

के.प्र.अ. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निः शुल्क
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 42/2002
T.A. No.

199

DATE OF DECISION 14-11-02

Kailash Vasandani

Petitioner

Mr. Kuldeep Mathur

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. Manoj Bhandari, for R-1&2
Mr. N.K. Khandelwal, for R-3&4

Advocate for the Respondent (s)



CORAM :

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

The Hon'ble Mr. Gopal Singh, Adm. Member

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 ?

- sd -

(GOPAL SINGH)
MEMBER (A)

- sd -

(G. L. GUPTA)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

* * *

Date of Decision: 14-11-02

OA 42/2002

Kailash Vasandani, Laboratory Assistant O/o Sr.Divisional Mechanical Engineer, Diesel Shed, Bhagat ki Kothi, N/Rly, Jodhpur.

... Applicant

Versus

1. Union of India through General Manager, N/Rly, Baroda House, New Delhi.
2. Dy.Chief Mechanical Engineer, Workshop, N/Rly, Jodhpur.
3. Shri Narendra Singh, CMA-II, through Dy.Chief Mechanical Engineer, Workshop, N/Rly, Jodhpur.
4. Shri Madan Lal Meena, CMA-II, through General Foreman, Diesel Shed, Bhagat ki Kothi, N/Rly, Jodhpur.
5. Shri Rishi Raj Kalla, Hatrioh ka Chowk, near Pungal Para, Jodhpur.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.GOPAL SINGH, ADM.MEMBER

For the Applicant

... Mr.Kuldeep Mathur

For Respondents No.1&2

... Mr.Manoj Bhandari

For Respondents No.3&4

... Mr.N.K.Khandelwal

For Respondent No.5

... None

ORDERPER MR.JUSTICE G.L.GUPTA

Through this OA, the applicant calls in question the order dated 29.10.2001 (Ann.A/1), whereby he was declared failed in the viva-voce test in the selection for the post of Junior Chemist and Metallurgical Assistant (JCMA, for short).

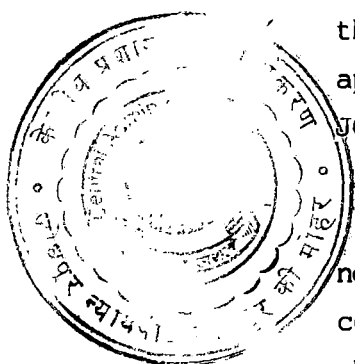
2. The relevant facts are these. The applicant was initially appointed as Khalasi on 31.1.75. He earned various promotions and he was promoted as JCMA on ad hoc basis vide order 6.2.80. When he was sought to be reverted by an order dated 26.12.92 from the post of JCMA to the post of Lab Assistant, he filed OA 426/92. This Tribunal stayed the reversion and he continued on the post of JCMA. This Tribunal vide order dated 7.2.2000 partly allowed the said OA. It was held that the applicant was senior to Rishi Raj Kalla (Respondent No.4 in that OA), (Respondent No.5 herein). It was directed that if necessity arose to revert a JCMA, the junior most JCMA should be reverted and not the

applicant. In other words, the impugned order Annex. R.10 dated 26.12.92 impugned in that O.A. was set aside.

In the year 1996, a selection test was held for regular promotion to the post of JCMA. The applicant appeared in the written test but he was not found qualified for appearing in the viva voce test. He challenged the said selection before this Tribunal by filing O.A. No. 303/96. The Tribunal vide order dated 19.7.2000 dismissed the said O.A.

Being dissatisfied, the applicant preferred Writ Petition No. 2743/2000 before the High Court of Judicature for Rajasthan. The same was admitted by the Hon'ble High Court of Rajasthan and one post of JCMA was directed to be kept vacant vide order dated 17.8.2000. The Hon'ble High Court of Rajasthan vide order dated 5.11.2001, set aside the order dated 19.7.2000, passed by this Tribunal in O.A. No. 303/96, and held that the applicant was eligible to be called for the interview/viva voce test on the basis of the marks allotted for his seniority.

It may be stated that even before the Hon'ble High Court passed the judgement in W.P. No. 2743/2000, the official respondents had allowed the applicant to appear in the viva voce test on the basis of the marks obtained by him for his seniority position. However the applicant was not empanelled as a successful candidate for the post of JCMA as he was declared unsuccessful in the interview.



The case for the applicant is that in view of Para 2.2 record note of a meeting held of the Railway Board on 27.11.95, the applicant could not be declared as unsuitable in the interview when he had obtained 60% marks in the 'professional ability' and 'seniority'. It is averred that the applicant has been discharging his duties to the utmost satisfaction of the higher authorities and therefore the impugned order is illegal, arbitrary, discriminatory and contrary to the law laid down by the Apex Court in the case of R.C. Srivastava vs. Union of India SLP (C) No. 9866 of 1993 decided on 3.11.95.

