

(4)

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

**O.A.NO./122/90**  
**T.A.NO.**

**DATE OF DECISION** 30 Sept. 1999

Brahamlal Damodar Prasad & others. Petitioner

Mr. K.K. Shah Advocate for the Petitioner [s]  
Versus

Union of India & Others Respondent

Mr. N.S. Shevde & Mr. Girish Patel Advocate for the Respondent [s]

**CORAM**

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

The Hon'ble Mr. P.C. Kannan, Member (Judicial)

**JUDGMENT**

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

Brahmlal Damodar Prasad  
Aged about 49 years  
Residing at Vishnunagar  
Building No. 1102  
Block No. 198  
Gujarat Housing Board  
Chand Kheda  
Dist. Gandhinagar.

Gokulchand Harshay Shama  
Aged about 50 years  
Residing at New Railway Colony  
Quarter No. 488/A  
Sabarmati, Ahmedabad- 19.

Jesingbhai Aasharam Prajapati  
Aged about 52 years  
Residing at Ramnagar  
Opp. Kamal Talkies  
Kumbharvas, House No. 945  
Sabarmati, Ahmedabad-19.

Office Address: District Controller of  
Stores, Western Railway, Sabarmati, Ahmedabad.

Applicants.

Advocate: Mr. K.K. Shah //  
Versus:

(1) Union of India  
Notice to be served through  
Shri Subramaniam or his successor  
General Manager (E)  
Western Railway  
Headquarter Office  
Churchgate, Bombay-400 020.

(2) Shri P.D. Joglekar  
or his successor  
Controller of Stores  
Headquarter Office  
Churchgate  
Bombay- 400 020.

(3) Shri Mukulkumar  
or his successor  
District Controller of Stores  
Western Railway  
Sabarmati  
Ahmedabad.

(4) Lallaram R.

(5) Ramrai S.

(6) Sendhabhai S.

(7) Chhaganbhai C.

- (8) Kalikaprasad S.
- (9) Babubhai Hirabhai
- (10) Amthalal J.
- (11) Arvindsing R.
- (12) Bhagwandas S.
- (13) ~~✓~~ Rajaram B.
- (14) Bhimabhai B.

Respondent No. 4 to 14 working as  
Sr. Store Khallasi, GS Depot, Sabarmati  
(To be served through Shri Mukulkumar  
DCOS, Sabarmati).

Respondents

Advocate: 1) Mr. N.S. Shevde  
2) Mr. Girish Patel

JUDGEMENT

IN

O.A./122/90

Dated 30 Septr. 1999

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

The applicants were Senior Group D employees in the office of the District Controller of Stores, Sabarmati. They appeared in the selection for promotion to the Group 'C' post of Record Sorter. They are aggrieved by the fact that in the panel dated 7.4.89 containing the list of 11 successful candidates their names are not included and they have been declared failed in the selection.

W

2. We have heard Mr. K.K.Shah for the applicants and Mr. N.S.Shevde for the respondents.

3. Mr. K.K.Shah submits that the petitioners joined Railways in 1961 and the petitioner No.1 is in the seniority list of Khalasi and petitioners No.2 and 3 are in the seniority list of peons. The Railways organised the selection for the Group -C post of Record Sorter as circulated vide their letter dated 26.10.88. The applicant's names figured in the list of eligible candidates and they took the written test. They passed in the written test and were eligible for the viva voce test. This was communicated by the Office of the DCOS Sabarmati by his letter dated 17.2.89. However, in the final panel which contained the names of 11 persons published by letter dated 7.4.89 their names did not figure and they were informed that they have not secured the minimum marks required and as such they were not selected. Mr. Shah submits that the action of the Railways in leaving out these applicants who are very senior in Group D is arbitrary and is against the provisions of the Indian Railways Establishment Manual. In support thereof the applicants have raised the following grounds:-

(a) The panel dated 7.4.1989 is illegal as the number of S.C./S.T. candidates who are empanelled are in excess of the quota reserved for them. Mr. Shah says that out of the 11 vacancies one was reserved for SC and one for ST whereas the panel contains the names of two S.C. candidates.

