

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 481/91 199X
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DATE OF DECISION 22.10.92

Shri C Gopalakrishnan Nair Applicant (s)

Shri P Sivan Pillai Advocate for the Applicant (S)

Versus

Union of India (General Manager, Southern Railway) and 41 others Respondent(s)

Shri MC Cherian Advocate for the Respondent (s) 1 & 2.

CORAM :

The Hon'ble Mr. **SP Mukerji** - **Vice Chairman**
&

The Hon'ble Mr. AV Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *yes*
4. To be circulated to all Benches of the Tribunal? *yes*

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The applicant, Shri Gopalakrishnan Nair, is a Goods Guard in the scale of Rs.1200-2040/- working in the Palakkad Division of the Southern Railway. He participated in the selection for promotion to the post of Passenger Guard in the scale of Rs.1350-2200/- in the year 1990. After being successful in the written examination, he was called for an interview which he attended. When the panel of selected candidates (Annexure A3) dated 31.12.1990 consisting of 44 names was published, to the disappointment of the

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applicant, his name was not found in the list. Some of the selected candidates were promoted as Passenger Guards vide order dated 10.1.1991 at Annexure A2. Aggrieved by his non-selection and non-inclusion in the panel, the applicant individually and also through Union made representations to which a reply was given to the Divisional Secretary of the Southern Railway Mazdoor Union, Palakkad by the 2nd respondent stating that the selection was in order. Annexure A6 is a copy of this communication. The applicant has filed this application challenging the orders at Annexure A2 and A3. It has been averred in the application that as the applicant had performed very well in the examination as well as in the viva voce, he happened to be omitted in the select list solely because of the arbitrary and unreasonable manner in which the viva voce was held. It has further been averred that the viva voce was held in an absolutely unscientific manner and the time taken to interview him was only one minute. The applicant has also impugned the selection process on the ground that the constitution of the selection board was not in accordance with the requirements of the Rules governing the selection. The persons who were promoted as Passenger Guards by order at Annexure A4 are impleaded as respondents 3 to 42.

2. The respondents 1 & 2 in their counter affidavit have contended as follows:-

The selection for promotion as Passenger Guards in the scale of Rs.1350-2200 was made on the basis of the positive act of selection consisting of written examination

viva voce, assessment of personality, address, leadership, academic qualification, record of service etc. 50 marks were allotted for professional ability which comprises of a written examination and viva voce, of which 35 marks were allotted to written examination and 15 marks for viva voce. The balance 50 marks were made up of 20 marks for personality, address, leadership and academic qualification, 15 marks for record of service and 15 marks for seniority. The candidate would be eligible to succeed in the selection if he could secure a minimum of 60% marks for written examination and professional ability including written examination and further an overall 60% marks. The applicant could get more than 60% marks for the written examination as also more than 60% marks in the professional ability. He could secure only an overall percentage of 57.3% marks. It was only because, the applicant did not get the qualifying marks of 60% in the selection that he could not be selected and empanelled. There was no arbitrariness or irregularity in the conduct of the viva voce test. The allegation regarding the time taken for the interview is baseless and false. According to Rules, the selection board consists of two officers in the senior scale and one Assistant Personnel Officer. The board in this case consisted of 2 senior scale officers of the Operating Department and one Assistant Personnel Officer. Therefore, the contention that the constitution of the Board was not in accordance with the Rules, is devoid of merit. The applicant did not make any individual representation. The representation submitted

by the Union did not contain any allegation that the viva voce was held in an illegal or irregular manner. As the applicant who has participated in the selection process without any complaint regarding the conduct of the selection cannot be heard to say that the selection was held in an irregular manner finding that he could not succeed. The application is, therefore, devoid of any merit and the same has to be dismissed.