3. In the counter, the official respondents 1 & 2 have come out with the case that the marks obtained by the applicant in the written examination being 15.4 only and in total he did not get the minimum prescribed marks 60%, he is not eligible to be promoted. It is stated that pursuant to the directions of the Hon'ble High Court of Rajasthan, the applicant was called for the viva voce and as he has failed, he is not eligible to be promoted on the post of JCMA, which is a selection post. It is further averred that the order of the Railway Board dated 27.11.95 is not applicable, since the applicant has not only failed in

the viva voce but has also failed in the written examination, which is clear from the record. It is further stated that the fact situation was very different in R.C. Srivastava's case.

4. In the separate replies filed by R.3 and R.4, similar averments have been made.

5. The applicant has filed rejoinder stating that as per the existing provisions a candidate is required to get 60% both in the written examination and seniority and it is not necessary to get 60% in the written examination alone.

6. In the reply to the rejoinder, the official respondents have stated that the applicant was called for viva voce by taking into account the seniority marks, but for empanelment, it is necessary that a candidate should get 60% marks in the professional ability separately and 60% marks in the aggregate.

7. We have heard the learned counsel for the parties and perused the documents placed on record.

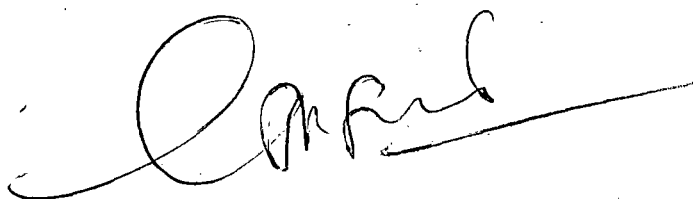
Para 219 of the Indian Railway Establishment Manual Vol.1 (IREM for short) provides the procedure to be adopted by the selection board. The relevant sub-para (g) is reproduced hereunder :-

"(g) Selection should be made primarily on the basis of overall merit, but for the guidance of Selection Board the factors to be taken into account and their relative weight are laid down below :-

E(NG) I-69/PM.1-126 dated 18.9.69.

	Maximum Marks	Qualifying Marks
i) Professional ability	50	30
ii) Personality, address, Leadership and academic qualification	20	--
iii) A record of service	15	--
iv) Seniority	15	--

Note (i) The item 'record of service' should also take into consideration the performances of the employee in essential Training Schools/Institutes apart from the examining CRs and other relevant records.



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E(NG) I-72/PM 1/192 dt.27.6.73

- (ii) Candidates must obtain a minimum of 30 marks in professional ability and 60% marks of the aggregate for being placed on the panel. Where both written and oral tests are held for adjudging the professional ability, the written test should not be of less than 35 marks and the candidates must secure 60% marks in written test for the purpose of being called in viva-voce test. This procedure is also applicable for filling up of general posts. Provided that 60% of the total of the marks prescribed for written examination and for seniority will also be the basis for calling candidates for viva-voce test instead of 60% of the marks for the written examination.

E(NG) I/72/PM-1/158 dt. 12.12.73 & E(NG) I/83/PM 1/65 dt.5.12.1984."

Note (ii) provides that a candidate should obtain minimum 30 marks in the professional ability and 60% marks in the aggregate for being placed in the panel. It is further provided that where both written and oral tests are held for adjudging the professional ability, the written test should not be of less than 35 marks and the candidates must secure 60% in the written test for the purpose of being called for the viva-voce test. The proviso says that 60% of the total marks prescribed for written examination and for seniority would also be the basis for calling candidates for viva voce test instead of 60% marks in the written examination. In other words, a candidate though does not get 60% in the written examination, but gets some marks for seniority position and if the total of marks obtained in written test and seniority position makes 60%, he is entitled to be called for the viva-voce test.

19. It is evident that the Hon'ble High Court of Rajasthan vide its judgement dated 5.11.2001, held that the applicant was entitled to be called for the viva-voce test on the basis of the marks obtained by him in the written test and the marks obtained for seniority position. As a matter of fact, even before the Hon'ble High Court rendered its judgement, the respondents themselves had called the applicant for interview, presumably on the basis of the interim order passed by the High Court and also the proviso appended below Note ii under sub-para (g) Para 219 of IREM Vol.1. After the interview the marks obtained by the applicant are as follows :-

Maximum marks	Marks Obtained
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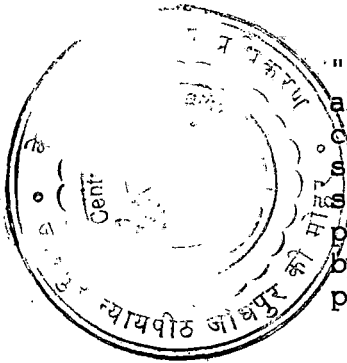
i) Professional ability Written

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	test	35	15.4
	viva voce	15	8.0
ii)	Personality, address, Leadership and academic qualification	20	14.0
iii)	Record of service	15	9.0
iv)	Seniority	15	15.00
		<u>100</u>	<u>61.4</u>

It is manifest that the applicant has got 61.4% and it has, therefore, to be held that he is eligible for being placed in the panel.

