

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
~~NEW DELHI~~

O.A. No. 337 of 1988  
~~T.A. No.~~

DATE OF DECISION 21.8.1991

Shri N.S. Badlani Petitioner

Mr. K.I. Patel Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. R.M. Vin Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh : Member (A)

The Hon'ble Mr. S. Santhana Krishnan : Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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Shri N.S.Badlani,  
Western Railway,  
Churchgate,  
BOMBAY.

: APPLICANT.

(Advocate : Mr.K.I. Patel)

VS.

1. The Union of India, Notice  
to be served to  
The Secretary,  
Government of India,  
NEW DELHI.
2. The General Manager,  
Western Railway,  
Churchgate,  
BOMBAY.
3. The Divisional Rly. Manager,  
Western Railway,  
BHAVNAGAR PARA.

: RESPONDENTS.

(Advocate: Mr.R.M.Vin)

CORAM : Hon'ble Mr. M.M. Singh

: Member (A)

Hon'ble Mr. S.Santhana Krishnan

: Member (J)

O R A L - O R D E R

O.A.No. 337 of 1988

Date : 21.8.1991

Per : Hon'ble Mr. M.M. Singh

: Member (A)

In this original application filed under Section 19 of the Administrative Tribunals Act, 1985 by the applicant who is Chief Design Assistant in the office of the Divisional Railway Manager, Western Railway, Bhavnagar Para, the applicant has raised dispute that ~~the~~ <sup>as</sup> he is qualified for promotion to the post of AEN (Class II) <sup>dis</sup> ~~dis~~ <sup>te</sup> ~~te~~ <sup>of</sup> which he has not been promoted by the respondents. He has further sought direction to respondents to include his name in the list of 85 candidates promoted as AEN with effect from 11.11.86 with retrospective effect with all other ancillary, consequential benefits to the applicant.

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2. Neither applicant nor his counsel present. The respondents counsel Mr. R. M. Vin present and heard. We have gone through the record also.

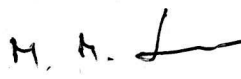
3. In para 3(3)(iv) <sup>2<sup>nd</sup> of the application,</sup> of the application the applicant has stated that he had passed written selection test as well as oral viva-voce test for the post of AEN (Class II). His averment in para 6(v) of the application on this subject is to the effect that he had successfully passed written selection test and given very good viva-voce and he should be given promotion of AEN and placed on panel with effect from 11.11.1986 like other candidates on the panel. We notice <sup>that</sup> in the body of the application there is no averment to the effect that the applicant has passed viva-voce test also. Only averment in this regard is that he had given very good viva-voce. This is liable to be construed as <sup>his own subjective assessment</sup> ~~is now substantive assistance~~ about his performance in the viva-voce test. What is important is not the applicants <sup>subjective assessment of</sup> ~~substantive assistance~~ to the viva-voce test, but the result of the viva-voce test as given by the competent authority constituting viva-voce examiners. On this subject the respondents reply is to the effect that though the applicant had passed in the written test he had failed in the viva-voce test held on 16.10.1986 and that having failed in the viva-voce test he could not get place on the panel of Assistant Engineer Notified on 12.11.1986. This averment figures in para 2 of the respondents reply. The applicant has filed rejoinder on the issue of his having failed in the viva-voce test, the rejoinder says that "As a matter of fact the applicant has passed viva-voce test also, but because of the mal-practice applied by the persons concerned, the record has been manipulated against the applicant.". This allegation of manipulation is made for the first time in the rejoinder and there is not even a whisper of any such allegation in the original application. Besides, no name of any person who allegedly applied mal-practice against the applicant has been mentioned. The allegation is vague and

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<sup>ed</sup> unsubstantiated and cannot be accepted for allowing the relief <sup>M</sup>prayed. Besides, the tenability of the viva-voce test has not been challenged in the relief prayed by the applicant.

4. <sup>was</sup> In view of the above we find that the application has ~~not~~ merits. We therefore dismiss the same. There are no orders as to costs.

  
(S.SANTHANA KRISHNAN)  
Member (J)

  
(M.M.SINGH)  
Member (A)

\*Ani.