3. In a rejoinder filed by him, the applicant has contended that as ~~xxxxxx~~ 15% marks have been allotted for viva voce and another 20% marks for personality, leadership etc., the overall marks allotted for viva voce/interview being 35%, the entire selection process has to be declared illegal and unjustified, as it is settled law that allocation of such high percentage of marks for interview/viva voce is unreasonable and excessive. It has also been contended that in accordance with the directions contained in the Railway Board's letter dated 10.8.77 and paragraph 218 of the Indian Railway Establishment Manual, when the selection board consists of not less than 3 officers, one should be a Personnel Officer and one of the members should be from a Department other than for which the selection is being made and none of the members should be directly subordinate to any other and that since the selection board in the instant case consisted of Senior Divisional Operating Superintendent, Divisional Operating Superintendent and Assistant Personnel Officer, the Divisional Operating Superintendent is subordinate

to the Senior Divisional Operating Superintendent, the constitution of the board is against the provisions contained in paragraph 218 of the Manual as also the instructions, a copy of which is at Annexure A7.

4. In reply to the rejoinder, the respondents 1 & 2 have filed an additional counter affidavit in which they have contended that in accordance with the directions contained in the letter of the Railway Board dated 31.1.1990, enclosing therewith the selection procedure adopted by the South Central Railway for guidance and application by the Zonal Railways, the composition of the selection board for filling up non-gazetted posts would be, in regard to Departments other than Personnel Department, two officers of the Department as far as possible for which selection is held and one Personnel Officer and that the selection board in this case was constituted accordingly. The 2nd respondent has filed an affidavit stating that the Divisional Operating Superintendent, Shri Ganeswara Rao and Shri Tharanathan, another Divisional Operating Superintendent, were of the same cadre and neither of them was subordinate to the other. The respondents have also stated in the additional reply statement that the principle that marks allotted to viva voce test should not exceed 15% in the matter of selection is not applicable to selection for promotion to posts in the Department, of persons who had been rendering considerable length of service, but it is applicable to selection from among persons fresh from

colleges and that the case of the applicant that allocation of more than 15% marks for viva voce/interview is excessive and arbitrary, is not tenable.

5. At our direction, the learned counsel for the respondents 1 & 2 had made available for ^{our perusal} ~~our~~ the file relating to the impugned selection containing the tabulation sheets of marks obtained by the candidates.

6. We have heard the arguments of the counsel on either side and have also very carefully perused the pleadings and documents on record as also the file relating to the selection.

7. We shall first deal with the contention of the applicant that the selection board was not properly constituted. According to Railway Board's PB circular No. 132/73, letter of the Railway Board dated 10th August, 1973:-

"In terms of the instructions contained in Board's letter No. E(NG)1-68PM1/60 dated 27th June, 1969 selection Boards constituted for the purpose of promotion of non-gazetted staff to Class III posts, shall consist of not less than three officers, one of whom should be a Personnel Officer. In the light of the recommendations made by the Administrative Reform Commission, the Board have decided that one of the members of the Selection Board should be an Officer from a Department other than for which selection is held."

Paragraph 218 of the Indian Railway Establishment Manual provides that when Selection Board consists of only three officers, none of the members should be directly subordinate to any other. The case of the applicant is that apart from the Assistant Personnel Officer, the two members of the board were persons of the Operating Department and that violated the direction contained in Annexure A7 order.

The applicant also has a case that as the Divisional Operating Superintendent and the Senior Divisional Operating Superintendent are from the same Department, the provisions of paragraph 218 of the Indian Railway Establishment Manual has been violated. The respondents have produced Railway Board's letter dated 31.1.1990 enclosing a copy of the check list in vogue on South Central Railway along with a copy of their circular No.P(R)605/IV dated 15.12.86 bringing out the important points for guidance of the members of the selection committee for guidance and adoption in other Railways. According to the circular, the composition of the selection board for filling up of non-gazetted posts in the Railways has to be as follows:-

"(a) Department other than Personnel : Two Officers of the Department as far as possible for which the selection is held and one Personnel Officer.

(b) Personnel Department : Two Officers of the Personnel Department and one Officer from another Department."

It is the case of the respondents that this system has been adopted by the Southern Railway and, therefore, the committee consisting of two Officers of the Operating Department and one Assistant Personnel Officer was validly constituted. We find that the argument of the applicant that the selection committee has been constituted against the rules, has no force in the light of the fact that the Southern Railway have adopted the procedure in vogue in South Central Railway.