10. However, according to the respondents, the applicant has not been empanelled because he did not get 60% marks in the professional ability, wherein he got $15.4 + 8 = 23.8\%$ marks only. The respondents have relied on sub para (h) of Para 219 of the IREM, Vol.I, which reads as under :



"(h) The importance of an adequate standard of professional ability and capacity to do the job must be kept in mind and a candidate who does not secure 60% marks in professional ability shall not be placed on the panel even if on the total marks secured he qualifies for a place. Good work and a sense of public duty among the consciousness staff should be recognised by awarding marks both for record of service and for professional ability."

11. A reading of proviso to note (ii) below sub para (g) and sub para (h) shows that there is inconsistency in the two sub-paras. A candidate is entitled to be called for the viva-voce test on the basis of marks obtained by him in the written test and marks allotted for seniority, provided both of them make the aggregate of 60% of the marks fixed for the professional ability. In other words, a candidate is required to obtain at least 30 marks in the written test and the marks allotted to him based on his seniority to become entitled for the viva-voce test. Whereas sub para (h) says that unless a candidate gets 60% in professional ability, he cannot be empanelled.

12. It is not clear as to what is the use of permitting a candidate to appear in the viva-voce test on the basis of marks allotted for seniority, who had not got 60% marks under the heading 'professional ability', if sub para (h) is applicable. In our view, the object of making this provision was to enable the empanelment of the candidates

who have put in long satisfactory service. It appears, the rule making authority omitted to make necessary amendment in sub Para (h) and that has resulted inconsistency in the two sub paras.

However, keeping in view the object of Note (ii) under sub-para (g), it will have to be held that a candidate who had been allowed to appear in the viva test on the basis of marks obtained by him in the professional ability and the marks allowed to him on his seniority shall be entitled to be empanelled for the post, if he got not less than 60% in the aggregate.

13. True it is, the applicant obtained 8 marks only in the interview, but the total marks obtained by him in the written test, marks allotted to him for seniority, marks obtained by him in the interview, record of service and personalty (15.4 + 15 + 8 + 9 + 14) make more than 60% of the total marks and hence he cannot be denied empanelment for the post of JCMA.

14. This contention of the learned counsel for the applicant cannot be lightly brushed aside that the applicant had put in 20 years of service, and his entire service was without any stigma and therefore he could not be deprived of the empanelment on the ground of unsuitability in the interview. In this connection the decision taken in the meeting dated 27.11.75 (reproduced hereunder) is very relevant :-



2.2 Panel should be formed for selection posts in time to avoid ad hoc promotion. Care should be taken to see, while forming panels that employees who have been working in the posts on ad hoc basis quite satisfactorily are not declared unsuitable in interview. In particular any employee reaching the field of consideration should be saved from harassment."

The subsequent order of the Railway Board dated 5.12.84 is also on the same point.

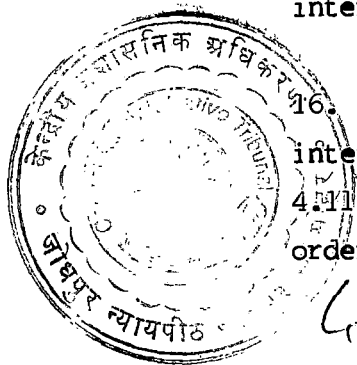
The Hon'ble Supreme Court in the case of R.C. Srivastava (Supra) has upheld the validity of the circular dated 27.11.75. It has, therefore, to be held that a candidate, who is working on ad hoc basis satisfactorily, cannot be denied empanelment on the basis of marks obtained in the viva voce test.

15. It is not in dispute that the applicant has put in long service without stigma. It is also admitted position that the applicant has been working on ad hoc basis on the post of JCMA satisfactorily for the last more than 22 years. Following the dictum in the case of

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R.C.Srivastava (Supra) it will have to be held that the applicant has a right of empanelment, even though he did not get sufficient marks in interview.



Consequently the OA succeeds. The respondents are directed to interpolate the name of the applicant in the selection panel dated 4.11.96/24.7.98 for the post of JCMA with consequential benefits. No order as to costs.

(GOPAL SINGH)

MEMBER (A)

(G.L.GUPTA)

VICE CHAIRMAN