

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 28th day of May, 2004.

QUORUM : HON. MR. D. C. VERMA, V.C.

HON. MR. D. R. TIWARI, A.M.

O.A. No. 900 of 1999

Kusum Singh D/O Late Shri Kamla Singh R/O Sarvodaya Nagar,
Jungle Tulsi Ram, District Gorakhpur.

.....

.....Applicant.

Counsel for applicant : Sri B. Tiwari.

Versus

1. Union of India through the General Manager (Personnel),
North Eastern Railway, Gorakhpur.
2. Suresh Mazhi, S.P.O.(M), North Eastern Railway, Gorakhpur.
3. R.C. Dixit, S.P.O.(E), North Eastern Railway, Gorakhpur.
4. Baijnath Prasad, S.C.M. (Claim), North Eastern Railway,
Gorakhpur.
5. Sangeeta Jaiswal, Personal Inspector, Grade-III, North
Eastern Railway, Gorakhpur.
6. A.M. Tripathi, Personal Inspector, Grade-III, North
Eastern Railway, Gorakhpur.
7. Subhash Chandra Gaur, Personal Inspector, Grade-III, in
the office of the Chief Personnel Officer, North Eastern
Railway, Gorakhpur.....

.....Respondents.

Counsel for respondents : Sri A.K. Gaur.

ORDER

BY HON. MR. D. C. VERMA, V.C.

By this O.A., the applicant has prayed for inclusion of her name in the select list for the post of Personal Inspector, Grade-III in the scale of Rs.5000-8000 along with other candidates selected for the post. She has also claimed salary, seniority etc. w.e.f. 31.3.1999. Relief for setting aside the Railway Board's letter dated 5.5.1997 after declaring Section 2 of 77th Constitutional Amendment 1995 as unconstitutional being violative of Article 368 of the




Constitution of India was also prayed but the relief has not been pressed, during the course of argument.

2. The fact, in brief, is that vide notification dated 8.1.1999, 16 vacancies were notified for the post of Personal Inspector, Grade-III in the scale of Rs.5000-8000, Out of these 16, 10 posts were for general candidates and 04 posts were reserved for Schedule Caste and 02 for Schedule Tribe. After the written test, those who qualified for viva, list was notified vide order dated 23.3.1999. The name of the applicant appeared at Sl.No.10. After viva, the final panel was prepared wherein the applicant's name was missing, hence the present O.A.

3. The respondents case is that 42 employees appeared in the selection held on 13.3.1999 and 20.3.1999 out of which 17 qualified in the written test. They were interviewed by a Nomination Committee of three Senior Scale Officers, two of Personnel Branch and one from Commercial Branch.

4. The Selection Committee, after interview, finally recommended 10 candidates (6 from general and 4 from S.C. group). As the applicant could not qualify, his name was not included in the final list. Aggrieved by the result published on 25.3.99, the applicant has filed the instant O.A. which is wholly devoid of merit.

5. Learned counsel for the applicant has challenged the non-selection of applicant on the ground of malafide against Respondent No.4 Baijnath Prasad, who presided over the Interview Board. Further submission is that the interview took place on 31.3.99. The same day result was declared and the successful candidates were allowed to take over the charge. This, according to learned counsel, is itself a ground to support the motive alleged by the applicant.




6. During the course of argument, learned counsel for the respondents placed reliance on the decision of All India Schedule Caste and Schedule Tribe Employees Association and others Vs. Arthur Jeen reported in JT 2001(5) SC 42 wherein the reliance has been placed on an earlier decision in the case of Brabodh Verma Vs. State of UP & others 1984(4) SCC 251. The submission of learned counsel is that in case the whole selection is challenged it was necessary for the applicant to implead the successful candidates as their interest would be vitally affected by the judgment in case it goes in favour of the applicant. Learned counsel for the applicant has, on the other hand, submitted that he has already impleaded three private respondents namely Sangeeta Jaiswal (Respondent No.5), A.M. Tripathi (Respondent No.6) and Subhash Chandra Gaur (Respondent No.7). It is submitted that it is not at all necessary to implead all the affected persons.

7. Counsel for the parties have been heard on the above points. It is noticed from the relief clause that the applicant has not challenged the whole selection. Relief has been claimed only for inclusion of the applicant's name in the select list. Consequently the grounds which are to challenge the whole selection, are not required to be considered.

8. Learned counsel Sri Tiwari submitted that he is not challenging the whole selection. It is not necessary for him to implead all the selected persons as respondents.

9. The submission of counsel for applicant is that the applicant cleared the written test but failed to secure the qualifying marks in the viva-voce so his name has not been included in the final panel. In this connection, learned counsel placed reliance on the decision of Principal Bench of this Tribunal in the case of Mrs. Saroj Ghai Vs. The General Manager, Northern Railway, New Delhi reported in



1997(1) ATJ 13. In the cited case, the applicant therein cleared the written test but failed in the viva-voce. On examination, the Tribunal found that there was tempering with the ACRs of the applicants, therein, and consequently a review DPC was directed to be convened. It was also noticed that though the applicants, therein, had received commendation certificates and cash rewards but the Selection Committee had not taken that into assessment. With regard to tempering, the Tribunal directed the department for an enquiry. There is no such allegation in the present case. Consequently, the decision of Mrs. Saroj Ghai is not relevant.

10. Learned counsel for applicant has also placed reliance on the decision of the Apex Court in the case of K. Prabhakar Rao Vs. Union of India & others reported in AIR 2002 SC 205 and submitted that fixation of minimum percentage of mark for viva-voce test is illegal. On this basis it has been submitted that in the case before this Bench, as the applicant failed to secure the qualifying marks in the viva-voce, he has been failed. ~~as~~ No such marks could be validly fixed in view of the decision in K. Prabhakar Rao case. The applicant's claim cannot be denied on that scope only.

11. The decision of K. Prabhakar Rao is in respect of para 205 of the Indian Railway Establishment Manual (IREM) which specifically provides for minimum marks. That provision is in Section A of Chapter 2 which contains rules governing promotion of sub-ordinate staff in group 'D' posts. The applicant's case falls in para 219(g) which is in Chapter II Section-B which contains rules governing the promotion of group 'C' staff. ~~In para 219(g) there is no oral viva and no minimum marks is provided.~~ The relevant part is quoted as below :-

"(g) Selection should be made primarily on the basis of overall merit, but for the guidance of Selection Board the factors to be taken into account and their relative weight are laid down below :-

	Maximum Marks	Qualifying Marks
(i) Professional ability	50	30
(ii) Personality, address Leadership and academic qualification	20	--
(iii) A record of service	15	--
(iv) Seniority	15	--

NOTE (i) The item 'record of service' should also take into consideration the performances of the employee in essential Training Schools/Institutes apart from the examining CRs and other relevant records.

E(NG) I.72/PM 1/192 dt. 27-6-73

(ii) 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 candidate for viva-voce test instead of 60% of the marks for the written examination.

E(NG) I/72/PM-1/158 dt. 12-12-73 & E(NG) I/83/PM 1/65 dt. 5-12-1984

(h) The importance of an adequate standard of professional ability and capacity to do the job must be kept in mind and a candidate who does not secure 60% marks in professional ability shall not be placed on the panel even if on the total marks secured, he qualifies for a place. Good work and a sense of public duty among the consciousness staff should be recognised by awarding more marks both for record of service and for professional ability."

12. In the case in hand, marks have been allotted only on the basis of personality, address, record of service and seniority. Only for the written test it is provided that ~~only~~ 60% marks ^{would be necessary} for being called in the viva-voce test. The contention that minimum marks have been provided for viva-voce is not correct and the judgment cited is not in respect of para 219(g) of the IREM.

13. Learned counsel for the respondents, on the other hand, has placed reliance on the decision of the Apex Court in the case of Om Prakash Shukla Vs. Akhilesh Kumar Shukla & others AIR 1986 SC 1043. The relevant para 23 is quoted below :-

"23. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not responsible for the conduct of the examination."

14. Learned counsel for the respondents has also placed reliance on another decision of Apex Court in Union of India & others Vs. Tarun K. Singh reported in 2000(4) SCC (L&S) 316 wherein cancellation of selection was upheld as, after departmental enquiry it was found that a large number of mal-practices were adopted in the process of selection. Such is not the case before this Bench as cancellation of selection is not prayed.


15. It is to be noticed that in the present case though the applicant secured more than 60% marks in the written test and became eligible for viva-voce, the applicant failed to secure the qualifying marks ^{in aggregate} after the viva-voce and

consequently he has not been placed in the panel. The rules, which have been quoted above, provides that one must get 60% of marks of the aggregate being placed in the panel. As the applicant has failed to secure the said marks, he has rightly been not placed in the panel.

16. The applicant has challenged the inclusion of the name of private respondents. The same is not required to be judged as their names have been included because they qualified and secured the qualifying marks. It is not the case that because of inclusion of the name of private respondents, the applicant's name has not been included in the panel. Consequently the case with regard to the private respondents is not required to be separately examined.

17. The grievance of the applicant against non-inclusion of her name in the final panel is concerned, it is because she failed to secure the required marks in the aggregate. Out of 10 vacancy for general candidates only 06 could qualify. The vacancy was available but the applicant failed to qualify.

18. Coming to the last question of malafide, it is found that in para 4.20 of the O.A., the only sentence against Mr. Baij Nath is that "due to malafide attitude adopted by Mr. Baijnath, Chairman of the Selection Committee, the applicant was declared failed." No details are spelt out. The submission is that details are given in the representation. All this has been considered. It is very easy to allege malafide but difficult to prove. However, the circumstances if brought out on record, may lead to such an inference. But in this case there is no fact or circumstance. Bare allegation would not suffice. Mr. Baijnath was not the only person in the Selection Committee. There is no allegation against other members nor it is the case that other members were under pressure of Mr. Baijnath. Thus, the ground of malafide is baseless.



19. In view of the discussions made above, the O.A.
has no merit and is dismissed.

Cost easy.

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A.M.

D. Verme
V.C.

Asthana/