8. Now, coming to the contention that one of the

members, the Divisional Operating Superintendent, was subordinate to the Senior Divisional Operating Superintendent, the 2nd respondent has filed an affidavit stating that the two Operating Superintendents, Shri Ganeswara Rao and Shri Tharana- than were of equal status and that neither of them was subordinate to the other. There is no reason to suspect the veracity of the statement made by the 2nd respondent. Therefore, we find that the contention of the applicant that the board was not constituted in accordance with the rules, has no force.

Shri Sivan Pillai,

9. the learned counsel for the applicant argued that
the allocation of 15% marks for viva voce under the head professional ability and another 20% marks for personality, address, leadership etc make the total marks for interview 35% and that allotting such high percentage of marks for such practice interview alone is unscientific and has been adversely commented
upon by the Hon'ble Supreme Court in various decisions.

The learned counsel invited our attention to the decision of Hon'ble Supreme Court in Minor A Peeriakaruppan v. State of Tamil Nadu, (1971) 1 SCC 38, wherein it was observed as follows:-

"Earmarking 75 marks out of 275 marks for interview as interview marks prima facie appears to be excessive. It is not denied that the interview lasted hardly for three minutes for each candidate. In the course of three minutes interview it is hardly possible to assess the capability of a candidate. In most cases the first impression need not necessarily be the best impression."

He also invited our attention to the following observation of the Hon'ble Supreme Court in Ajay Hasia's case, (1981) 1 SCC 722 at page 744:-

"The oral interview test is undoubtedly not a very satisfactory test for assessing and evaluating the capacity and calibre of candidates, but in the absence of any better test for measuring personal characteristics and traits, the oral interview test must, at the present stage, be regarded as not irrational or irrelevant though it is subjective and based on first impression, its result is influenced by many uncertain factors and it is capable of abuse. We would, however, like to point out that in the matter of admission to college or even in the matter of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification."

The learned counsel also referred us to the decision of the Hon'ble Supreme Court in that case that allotting 33.33 per cent of the total marks for oral interview was arbitrary and unreasonable. Shri Pillai ~~xxxxxxbxxxxxx~~ also referred us to Ashok Kumar Yadav v. State of Haryana (1986) 4 SCC 417 in which a Bench of four Judges of the Hon'ble Supreme Court held that 25% marks allotted for interview is excessive and that only 12.2% of the total marks need to be earmarked for viva voce. The learned counsel argued that this very Bench of the Tribunal had in OA 776/90 and OA 777/90 held that allotting 50% of the total marks for viva voce in the matter of selection to the post of Chief Travelling Ticket Inspector Grade I, was arbitrary and unreasonable and had directed the Department to consider the candidate by keeping the marks for viva voce at 12.2% and that in view of the above legal position, the selection of respondents 3 to 42 on the basis of the high percentage of marks allocated for interview has to be set aside. We are

not inclined to accept this seemingly persuasive argument.

In Minor A Peeriakaruppan v. State of Tamil Nadu, (1971) 1

SCC 38, and in Ajay Hasia's case, (1981) 1 SCC 722, the

Hon'ble Supreme Court was considering the question of the

effect of allocation of high percentage of marks for viva

voce in the matter of selection for admission to colleges.

In Lila Dhar v. State of Rajasthan, (1981) 4 SCC 159, the

allocation of 25% of marks for interview in the selection

to Rajasthan judicial service was challenged. The Hon'ble

Supreme Court refused to intervene. It was observed that

the percentage of marks for interview test need not and can-

not be the same for admission to colleges and entry into

public service. Referring to the words "or even in the matter

of public employment" used in Ajay Hasia's case, their

Lordships observed as follows:-

"The observations of the court were made, primarily, in connection with the problem of admission to colleges, where naturally, academic performance must be given prime importance. The words "or even in the matter of public employment" occurring in the first extracted passage and the reference to the marks allocated for the interview test in the Indian Administrative Service examination were not intended to lay down any wide, general rule that the same principle that applied in the matter of admission to colleges also applied in the matter of recruitment to public services. The observation relating to public employment was per incuriam since the matter did not fall for the consideration of the court in that case. Nor do we think that the court intended any wide construction of their observation. As already observed by us the weight to be given to the interview should depend on the requirement of the service to which recruitment is made, the source material available for recruitment the composition of the Interview Board and several like factors."

