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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No.518 of 1992.

DATE OF DECISION : AUGUST 19, 1993.

T.K.Padmanabhan ...

Applicant.

Versus

Union of India and others ...

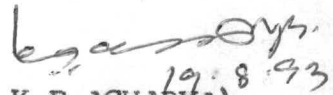
Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ?


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

19 AUG 93


(K. P. ACHARYA)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.518 of 1992.

Date of decision 1 August 19,1993.

T.K.Padmanabhan ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.D.K.Misra,
M.R.Mohanty-2,
S.C.Mohanty,
B.K.Nayak, Advocates.

For the respondents 1 to 4 .. Mr.Ashok Mohanty,
Standing Counsel (Railways)

For the respondents 5 & 6 .. Mr.U.B.Mohapatra,
Advocate.

C O R A M:

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN.)

J U D G M E N T

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays that the list containing the empanelment for promotion to the post of AEN(Group-B) vide Annexure-1 should be quashed and the respondents be directed to award marks on the viva-voce test, if not awarded and prepare a fresh list of empanelled candidates.

2. Shortly stated, the case of the applicant is that he is continuing as Inspector of Works(Construction), posted at Rayagada. An advertisement was published calling for applications to fill up the post of AEN(Group B)

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in Civil Engineering Department of the South Eastern Railway. Inspectors of Works, Grade III having put in 5 years of regular service with Diploma in Civil Engineering were eligible for taking the selection test in the promotional post of AEN(Group B) and hence the applicant was one of the applicants and he took the written examination held on 23.3.1991 and 24.3.1991. Altogether there were five papers and according to the applicant, he had done very well in all the papers and having turned out successful in the written test he was called to the viva-voce test which was conducted on 25.11.1991. Surprisingly, no marks were allotted to the applicant in the viva-voce test though he had fared very well. In the list contained in Annexure-1 the name of the applicant not having found place, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents 1 to 4 maintained that according to the Board's circular letter No.E(GP)76/2/96 dated 3.6.1977, contained in Annexure-R/1, in order to make one candidate qualify himself for appearing in the viva-voce test, he/she must secure the minimum marks of 60 per cent in each of the papers in which he/she has appeared in the written examination. Further case of the respondents is that Shri T.K.Padmanabhan, the present applicant could not secure 60 per cent of marks in paper III and therefore, he was not eligible to be called to the viva-voce test. By mistake, Shri Padmanabhan was called

to the viva-voce test and the mistake having been detected later his candidature for the viva-voce test was rightly ignored. After ignoring the candidature of Shri Padmanabhan the names of the successful candidates were published vide Annexure-1 and since no illegality has been committed, Annexure-1 should not be quashed - rather it should be sustained.

Respondents 5 & 6 have filed separate counter and their stand is practically same as that of the Respondents 1 to 4. It needs no repetition.

4. We have heard Mr. M. R. Mohanty-2, learned counsel for the applicant, Mr. Ashok Mohanty, learned Standing Counsel (Railways) and Mr. U. B. Mohapatra, learned counsel appearing for Respondents 5 & 6.

5. Admittedly, the applicant had appeared in the written examination. Though according to the applicant he had done very well in the written examination but from the counter filed by Respondents 1 to 4 we find that the applicant had not turned out successful in Paper III and he has scored below 60 %. Now ^{the} question arises as to whether the Board's letter dated 3.6.1977 would govern the field or Board's letter No. E(GP)88/2/III dated 20.8.1991 read with Board's letter No. E(GP)88/2/11 dated 15.3.1989 would govern the field. In Clause (ii) of the said letter it is mentioned as follows:

" The minimum qualifying marks in the written test for LDCE in the non-professional subjects should be 45 % as against 60% prescribed in Board's letter No. E(GP)76/2/96 dated 3.6.1977. The minimum qualifying marks of 60% for professional papers, will, however, continue as at present. Also no

minimum percentage of marks for the aggregate will be required for qualifying in the written examination for LDCE.

These instructions will apply to the selections initiated after the issue of this letter and the selections already in hand may be finalised according to the instructions presently in vogue except that where the written test has not been held or the answer sheets have not been evaluated or the result of written test not declared, this may be done according to the instructions contained therein."

Admittedly, the written examination has been held in March, 1991, ^{which is} ~~therefore~~ ⁱⁿ much after the aforesaid circular of 1989 was issued. Therefore, we have no iota of doubt in our mind to hold that the aforesaid circular dated 15.3.1989 would govern the field, especially in the case of the applicant. Therefore, according to the circular of March, 1989, the minimum marks required in the non-professional subjects is 45 % and not 60%. Now, the question arises whether Paper III comes within the category of non-professional or professional. We are constrained to note that nowhere it is clarified whether Paper III is non-professional or professional. As such we are not in a position to come to an irresistible conclusion as to whether the applicant would be held to be successful in Paper III if he has secured less than 60 % of marks and 45% of marks or above. Another doubt arises in our mind namely in Annexure-R/1 dealing with 'Scheme of Examination' and under the heading 'written examination' (Sl.No.(i)) paper III is said to be "General Financial and Establishment Rules and Procedures". We are not in a position to determine as to whether Paper III - "General Financial and Establishment Rules and Procedures" comes within the category of professional or

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non-professional subject. But we would go to this extent of saying that had paper III been a professional subject then against paper III it would have been said 'do', as against Paper II(A) it is stated, 'Professional subject' and in respect of paper II(B) it has been stated 'do'. Against Paper III it has been stated 'General Financial and Establishment Rules and Procedures'. Therefore, we are of prima facie opinion that paper III relates to non-professional category as it relates to General Financial and Establishment Rules and Procedures. In case, paper III comes within the non-professional category, then the applicant has qualified himself in paper III as he has secured more than 45 %, the applicant has not been erroneously called to the viva-voce and he is entitled to be called to the viva-voce test and after assessing his performance marks be awarded, if not awarded. Therefore, we would direct the Chief Personnel Officer, South Eastern Railway, 14, Strand Road, Calcutta to reconsider the matter and pass a reasoned order on the following points;

- i) Whether paper III comes within the category of professional or non-professional ;
 - ii) if it comes within the category of non-professional, whether the applicant has scored marks more than 45 %; and
 - iii) if the applicant has scored marks above 45 % in paper III, marks should be awarded to the applicant in the viva-voce test, if not awarded and the case of the applicant should be considered afresh and marks should be awarded and then the Chief Personnel Officer should
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come to the conclusion whether the applicant is eligible to be empanelled.

The Chief Personnel Officer, S.E. Railway will pass a reasoned order on the aforesaid points and pass final orders on the prayer of the applicant to be empanelled for promotion to the post in question. We hope and trust the above process would be completed within 45 days from the date of receipt of a copy of this judgment. In case, the findings of the Chief Personnel Officer are in favour of the applicant, all service benefits should be given to the applicant. In case the applicant is aggrieved by any order passed by the Chief Personnel Officer liberty is given to the applicant to approach this Bench.

6. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

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MEMBER (ADMINISTRATIVE)

19 Aug 93

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VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
August 19, 1993/Saranghi.

