

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 540/90
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DATE OF DECISION

20.3.1992

Shri L. Mony _____ Applicant (s)

Shri P. Sivan Pillai _____ Advocate for the Applicant (s)

Versus
Union of India & 13 others _____ Respondent (s)

Smt. Sumathi Dandapani _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V. Haridasan - Judicial 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. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

The applicant, presently working as a Shunter in the scale of Rs.1200-2040/- to which he was reduced from the post of goods driver carrying a pay scale of Rs.1350-2200/- by a penalty imposed in a disciplinary proceeding, has filed this application under Section 19 of the Administrative Tribunals Act praying that the panel prepared by the selection committee and approved by the ADRM/TVC on 2.3.1989 at Annexure A4 and the order dated 2.3.1989 promoting the persons whose names occur in the Annexure A4 panel to the post of passenger driver in the scale of Rs.1600-2660/- may be set aside or that the

respondents may be directed to include the applicant also in the Annexure A4 panel and Annexure A6 order or to direct the respondents to hold a separate selection for the vacancy reserved for ST community ^{which} ~~remained~~ unfilled in Annexure A4 and to consider the applicant for promotion against one of such vacancies.

2. The facts necessary for the disposal of this application can be briefly stated thus: The applicant is the Divisional Secretary for All India Loco Running Staff Association, Thiruvananthapuram and as such had to lead several demonstrations and agitations espousing the cause of Loco Running Staff. This according to the applicant has brought upon him the wrath of senior officers at the divisional level. The applicant was subjected to several disciplinary proceedings against the outcome of which the applicant had filed O.A.484/90 and O.A.487/90. As a result of one of the disciplinary proceedings, the applicant was reduced in rank from the post of goods driver to that of Shunter which action is challenged by him in O.A.484/90. The grievance of the applicant in this application is that though he was successful in the written examination and had done very well in that viva voce for selection to the post of Passenger Driver in the scale of Rs.1600-2660/- for ten vacancies of which three were reserved for ST pursuant to letter dated 19/20.6.1988, his name was not included in the panel at Annexure A4 published on 3.3.1989 and that he has been deliberately left out in the orders of promotion at Annexure A6. Feeling that the non-inclusion of his name in the panel and

his non-promotion was an act of victimisation for his Trade Union activities, on 16.3.1989, the applicant submitted a representation to the third respondent objecting to the manner in which the selection was held and requesting that the panel may be cancelled or that his name may also be included in the panel. He had also requested to furnish him with details of marks obtained by him in the written test, viva voce and other items. Finding no response to this representation, the applicant had filed this application. It has been averred in the application that the respondents 5 & 6 against whom the Association headed by the applicant staged demonstrations had grudge against the applicant and their inclusion in the selection committee had prejudiced the applicant's chances of success as he has been deliberately pulled down in the viva voce test. It has further been averred that in terms of paragraph 31 of P.B. Circular No.99/86 pertaining to conducting of selections in case of non-availability of a suitable candidate for empanelment, a fresh selection should be held after six months considering all the eligible candidates in the order of their seniority and the action of the respondents not to hold such a selection after six months towards the left over vacancy in Annexure A4 is illegal and unjustified. The applicant has, therefore, prayed that the impugned panel at Annexure A4 and order at Annexure A6 may be quashed or the respondents may be directed to include the applicant's name also in them or to hold another selection for the vacancies reserved for ST community remaining unfilled in Annexure A4.

3. The respondents in the reply affidavit have refuted the allegations that the constitution of selection committee was illegal, that the applicant had been pulled down in the viva voce as an act of victimisation for his Trade Union activities and that the applicant is eligible to be included in the panel. They have further contended that it was only because the applicant failed to make the grading to be qualified to be included in the panel that he could not be promoted though he is a senior person in the feeder category and a member of ST. The respondents have further averred that as the post of the Passenger Driver is one in the safety category, relaxation in the eligibility qualification ~~xxxxxxxxxxxxxx~~ in terms of the P.B. Circular mentioned is not applicable. in the application/ If has been further stated that the applicant could not be called for the subsequent selection since he had been undergoing a punishment of deduction in rank with effect from 1.7.1989.

4. We have heard the arguments of the learned counsel appearing on either side and have also carefully scrutinised the pleadings and documents on record. The learned counsel appearing for the Railway Administration made available for our perusal the proceedings relating to the selection in question. From the proceedings of the selection board meeting held on 12.10.1988, 14.10.1988 and 20.2.1989, we notice that the category for which the selection was made was one which involved safety aspects and that as per the norms, the candidates to be qualified for inclusion in the panel should secure 30 marks out of 50 in the professional ability and 60% in the aggregate. It is seen