In Ashok Kumar Yadav v. State of Haryana, (1985) 4 SCC 417,

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the Hon'ble Supreme Court at paragraphs 24 and 25 of the judgement observed as follows:-

"While a written examination assesses the candidate's knowledge and intellectual ability, a viva voce test seeks to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the viva voce test, there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated perhaps, with some degree of error, by a viva voce test, much depending on the constitution of the interview board. There can therefore, be no doubt that the viva voce test performs a very useful function in assessing personnel characteristics and traits and in fact, tests the man himself and is therefore regarded as an important tool along with the written examination."

"There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter of determination by experts. The court does not possess the necessary equipment and it would not be right for the court to pronounce upon it, unless to use the words of Chinnappa Reddy, J. in Lila Dhar case 'exaggerated weight has been given with proven or obvious oblique motives.'

It is clear from the above observations of their Lordships of the Hon'ble Supreme Court that the precise weight to be given for viva voce test would depend upon the requirement of the service, the minimum qualifications prescribed, the age group from which selection is made, the constitution of the Boards conducting the viva voce test and several other factors. In the instant case before us, the selection was being made from among Goods Guards of the Safety Deptt who had been in service for a considerable length of time for

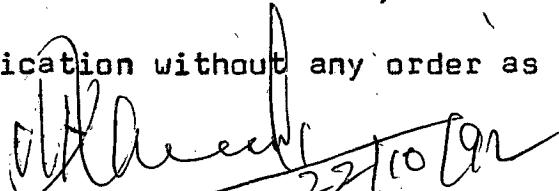
being promoted to the post of Passenger Guards. Obviously, it is not a selection based on theoretical or bookish knowledge as in the case of selection from among persons who are fresh out of educational institutions. 15% marks allotted for viva voce was in regard to the knowledge of the individual to be assessed in the viva voce on technical aspects of the profession and 20% marks allotted for personality, address and leadership was intended to test the individual's traits, and also for academic qualification. capacity to act promptly, initiative and leadership. The post of Passenger Guard being a safety post, ^{if} the Department felt that assessment of personal qualities should be an important aspect in making selection, we are of the view that it cannot be considered arbitrary or irrational. The facts and circumstances of the case in OA 776/90 and 777/90 are also different from the facts of this case. The selection in the case in OA 776/90 and 777/90 was for non-safety posts of Chief Traveling Ticket Inspector Grade I. The entire 50% marks were allotted for professional ability to be assessed on the basis of the viva voce test. It was in those circumstances that it was held that the allocation of the entire 50% marks for viva voce was unreasonable. As the selection in the case before us relates to safety posts and as the entire marks for professional ability were not allocated for viva voce, the direction given in the judgement in OA 776/90 and OA 777/90 is not applicable to the facts of this case.

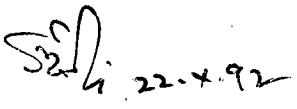
10. The learned counsel for the applicant argued that as the time taken for interviewing the applicant was just one

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minuted it would not have been possible to assess the professional ability, personal traits and leadership qualities of the applicant within that short span of time, the method of selection has to be struck down as arbitrary and unreasonable. The applicant did not raise any complaint regarding the duration of the interview until the result was published. In the representation submitted on behalf of the Senior Goods Guards like the applicant, by the Union a copy of which is available at Annexure A5, no averment was made that the interview/viva voce was held in a hasty manner. Therefore, we are of the view that the allegation to that effect in the application is only an after-thought.

11. On a careful consideration of the entire facts and circumstances of the case, we are of the view that there is no basis for the argument of the applicant that the selection was held in an unreasonable or illegal manner.

12. In the additional reply statement filed by the respondents it has been stated that the applicant, being successful in a subsequent selection, has been appointed as a Passenger Guard. However, in view of what is stated in the foregoing paragraphs, we do not find any legitimate grievance of the applicant to be redressed and, therefore, we dismiss the application without any order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

22.10.1992.