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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 205 OF 1993
Cuttack, this the 3rd day of September, 1999

U.M.Vijayan

.....

Applicant


Vrs.

Union of India and another Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO.

(G.NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 3.9.99

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

U.m.Vijayan, son of late U.K.Makkuny,
C.P.W.I, S.E.Railway, Qr.No.C-5/A,
Railway Colony,At/PO-Bhubaneswar,
District-Puri Applicant

Advocates for applicant - M/s G.A.R.Dora
V.Narasingh

Vrs.

1. Union of India, through the General manager,
S.E.Railway, Garden Reach, Calcutta-43.
2. Chief Personnel Officer,
S.E.Railway, Garden Reach, Calcutta-43....Respondents

Advocate for respondents-Mr.Ashok Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the selection and the panel of Assistant Engineers (Group-B) published in order dated 11.3.1993 (Annexure-A/5). He has also prayed for a direction to the respondents to prepare fresh panel after proper consideration of the marks in written and viva voce and to make the final selection adding the marks in written and viva voce. The third prayer is for a declaration that fixation of minimum marks under the second and third heads of the selection procedure is bad

and if the second head is treated separately, then marks should be awarded under each item. The last prayer is for a direction to the respondents to promote the applicant as Assistant Engineer with consequential benefits. At the time of hearing the learned counsel for the petitioner Shri G.A.R.Dora confined his prayer only to a limited aspect which will be referred to after recital of the case of the applicant.

2. According to the applicant he was selected through Railway Service Commission as Apprentice Assistant Permanent Way Inspector on 31.7.1964. This post was subsequently redesignated as Permanent Way Inspector Grade-III. After passing suitability test and on the basis of interview and CR he was promoted as Permanent Way Inspector, Grade-II in 1981 and that post was upgraded to PWI Grade I on 1.1.1984. The applicant has stated that Group-C posts under the Railways are in four grades which are indicated below along with the pre-revised scales within bracket: Rs.1400-2300/- (Rs.425-700), Rs.1660-2600 (Rs.550-750), Rs.2000-3200 (Rs.700-900) and Rs.2375-3500 (Rs.840-1040). The post of Assistant Engineer in the scale of Rs.2000-3500/- is a Class II Gazetted post in Group-B. According to the relevant Establishment Serial if the number of posts are four or more, then three times the number of vacancies should be called to the selection test. The applicant was eligible as per vacancies, but he was not called to the test and therefore he along with six others filed OA No.404/90. In pursuance of the interim order dated 6.11.1990 of the Tribunal in the above OA he was called to the written test as per letter dated 4.12.1990 at Annexure-A/1. He passed the written test against 75% quota of Assistant Engineers and was called to the viva voce test in letter dated 17.6.1991 (Annexure-A/2). The applicant did well in the viva voce

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test but his name was not included in the panel which was published on 3.9.1991. Before finalisation of the earlier panel the applicant was again called for the written test against fresh vacancies for which applications were called for in notice dated 5.11.1992 at Annexure-A/3. The applicant passed the written test and was called to the viva voce as per letter dated 2.2.1993 at Annexure-A/4. He did extremely well in the viva voce but his name was not included in the part panel published in the impugned order dated 11.3.1993 at Annexure-A/5. The applicant's representation dated 19.3.1993 at Annexure-A/6 has also proved futile. In view of this, the applicant has come up in this petition with the prayers referred to earlier.

3. Before taking note of the averments made by the respondents in the counter it is necessary to mention that the applicant was called to the selection test twice as noted by us above, for the first time in pursuance of the interim order of the Tribunal and for the second time on the basis of his eligibility as determined by the respondents. During hearing of this matter Shri G.A.R. Dora, the learned counsel for the petitioner, submitted that he is confining his submissions and the prayers only with regard to the second selection. In view of this, it is not necessary to refer to the averments made by the respondents in their counter with regard to the first selection test to which the applicant was not initially called and in which he appeared only in pursuance of the interim order of the Tribunal in OA No.404/90.

4. Respondents in their counter have stated that as the earlier panel drawn up for filling up of 75% quota of vacancies of Assistant Engineers was exhausted, it was decided to conduct a fresh selection for formation

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of a panel of 135 candidates. The applicant was called to appear in the written examination held on 20.12.1992. After he qualified in the written examination he was called to viva voce held on 7th, 8th and 9th February 1993 along with other candidates who had qualified in the written examination. The applicant appeared in the viva voce test but could not secure enough marks so as to pass in the aggregate for record of service and viva voce test and therefore he could not be empanelled in the panel of 104 candidates published in the order dated 11.3.1993 at Annexure-A/5. Supplementary viva voce test was held on 26.5.1993 catering to the absentees and a panel of 107 candidates was published on 11.6.1993. The respondents have stated that the selection process initiated in 1992 is an independent selection and there was no bar on publishing the panel even though some Original Applications filed against the earlier selection were pending before Tribunal. The respondents have stated that the result of the applicant in the second selection test has not been withheld. The applicant's name has not appeared in the panel as he did not qualify in the selection. The respondents have stated that the selection of candidates has been done in accordance with the relevant instruction 18.6.1987, copy of which has been enclosed as Annexure-R/1. On the above grounds, the respondents have opposed the prayers of the applicant.

