

Board cannot be taken lightly. The petitioners have not been able to convince us that the minimum qualifying marks for viva-voce test could not be fixed under the rules. They have also not been able to establish by any material before us that the seniority should have been the relevant consideration before the Selection Board and some marks for seniority should have been reserved in the selection. The objections raised by the petitioners against the validity of the impugned circular, therefore, do not hold good and the same is not unreasonable or void.

10. The next point canvassed on behalf of the petitioners before us is that the complete record of the petitioners was not before the Selection Board on the date their interview was held and as such, there could be no proper marking on the basis of the record of service in the absence of the complete record. In support of this contention, more reliance has been placed in the case of the petitioner Rajbanshi Prasad. In the present case, the written test was held on 6.7.1986^{and} 19.7.1986 and viva-voce test was held on 25.7.1986. Annexure 7 to the petition in the case of Rajbanshi Prasad is a letter dated 17.9.1986 of the General Manager (P) to the DPO N.E.R, Varanasi asking him to send service records of Rajbanshi Prasad and one other railway employee in connection with the selection of AOS/ATO group 'B'. Annexure 8 is a D.O. letter dated 18.9.1986 from DRM(P) Varanasi to DPO Gorakhpur stating that the service records consisting of personal file, service folder and service book of Rajbanshi Prasad were not received in Varanasi

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Division from Lucknow Division on his posting. On the basis of these two letters, the learned counsel for the petitioners contended before us that the material service records were not available before the Selection Board on the date of viva-voce test and as such, no proper marking could be done without the said record. We have given our serious consideration to this fact and prima-facie the contention cannot be said to be without force. It appears from clause (iv) of para (e) of the impugned circular dated 29.4.1963 that marks for record of service should be given on the basis of confidential reports and relevant service records. Integrity of character should receive special consideration. According to the contention of the petitioners, personal file and service folders of the employees also contain necessary information about the record of his service and the same should have been before the Selection Board at the time of interview. The mark-sheet of the candidates, who appeared in this selection ^{with} before the petitioners was summoned by us from the respondents on the request of the petitioners and the mark-sheet shows that the Selection Board had made separate evaluation for record of service and personality, address, leadership etc., Under the head 'record of service,' the petitioners obtained 80% or more than 80% marks and none of them had failed on their scoring less marks for record of service. 80% or more is a high percentage and we are of the view that no

prejudice was caused to any of the petitioners before us due to the non-availability of any service record before the Selection Board on the date of interview. We may further like to point out that one candidate secured 96% marks under the head record of service but he too could not be selected. In the case of petitioner V.N.Misra, it has not been established that his any service record was not available at the time of interview but even in the case of other petitioner, namely, Rajbanshi Prasad, we are of the view that the necessary service record was available and ~~quite~~^{duly} considered by the Selection Board and he secured very good marks for his service record. We are further of the view that his final result has not in any way affected by the non-availability of his personal file and service folder etc. We, therefore, find no force even in this contention of the petitioners.

11. The petitioners have further placed their reliance on para 2.2 of the circular letter dated 25.1.1976 (copy annexure 1-A to the petition of V.N.Misra) which runs as follows :-

"2.2. Panels should be formed for selection posts in time to avoid adhoc promotions. Care should be taken to see, while forming panels that employees who have been working in the posts on adhoc 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 contention of the petitioners is that in the absence of any complaint regarding their working on class II posts on adhoc basis for several months, they should not have been declared unsuitable merely on the basis of interview test. The contention of the respondents in this connection, is that this circular letter was subsequently clarified by issuing circular letter dated 3.9.1982, copy annexure 1, to the reply, in which it was stated that there

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was no intention to confer any right on employees officiating on adhoc basis in higher post to be selected and included in the panels for these posts and the circular letter issued earlier was not to by-pass or supersede in any manner the normal rules of selection as contained in the Indian Railways Establishment Manual and other orders issued from time to time.

12. It is true that the circular letter relied upon by the petitioners did not by-pass or supersede the normal rules of selection contained in the Indian Railways ^{Establishment} Manual. The intention of the Railway Board was, however, clear that when an adhoc promotee is working satisfactorily on the promotion post, care should be taken that ~~they~~ ^{is} ~~are~~ ^d not declared unsuitable in the interview. This circular did not provide that in no case such adhoc promotees are to be declared unsuitable in the interview. The stress was however laid that care should be taken that it should ordinarily be not done. Thus, in our opinion, a duty is cast on the selection Board/Committee to see that adhoc promotees who are working satisfactorily, are not declared unsuitable merely on the basis of their performance in the interview. According to the impugned circular, 50% marks have been reserved for professional ability and 25% marks have been reserved for record of service. Professional ability and record of service thus appear to be the main considerations for selection. The

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remaining 25% marks reserved for personality, address, leadership and academic/technical qualification for promotion are, therefore, to be given in the light of the circular letter, annexure 1-A, stated above. We do not mean that a candidate who lacks leadership, personality and ability to address should never be failed. These qualities too are to be given due consideration in a promotion from class III to class II post. What however appears in the instant case is that the petitioner Rajbanshi Prasad secured 81% marks in the written test and 84% marks for record of service but could secure only 12 marks out of 25 marks for personality etc. The other candidate secured 60% marks in written test, 80% marks for record of service and only 11 marks for personality etc. It is, therefore, to be seen whether the performance of these petitioners in the viva-voce test was so unsatisfactory and their personality was so poor that they could be failed in interview despite their good performance in other respects. For this, we do not want to assume the duties and functions of the Selection Board but certainly like this matter to be re-examined from a practical point of view by the General Manager, N.E.Railway who is the final authority for approving or rejecting the panel prepared by the Selection Board.

13. The petitioners have also alleged in their petitions that out of 15 posts advertised

by the respondents, the panel for 12 posts only was prepared. This fact is not going to help the petitioners in case they are not found finally suitable. The only other point raised by the petitioner Rajbanshi Prasad in his rejoinder is that according to the letter dated 15.11.1983 of the Railway Board, a SC/ST candidate is entitled to relaxation in respect of qualifying marks. The copy of the said circular letter has not been annexed with the rejoinder. This ground should have been raised in the main petition so that the respondents could say something about it in their reply. No advantage of such letter, therefore, can be given to Rajbanshi Prasad by us.

14. In view of the above consideration, we allow both the petitions in part and direct the General Manager N.E.Railway Gorakhpur to call both the petitioners before him to satisfy himself whether the petitioners were dealt with fairly in the viva-voce test and the marks assigned to them by the Selection Board in the viva-voce test for personality, address, leadership and academic/technical qualification are correct and adequate. He will also see on the basis of their performance on the present class II post, (on adhoc basis) whether they could be declared unsuitable in the interview. At the time of such re-examination of the provisional panel, the General Manager will have a right to interview the petitioners himself and declare their result on the basis of his own assessment regarding their personality, address etc. The parties are directed to bear their own costs.

Member (A)

Sharma
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S. Sharma
3/7/87

Member (J)

Dated 3.7. 1987
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