(b) Mr. Shah submits that the Railways in their letter dated 17.2.89 as at Annexure A-2 called a number of SC/ST candidates who had not qualified in the written test for viva voce test and according to him, this is against the law.

(c) The learned counsel contends that the Railways have called for too many candidates and should have restricted the number <sup>to</sup> of three times the number of 11 vacancies of Record Sorters. The actual number called for selection is in excess of the number of persons who were in the zone of consideration in accordance with the provisions of para 215 of the IREM. He also says that for one post of SC and one post of ST, the Railways have called more than the permissible number at the time of interview which is not in conformity with the rules.

(d) Mr. Shah also argues that seniority marks have been added to some persons who have failed in the written test. The courts have held this to be illegal. In particular, he refers to the

cases of Sendhyabhai Sr.No.3 in the panel  
Shri Arvindsing Sr.No.8 and Shri Bhimabhai Sr.No.

11. He says that they have failed in the written test and they have no right to be called for viva vice.

Mr. K.K.Shah also contends that the post of Record Sorter is a general post as in the case of Law Assistant, Welfare Inspector etc. and in such cases, notional marks for seniority should not be added <sup>during the selection or</sup> for the purpose of deciding eligibility for being called for viva voce test.

(e) He further contends that so far as Sendhyabhai and Arvindsing are concerned they are general candidates and junior to one of the applicants. The applicants have passed in the written test and as these two persons are junior to the applicant their total marks should be less than what the applicants have secured. If it is otherwise it would indicate that some preferential treatment has been given to them while assessing their personality and record of service.

4. Mr. Shevde for the respondents resists the O.A. He brings out that the panel nodoubt contains two S.C. candidates but of these one has been placed on the panel against the vacancy reserved for S.C. candidates and the other one is placed in the panel as he has passed the selection without the relaxed standard prescribed for SC

candidates. He does not agree that in permitting a number of persons in excess of three times the number of vacancies, the Railway Admn. has vitiated the selection process. He says that the restriction of three times the number is not applicable in respect of selection to the present posts. As regards the SC/ST candidates, some concessions are available to them. He says that in terms of the instructions of the Railway Board relaxed standards are applied in respect of SC/ST candidates and if on the basis they are eligible, they would be called for interview even though they might not have secured the minimum qualifying marks prescribed for general candidates in the written test. According to him this was done as per the Railway Board circular. For them the relaxed standard in the written test for being called for viva voce is that they should secure 10 out of 35 marks instead of 21 out of 35 marks for the General candidates to be made eligible to be called for viva voce test. He says that the said relaxation has been given as per the policy decision of the Railways and as per the norms prescribed by the General Manager by his letter dated 16.11.83. The post of Record Sorter is non-safety post and it is permissible to prescribe relaxed standard for SC/ST.

(3)

Mr. Shevde also does not agree that adding seniority marks is in any way irregular. He states that ~~in~~ the post of Record Sorter stands on a different footing as compared to Law Assistant or Welfare Inspector as only those of that department can compete for the post. Seniority marks in such cases can be taken into account. There is no about a decision of the Jabalpur Bench of the Tribunal which states that the seniority marks should not be added in respect of those who have failed in the written test but such a decision rendered in 1993 would have prospective effect and does not in any way adversely affect the present selection which was completed in April 1989.

5. Mr. Shettigar for Mr. Girish Patel represents the private respondents and adopts the arguments of Mr. Shevde. He submits that the selection is not in any way irregular. According to him, the private respondents had been holding the higher post for a number of years and their selection cannot be upset at this stage.

6. We have carefully considered the contentions of all counsel.

7. Mr. K.K. Shah has submitted that when there were 11 vacancies only 33 persons should have been called in terms of para 215 of the IREM. Para 215 deals with selection post and ~~s~~ 215 (1) states that eligible