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5. We have heard Shri G.A.R. Dora, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned counsel appearing for the respondents and have also perused the records. It has been submitted by the learned counsel for the petitioner that in this case earlier there was an order to produce the records of the second selection. It was submitted by

the learned counsel for the respondents that accordingly records were obtained from the respondents. But as no date was fixed for hearing, the records have been returned. The learned counsel for the applicant submitted that the records need not be called for as this would further delay hearing of the matter.

6. The learned counsel for the petitioner has challenged the second selection on the ground that maximum 100 marks in the selection test have been broken up by assigning 50 marks for professional ability, 25 marks for personality, address, leadership and academic technical qualification, and 25 marks for record of service. Qualifying marks under these three heads are 30, 15 and 15 respectively, i.e., 60% of the maximum marks. It is submitted that fixation of minimum marks and disqualification for not obtaining minimum marks are bad in law. Personality, address and leadership are not adjudged by ^apsychiatrist at the time of interview and therefore the interview is a subjective test influenced by many uncertain factors. In view of this, the correct procedure should have been to total up the marks under the three heads and fix the qualifying marks as 60 out of total 100 marks. It is also submitted that under the second head there are four items: personality, address, leadership and academic technical qualification. Marks should have been given itemwise. Merely by looking at a person these qualities could not be adjudged. Thirdly, it is submitted that the applicant has passed Diploma in Civil Engineering whereas some other persons whose names find place in the panel have no such technical qualification. Besides, several of them are junior to the petitioner or are working in a lower grade whereas the applicant is working in a higher grade. It is further

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submitted that the applicant was promoted as Chief Permanent Way Inspector from Permanent Way Inspector, Grade-I, in December 1992 on the basis of interview and CR. Since that promotion was made only in December 1992 and the viva voce test for the second selection of Assistant Engineers was held on 9.2.1993, there could not have been much variance in the performance of the applicant in the interview and as he had obviously done well in the earlier interview for promotion to the grade of Chief Permanent Way Inspector, he could not have done badly in the interview for Assistant Engineers. Lastly, it is submitted that the Chief Engineer's letters at Annexures-A/8 and A/9 indicate that for Permanent Way Inspector track performance is given maximum weightage and in the review which is at Annexure-A/10 it is seen that the applicant who was then working as Chief Permanent Way Inspector, has all along been graded as "Very Good" and has exceeded the targets in some months and are very near the targets in some other months. This aspect has not been taken note of and certain other persons, who have been found poor in the same review in which the applicant's performance has been adjudged "Very Good", have been included in the panel of Assistant Engineers.

7. We have considered the above submissions of the learned counsel for the petitioner very carefully. The respondents have pointed out that the selection test has been conducted on the basis of Railway Board's instructions dated 18.6.1987 at Annexure-R/1 and these instructions in paragraph 8 specifically provide for fixing minimum qualifying marks under each of the three heads separately. As this system of marking has been

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continued for several years it cannot be held that the fixation of minimum qualifying marks under each head is bad in law. Moreover, since the total 100 marks have been allocated under three distinct heads under which the performance of a candidate has to be adjudged, it is only reasonable that qualifying marks are fixed for each head separately. This contention is therefore held to be without any merit.

8. It is also to be noted that for promotion from PWI Grade I to CPWI is a promotion within Group-C whereas the promotion in question in this OA is from Group-C to Assistant Engineers cadre in Group-B. It cannot therefore be said that just because the applicant's performance was presumably good in the interview at the time of his promotion from PWI, Grade I to Chief Permanent Way Inspector in December, 1992, his performance in the interview at the time of his promotion from Chief Permanent Way Inspector to Assistant Engineer held in February 1993 must also have been good. Performance in an interview depends upon among other things the ability of the interview to answer questions put to him and therefore performance in one interview cannot be a pointer to performance in another.

9. With regard to the contention of the learned counsel for the petitioner that the applicant has passed Diploma in Civil Engineering whereas certain other persons whose names find place in the panel do not possess Diploma in Civil Engineering, it must be held that this contention is without any merit because Diploma in Civil Engineering is not a required or essential qualification for promotion to the grade of Assistant Engineer and in the test there is provision for assessing academic technical qualification of the candidate and

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therefore the applicant cannot be held to have been better qualified irrespective of his performance in the test merely on the basis of his having acquired Diploma in Civil Engineering. As regards the performance in track monitoring, this is a matter which does not come in directly for consideration in the selection for promotion to the grade of Assistant Engineers. In case the applicant's very good performance in track monitoring has been reflected in his CR, then this would have been taken note of. Merely because of his good performance in track monitoring it cannot be claimed that he is entitled to be promoted to the grade of Assistant Engineer.

10. Another aspect has also to be borne in mind in this connection. In the instant case the applicant had taken the written examination, qualified in the same and was called to the interview but on the basis of results of interview and the marks in the three heads he has not qualified to be included in the panel. It is only after his failure to be included in the panel that the applicant has come up in this petition challenging the method of assessing candidates in the test. The Hon'ble Supreme Court in the case of University of Cochin v. N.S.Kanjoonjamma, reported in 1997(2) SCC (L&S) 976, have held that the applicant having participated in the selection, is estopped from challenging the correctness of the procedure. In view of the law as laid down by the Hon'ble Supreme Court in this regard, the applicant's contention challenging the selection procedure is held to be without any merit and is rejected.

11. In the result, the Original Application is dismissed but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN