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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 92 OF 1998
Cuttack, this the 25th day of July, 2001

Prasanna Kumar Panda

Applicant

Vrs.

Union of India and others ...

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
(SOMNATH SOH)
VICE-CHAIRMAN
25.7.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G. NARASIMHAM, MEMBER (JUDICIAL)
.....

Prasanna Kumar Panda,
son of Alekha Bihari Panda
presently working as AEN, Office of the Chief Project
Manager, S.E. Railway, Chandrasekharapur, Bhubaneswar

....

Applicant

Advocates for applicant - M/s A. Kanungo
B. Ray
R. K. Sahoo
S. R. Misra
R. Nayak
B. S. H. Rao

Vrs.

1. Union of India, represented through General Manager, S.E. Railway, Garden Reach, Calcutta-43.
2. Chief Personnel Officer, S.E. Railway, Garden Reach, Calcutta.
3. Chief Project Manager, S.E. Railway, Chandrasekharapur, Bhubaneswar.

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Respondents

Advocate for respondents - Mr. R. Ch. Rath

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this O.A. the petitioner has prayed for a direction to the respondents to publish the complete final panel of AEN Group-B pursuant to the selection held in 1992-93 and also for a direction to promote the applicant with effect from 11.3.1993 taking into account consideration his merit and seniority.

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2. The case of the applicant is that he is a Graduate Engineer and joined the Indian Railways on 7.9.1987 as Trainee Head Draftsman in the pay scale of Rs.1600-2600/- and was promoted as Chief Draftsman on 7.9.1990 in the pay scale of Rs.2000-3200/-. The departmental authorities issued notice on 24.8.1992 asking eligible employees to apply for appearing at the selection test for filling up of 75% of vacancies in AEN Group-B Category. The petitioner applied for the selection, appeared at the written test held on 20.11.1992 and in the notice dated 22.1.1993 at Annexure-1 it was mentioned that he has qualified in the written test and will be called for viva voce to be held from 6.2.1993 to 8.2.1993. The applicant appeared at the viva voce test and according to his statement, did well. But a provisional part panel of selected candidates was published on 11.3.1993 (Annexure-2) in which his name was not there. Again on 16.6.1993 another part panel of three candidates was issued. The applicant has stated that there is no provision for publishing part panel of selected candidates. He has also stated that his juniors have been promoted but he has been ignored. His second grievance is that according to him his CR ratings for 1988-89 to 1991-93 were uniformly good and thus he was entitled to get 12 marks for these four years and overall 15 marks for five years which are qualifying marks. The applicant has stated that his CRs have not been properly assessed and that is why he has come up in this petition with the prayers referred to earlier.

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3. Respondents in their counter have stated that vacancies for AEN against 75% quota came to 135, break up of which was Unreserved -118, Scheduled Castes - 7 and Scheduled Tribes - 1. Ultimately, in the written test held

on 20.12.1992 and 3.1.1993, 248 candidates of all categories appeared out of which 130 candidates got qualifying marks and were called to the interview. It is stated that on the basis of written test and viva voce a provisional panel of 104 candidates was published in order dated 11.3.1993 (Annexure-2). Two candidates could not attend the viva voce test held from 6.2.1993 to 9.2.1993 for genuine reasons. They were called for a supplementary viva voce test held on 26.5.1993. Results of two other candidates were kept pending due to non-receipt of their confidential reports at the time of publication of the results. Based on the marks obtained three more candidates were selected and their names were interpolated. The results of five more candidates were kept pending due to pendency of vigilance case against them out of which one was cleared from vigilance angle in August 1995 and on the basis of his marks his name was included in the provisional part panel published on 11.10.1995. One more candidate was cleared from vigilance angle and his name was included in the panel dated 22.7.1996 at Annexure-4. Till date results of three candidates have been kept in sealed cover due to non-clearance from Vigilance/SPE cases and as such the provisional part panel cannot be made final. The respondents have stated that the applicant like many other candidates qualified in the written test but could not secure enough marks so as to pass in the aggregate for record of service and viva voce and that is why he could not be selected and included in the panel. On the above grounds, the respondents have opposed the prayer of the applicant.

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4. The applicant in his rejoinder has referred to the rules providing for allocation of marks and qualifying marks for this examination and this will be

referred to at the time of considering the submissions made by the learned counsel for the parties. It is also necessary to note that the applicant in his O.A. as also in the rejoinder has mentioned the case of one A.V.R.S. Pattnaik who had only one year's confidential roll and could not have secured qualifying marks in the record of service part.

5. We have heard Shri B.S.H. Rao and Shri A. Kanungo, the learned counsels for the petitioner and Shri R. Ch. Rath, the learned panel counsel (Railways) for the respondents. Shri Rao has filed a copy of the decision of Hyderabad Bench of the Tribunal in O.A. No. 1228 of 1998 and Shri Rath has filed a copy of the decision of this Bench in O.A. No. 205 of 1993. The learned counsel for the petitioner has also filed written note of submission. We have perused all these documents and pleadings of the parties. At our instance the learned panel counsel (Railways) has produced the concerned file of S.E. Railway Headquarters and we have perused the same.

6. The first point made by the applicant is that there is no provision in the rules for publishing a part panel. The respondents have correctly explained that because vigilance/SPE cases ^{were} pending against some of the candidates and therefore, their cases were kept in sealed cover and that is why a part panel was published. Under the rules, after the vigilance cases are finalised and if the concerned candidate is exonerated, then the sealed cover has to be opened and basing on the marks obtained by the candidate he has to be either declared as selected or not selected. In view of pendency of these cases, the respondents were justified in publishing a part panel. They have mentioned that even now results of three candidates

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have been kept in sealed cover due to non-clearance from vigilance angle. This contention of the learned counsel for the petitioner is, therefore, held to be without any merit and is rejected.

7. The next contention of the learned counsel for the petitioner is that the applicant has not been correctly assessed so far as his CRs are concerned. The admitted position is that the examination consists of a written test of 150 marks of which the qualifying marks are 60%, i.e., 90 marks. For those who qualify in the written test, there are viva voce and record of service, each carrying total 25 marks. Qualifying marks for viva voce and record of service together are 60%, i.e., 30 marks with the rider that out of 30, at least 15 marks would be in record of service. The applicant has mentioned in paragraph 4.12 of the O.A. that his CR ratings for the four years from 1988-89 to 1991-92 are good and for these years he should get three marks for each year for having good CR, i.e., total 12 marks and these marks projected for five years would give him 15 and thus he would have qualified in the record of service. Even though it is not possible to rely on the averment made by the applicant himself with regard to the CR grading, we have checked up the original documents in which CR grading of all the candidates yearwise has been mentioned and from this we find that the applicant has correctly known his CR gradings as mentioned in his O.A. and on verifying the record it cannot be said that his CR grading has been incorrectly done.

8. The applicant has submitted that he has *done very well in viva voce and if he had got qualifying* marks in record of service, then he should not have been

failed in the viva voce. For viva voce there are 25 marks against which 60% i.e., 15 is the qualifying marks. According to Paragraph 204.1 of Indian Railways Establishment Manual, extract of which is at Annexure-7, in the viva voce, personality, address, leadership and academic qualification are to be assessed. The applicant has stated in his rejoinder that as he is a Graduate Engineer he should have been given full marks for academic and technical qualifications and so far as his personality and leadership are concerned, these have already been adjudged in the CR and therefore, he should not have got less than qualifying marks in the viva voce. The learned counsel for the petitioner has referred to a decision of the Hyderabad Bench of the Tribunal in OA No.1228 of 1998, L.I.Reddy v. Union of India and others, decided on 17.3.1999, in which the petitioner appeared at an examination for the post of Assistant Electrical Engineer. He qualified in the written test and got good marks in record of service, but he got just one-third of the total marks in viva voce and thus fell short of aggregate of 30 marks required to be achieved for viva voce and record of service. In that case the Tribunal after going through the CR, noted that many of the qualities like personality, address and leadership qualities are also assessed in the CR and the candidate before them has been written about in superlative terms on these aspects. In consideration of this, the Tribunal held that something is amiss so far as the result of viva voce is concerned and issued a direction to the Chairman or the concerned Member of the Railway Board to examine the case of the applicant to rectify injustice, if any, that may have been inadvertently caused to the applicant. In the instant

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case, the applicant has rightly mentioned that for four of the relevant years his CR is good and we have verified the extract of the CR recordings and found that this is so. He has also got qualifying marks in the record of service, but he has not got qualifying marks in the viva voce, taking viva voce and record of service marks together he has not got 30 marks. In their above decision, the Hyderabad Bench of the Tribunal have noted the well settled position of law that it is not for the Tribunal to re-assess the record of service of a candidate and come to a finding different from that arrived at by the Selection Committee. There are several decisions of the Hon'ble Supreme Court in this regard and it is not necessary to refer to the same. As the settled legal position is that the Tribunal cannot re-assess the written record, which is the CR, it is still more beyond the scope of the Tribunal to come to a finding that a candidate has not been correctly assessed in viva voce. It is no doubt true, as has been noted by the Hyderabad Bench of the Tribunal that many of the aspects like leadership quality, personality and address, which are required to be assessed in the viva voce as per Paragraph 204.1 of the Indian Railways Establishment Manual, are also commented upon in the Confidential Character Roll, but that does not mean that the assessment of the interviewing Board must be on the same lines as on the lines in which these have been written about in the CR of a candidate. At the time of interview the assessment depends upon the questions put to the candidate, the answers given and the manner of giving answer and there is nothing on record before us to hold that the Interview Board had acted in a manner which is legally not sustainable. We have also gone through the marks

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obtained by many unsuccessful candidates and we find that some of them like the applicant have qualified in the written examination and have got more marks than the applicant in the record of service, but have been disqualified because of getting less marks in the viva voce. In view of the above, we hold that the applicant's stand that he has not been correctly assessed in viva voce cannot be accepted.

9. In the result, therefore, we hold that the application is without any merit and the same is rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)
25.7.2001
VICE-CHAIRMAN

CAT/CB/25-7-2001/AN/PS