staff upto three times number of staff to be empanelled will be called for written and/or viva voce test. The Railway Administration has taken the stand that this para will not apply and the relevant rule is contained in para 189(3) of the IREM. Para 189 deals with promotion to higher grades in Group-C. It states that in respect of railway servants in Group D categories for whom no regular avenue of promotion exists a certain percentage of vacancies in the lowest grade of Ticket Collectors, Train clerks, Stores Clerks etc. should be earmarked for promotion. It also provides for holding a written test and an oral test. Sub Para (3) of Para 189 says that selection may not be restricted to three times the number of vacancies but kept open to all eligible candidates who would like to be considered for such selection. Para 189 therefore contains different provisions as compared to para 215. Para 215 is in Chapter II Section B which deals with rules governing the promotion of Group 'C' staff. In the present case, it is not a promotion of Group C staff to higher Group 'C' posts but of employees of Group D for promotion to Group 'C'. In the light of the provisions of para 189(3) the contention that the zone of consideration should have been restricted to only three times the number of persons to be empanelled as provided in para 215 is without merit and is rejected.

8. The submission regarding excess intake of SC/ST candidates is also without substance. For 11 vacancies, one was reserved for SC and one for ST. There are of course two SC candidates in the panel but the Railways have brought out that one is given on the basis of the reservation quota and the other was selected without the relaxed standard prescribed for SC candidates and he cannot be counted against the reservation quota. There is force in this argument.

9. We also note the stand of the Railway Admn. that they have prescribed relaxed standards for written test for SC/ST candidates as compared to general candidates, for posts which are non-safety posts. In any case, the present applicants belong to General category and not reserved category.

10. There was considerable discussion regarding the assignment of seniority marks to the candidates. Mr. Shah has argued that two candidates particularly Shri Sendhyabhai and Shri Arvindsing had failed in the written test but they were called for viva voce by adding seniority marks. He says that this is not permissible. In this connection, he relies on the decision of Jabalpur Bench in the case of Harchand vs. Union of India in OA/867 of 89 decided by Jabalpur Bench on 13th August 1993. He also refers to another decision of Jabalpur Bench in Premkumar

NM

Dewashar vs. Divisional Railway Manager, Jabalpur  
Bench in OA/764 of 1989 decided on 17th Septr. 1993.

He says <sup>that</sup> in these cases the Tribunal has held clearly that the Circular of the Railway Board which permits addition of seniority marks to those who have failed in the written test for the purpose of calling for viva voce test could not be sustained and had quashed the circular. In the present case, the respondents have admitted <sup>had</sup> added the seniority marks in respect of some persons in the panel namely Sendhyabhai and Arvindsing, even though they had failed in the written test. Mr. Shah contends that this has vitiated the entire selection.

We have gone through the decisions of the Jabalpur Bench relied upon by Mr. Shah. We may state that the decision in Premkumar's case turned on the facts of that case. The Tribunal has however noted their earlier decision in Harchand's case which quashed the Railway Board Circular of 5.12.84 which takes into account seniority marks to those candidates who failed in the written test and on that basis permitting them to be called for interview. We may reproduce para 10 of Judgement of the Jabalpur Bench in Harchand's case:-

"10. For the reasons discussed above, we quash the impugned order dated 5.12.84 prospectively and direct Govt. of India, Ministry of Railways ~~to verify~~ to verify their quota for examination to be conducted in future for selection post of I.O.M. Gr.I. The Railway Board in the discretion may either declare the post of I.O.M. and non selection post and modify the rules of selection to I.O.M. Gr.I in a manner

to remove the unreasonable classification and introduced by circular dated 5.12.84. It not only dispute the merit criterion but as well amounts to discrimination. Therefore, we have to strike down the circular but we do not want to unsettle the settled things, we are striking it down prospectively. It is a fact that the revised panel of I.O.M. Gr.I has already been implemented more than 3 yearsback. It is also a fact that S/shri R.K.Arora and ranked senior to the applicants as I.O.M. Gr.III or I.O.M. Gr.I. There can be no grievance against Shri P.M.Vyas who has been placed below the applicant in the panel."

It is clear therefrom that the orders of the Tribunal quashing Railway Board Circular has only prospective effect i.e. from 13th August 1993 onwards. In the present case, the selection was initiated on 26.10.88. The results of the written test were declared on 17.2.89 and the final panel was published on 7.4.89. The selection was thus held much before 13th August 1993 which is the date of the decision of the Jabalpur Bench in Harchand's case and that decision has only prospective effect. We do not therefore agree with the contention that addition of seniority marks to those two candidates has vitiated the selection.

