

**OPEN COURT**

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD**

**ORIGINAL APPLICATION NO. 184 OF 2000**

**ALLAHABAD THIS THE 07<sup>TH</sup> DAY OF May 2009**

**HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J  
HON'BLE MRS MANJULIKA GAUTAM, MEMBER-A**

Israrul Haq Ansari son of late Shri A.H Ansari, resident of  
1160, G.T.B Nagar, Karely Scheme, Allahabad.

.....Applicant

By Advocate : Shri D.P. Singh/Shri Shesh Kumar.

Versus

1. The Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The General Manager (P), Northern Railway, Baroda House, New Delhi.

.....Respondents

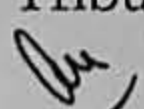
By Advocate Shri A. Tripathi.

**ORDER**

**HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J**

Heard Shri Shesh Kumar, Advocate appearing on behalf of the applicant and Shri Avnish Tripathi, Advocate appearing on behalf of the respondents. Perused the pleadings and documents on record by respective parties in the O.A.

2. The applicant is an employee of the Respondents Railway Department, at one stage, he was reverted; reversion was challenged before this Tribunal; order of the reversion was



set aside vide order dated 11.9.1991 (Annexure A-2 to the O.A.); the applicant (after his reversion order was set aside) claimed promotion to the post of Chief Controller; he was allowing to appear in Written Test and also allowed to appear in the Interview (vide letter dated 15.6.1992)-Annexure A-3 to the O.A.

3. Para 4.23 of the O.A. reads:-

*"4.23 That, procedure to be adopted by the selection Board has been provided in para 219 of Railway Establishment Manual. The factors which are to be taken into account by the selection Board has been provided in para 219 (g), which are quoted hereinunder.*

*(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:*

*E (NC) I. 69/PN 1-126 dated 18.6.1969.*

	<i>Maximum marks</i>	<i>Qualifying marks</i>
<i>(i) Professional ability</i>	<i>50</i>	<i>31</i>
<i>(ii) Personality, address, leadership and academic qualification</i>	<i>20</i>	
<i>(iii) A record of Service</i>	<i>15</i>	
<i>(iv) Seniority</i>	<i>15</i>	

*Note: (i) The items, record of service' should also taken into consideration the performance of the employee in essential Training School/Institute apart from the examining CRs and other relevant records.*

*E(NG) 1-72/PN1-192 dated 27.6.1973.*

*(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 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".*

4. Under notification dated 18.6.1969, the applicant, it is being argued, has secured more than 31 marks (in professional ability) as otherwise he was not called for interview and full 15

*W,*



marks against each head, titled 'Service Record' and 'Seniority' as far as marks under Head- 'personality' etc. carrying 20 marks is concerned. The applicant submits that he has an 'excellent service record' and certain to secure very good marks under this head also.

5. Respondents have filed counter reply. Para 11 of the said counter reply reads:-

*"11. That the contents of para 4 (23) and 4 (24) of the application are denied as stated. In reply it is submitted that the procedure has been changed vide Railway Board's letter No. E (GP)88/2/II dated 20.8.1998 (PS No. 10493), which reads as under:-*

<i>Written Test</i>	<i>Selection</i>	
<i>Prescribed paper</i>	<i>Max. Marks</i>	<i>Qualifying marks</i>
<i>a) One paper for Professional subject &amp; Estt. And Financial Rules.</i>	<i>150</i>	<i>90</i>
<i>b) Viva voce</i>	<i>25</i>	<i>30</i>
		<i>(including at least 15 marks in the record of service)</i>
<i>c) Record of service</i>	<i>25</i>	

*The applicant could not secure qualifying marks as per his overall performance in the Record of Service & Viva voce and could not be placed on the ACR's panel. The candidates who secure qualifying marks are being placed on the panel, in terms of Railway Board's letter NO. E (GP) 78/2/107 dated 8.12.1978 i.e. those who secure 80% above marks are to be assigned position on the panel in the 'Out Standing' category in the order of their inter-se seniority and those securing between 60% and 79% marks are to be placed in 'Good' category in orders of their seniority, below those securing 'Out standing' category".*

6. We may also reproduce para 5.C of the counter reply:-

*"5.C That selection was held for promotion to Group 'B' posts of AOM against 70% quota to form a panel for 22 posts including 3 SC/2 ST posts reserved for SC & ST respectively circulated vide this office letter NO. 752-E/67-XXVIII/EIA dated 18.6.1998 in which it has been clearly mentioned that the selection will comprise of written test and viva voce test only for those candidates who qualify in the written test and also prescribed medical test. There will be only one question in*

*written test, candidates who qualify in the written test shall have to pass the medical examination in prescribed standard before being called for viva voce test Sh. I.H. Ansarin/HC/ Allahabad called in the selection appeared on 25.7.1998, and qualified in the written test accordingly he was called in the viva voce test but fixed on 29.10.1998 he prepared in the viva voce test but as per the overall, performance in the record of service & viva voce Shri I.H. Ansari could not secure qualifying marks and could not be placed on the panel of AOM in terms of the guideline/procedure laid down by the Railway Board vide their letter NO. E (GP) 88/2/III, dated 20.8.1991 circulated under PS No. 10493, quoted hereinafter".*

7. From the aforequoted pleadings in the counter affidavit filed by the respondents, it is clear that panel of successful candidates is prepared on the criterion provided under letter/Notification dated 18.6.1998. In the instant case, it is admitted to the respondents that viva voce had taken place on 29.10.1998.

8. It is clear that the procedure/criterion after selection procedure had already commenced could not be changed and the fact that panel has been prepared on the basis of changed criterion vide order dated 18.6.1998 cannot be sustained in law. However, learned counsel for the respondents has raised a preliminary objection to the effect that O.A. can not be entertained in absence of 'necessary' parties namely candidates shown in the impugned panel. Considering nature of the case, we are not inclined to reject this O.A. on this ground at this stage.

*Dr.*



9. It is true that persons, who are likely to be affected, should be impleaded but in case relief can be granted, then Tribunal/Court is not expected to reject petition/OA on this ground.

10. According to para 5.C and 11 of the counter reply (quoted above), procedure were fixed as per Railway Board letter dated 18.6.1998 and that vide letter dated 20.8.1998- it is not clear as to which Circular/Notification was followed while preparing panel in question.

11. We are of the opinion that applicant is entitled for his case to be considered as per relevant criterion prescribed by the Railway Board for preparing the list of selected candidates to the post of Assistant Operating Manager.

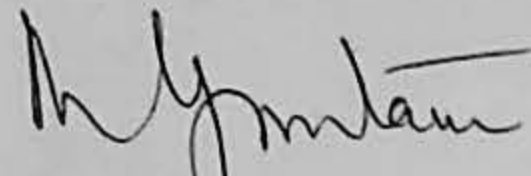
12. In view of the above, we direct the applicant to file a comprehensive/detailed representation (raising his grievance) alongwith certified copy of this order within 4 weeks from today before respondent NO. 2/General Manager (P), Northern Railway, Baroda House, New Delhi. It is also provided that the applicant be provided requisite relevant information in connection with preparation of panel in question, apart from 'inspection' of 'relevant original record' to

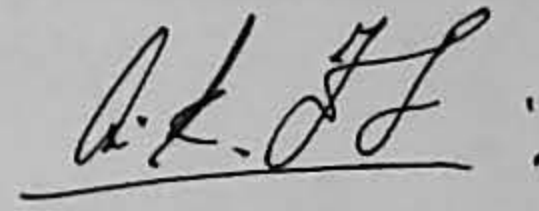
*Dev.*

enable him to ensure regarding criterion/procedure adopted for preparing the panel in question. Respondent No. 2 is directed to decide the representation of the applicant within 3 months from the date of receipt of copy of said representation in accordance with law.

13. O.A. stands finally disposed of subject to above directions/observations.

14. There shall be no order as to costs.

  
Member (A)

  
Member (J)

Manish/-