11. Mr. Shah also has contended that seniority marks have been added in the case of Bhimabhai who belonged to S.T. as he had not passed in the written test. We find from the records that Bhimabhai belongs to reserved category. As per the relaxed standard he is required to secure 10 out of 35 in the written test. He has in fact

secured 16 marks and he was called for interview on the basis of relaxed standard applicable to SC/ST.

12. Mr. K.K. Shah also has argued that two persons named Sendhyabhai and Arvindsing who are junior to the applicants and who had failed in the written test found their names in the panel whereas the applicants who have passed in written test and who had secured higher percentage of marks have been declared failed. He apprehended some error in the compilation of results. We had called for the relevant marks-sheets from Mr. Shevde. We have gone through the mark-sheets and have recorded the position as contained in mark-sheet by our order dated 1.4.98. The marks-sheet brings out the following position:-

Sl. No.	Name	Written test	Viva- voce	Per- sona- lity	Record of ser- vice	Senio- rity	Total
---------	------	--------------	------------	-----------------	---------------------	-------------	-------

1.	Braham Lal	23	7	7	6	10	53
2.	Gokul Chand	24	5	6	5	10	50
3.	Jesingbhai	21	8	10	10	10	59

Respondents

1.	Sendhabhai	20	11	12	8	10	61
2.	Arvindsing	20	10	11	10	10	61

As regards Bhimabhai who belongs to S.T. community, the relevant marks are 16, 9, 9, 10 and 10 totalling to 54. Mr. Shevde says that he got concession under the ST quota."

It is seen therefrom that Sendhyabhai and Arvindsing had fallen short of the minimum of 21 out of 35 in the written test by one mark. They had done much better in the viva voce. Their record of service is also better than that of some other candidates. All of them have got some seniority marks namely 10 out of 15. Mr. Shah has argued that the computation of seniority marks is not proper. At our direction the Railways have made available the procedure followed with regard to calculation of marks for seniority. It is an elaborate procedure and we have no reason to disregard the statement of the Railways that ~~six~~ seniority marks have been assigned to all the candidates as per the detailed and approved procedure laid down for the purpose.

13. Mr. Shah contends that notional marks for seniority should not be added in the present selection and has referred to the case of Law Assistants, Welfare Inspectors etc. We may extract para 3 of the Railway Board Circular dated 21.8.88 below:-

"3. The matter has been carefully considered by the Board and it has been decided that the notional marks for seniority should not be added for purpose of deciding eligibility for being called for viva-voce test in respect of the following categories of posts:-

- i) Ex-cadre posts where the employee retains his lien on the parent cadre and seeks advancement therein.
- ii) General posts like Welfare Inspector and Law Assistant etc. where employees of different departments and categories are considered but after induction, they can seek advancement only in the new cadre."

In the present case, promotion to post of Record Sorter is not to an ex-cadre post. The Railways have contended that it is also not a general post like Welfare Inspector and Law Assistant where employees of different departments and categories may be considered. In the present case, only employees of a single Department namely the Stores Department were considered, for the post of Record Sorter. We find from the letter dated 26.10.88 as at Annexure A-1 which gives the list of eligible candidates that they all belong to the Stores Department and the letter in fact had been addressed to only Assistant Controller of Stores and Deputy Controller of Stores etc. In other words, the selection to the post of Record Sorter is only for the Stores Department's employees and not extended to employees of other departments. We find merit in the contention of the respondents that it is not a general post where employees of different departments and categories can compete. The Railway Board Circular of 28.1.88 will not apply to the selection for the post of Record Sorters and addition of seniority marks in the present a selection is not against the rules or the instructions.

..16

14. We therefore reject the contention that the addition of seniority marks to the candidates in general and more particularly in cases of Sendhyabhai and Arvindsing has vitiated the selection.

15. For the foregoing reasons we hold that there is no merit in the O.A. and we dismiss the O.A. with no orders as to costs.

*Shanmugam*  
(P.C.Kannan)

Member (J)

*V.Ramakrishnan*  
30/2/1961  
(V.Ramakrishnan)  
Vice Chairman

pmr