that SC/ST candidates will be eligible for inclusion in the panel if they secure 30 out of 50 in professional ability and 51 out of 85 in aggregate (excluding the marks for seniority). From the tabulation statement of marks, the average obtained by the applicant in professional ability is found to be 30.15 while the aggregate marks obtained by him is 51.9 out of 100, which works out to 44.9 out of 85. The marks awarded by each of the members of the board are also available in the file. The applicant has averred in the application that the respondents 5 & 6 have grudge against him since he had led demonstrations against these officers. But in his representation at Annexure A5 though he had stated that there was no chance whatsoever for not including his name in the panel except his Trade Union activities as Divisional Secretary of All India Loco Running Staff Association, it has not been specifically stated that any of the members of the board had reason for a special dislike towards him. The applicant subjected himself to be assessed by the board even after knowing who the members of the board were. He did not raise any protest in the respondents 5 & 6 sitting in the board and assessing his suitability. Therefore, it is not open for the applicant now to say that the selection proceedings were vitiated because respondents 5 & 6 had prejudice against him. A careful scrutiny of the selection proceedings shows that the general method of assessment of the candidates by respondents 5 & 6 had a consistent and uniform pattern. It is seen that the marks awarded by respondents 5 & 6 to almost all the candidates were slightly less than the marks awarded by the other members

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of the board. But that is so in the case of all the candidates interviewed. Therefore, we are not convinced that any prejudice was caused to the applicant by reason of respondents 5 & 6 being members of the board that made selection. Therefore, we are not convinced that the applicant has made out a case for interference with the impugned panel.

5. The learned counsel for the applicant invited our attention to the fact that the percentage of marks allotted for viva voce being 15 out of total marks of 50 for professional ability, the method of selection is likely to give rise to considerable scope for arbitrariness. 15 out of 50 marks make up 30%. The learned counsel submitted that allocation of more than 12.2% marks for viva voce test has been deplored by the Hon'ble Supreme Court in Ashok Kumar Yadav's case. The learned counsel further invited our attention to the fact that apart from 15 marks for viva voce, another 20 marks are set apart for personality and academic qualification which again are to be allotted by the interview board. In Ashok Kumar Yadav vs. State of Haryana, AIR 1987 SC 454, the Hon'ble Supreme Court had observed that allocation of 22.2% of marks for viva voce test should be regarded as infecting the selection process with vice of arbitrariness. The Hon'ble Supreme Court opined that the percentage of marks allocated for the viva voce test by Union Public Service Commission in case of selection to Indian Administrative Service and other allied services namely, 12.2% was fair and just as striking a proper balance between the written examination

and viva voce and directed that in case of selection to the Haryana Civil Services (Executive Branch) and other services, it will be advicable to follow the same parametre. In Mohinder Sain Garg vs. State of Punjab and others, JT 1990 (4) SC 704, the Hon'ble Supreme Court observed:-

"In our view Ashok Kumar Yadav's case clinches the issues raised before us and being a decision given by four judges is also binding on us. That was a case relating to public employment and a direction was given to all the Public Service Commissions to follow the marks allocated for viva voce test as done by the UPSC which was 12.2% of the total marks. Ashok Kumar Yadav's case was decided in 1985 and we fail to understand as to why the State of Punjab did not follow the same for making selections in 1989 for the posts of Excise and Taxation Inspectors. It is no doubt correct that the selection of Taxation and Excise Inspectors is done by a Subordinate Selection body and not by Public Service Commission yet no valid reason has been given before us by learned counsel for the respondents as to why the principle enunciated in Ashok Kumar Yadav's case should not be applied in these cases as well. Even if Ashok Kumar Yadav's case may not in terms apply in the cases before us to the extent of laying down 12.2% of the total marks for viva voce test which was made applicable for selections to be made by UPSC, we deem it proper to lay down after taking in view the dictum of all the authorities decided so far that the percentage of viva voce test in the present cases at 25% of the total marks was arbitrary and excessive. There could be no gain saying that viva voce test cannot be totally dispensed with, but taking note of the situation and conditions prevailing in our country, it would not be reasonable to have the percentage of viva voce marks more than 15 per cent of the total marks in the selection of candidates fresh from college/school for public employment by direct recruitment where the rules provided for a composite process of selection namely written examination and interview."

In Vikram Singh and Another vs. The Subordinate Services Selection Board, Haryana and Others, JT 1990 (4) SC 528, the Hon'ble Supreme Court held that allocation of 28% marks for viva voce in the selection for the post of Excise Inspectors in Haryana, was unreasonable following the decision of the Hon'ble Supreme Court in Ashok Kumar Yadav's case.

On the strength of the above authorities, the learned counsel for the applicant argued that the selection proceedings in this case in which 15 marks out of 50 was allocated for viva voce test, and 20 marks out of 50 was allocated for personality test and academic qualification while the remaining 15 was allocated for recorded service and 15 was allocated for seniority, the scope for arbitrariness being wide, the proceedings will have to be set aside as vitiated. [We are not impressed with this argument for two reasons--(i) the applicant had not either in the application or in the rejoinder filed, put forth a case that more marks than reasonable have been allocated for viva voce and for that reason, the selection proceedings are vitiated and (ii) in all the judgement of the Hon'ble Supreme Court relied on by the learned counsel for the applicant, the Hon'ble Supreme Court were considering the percentage of marks to be allocated for interview in the case of direct recruitment from among candidates who were fresh at the educational institutions.

The parameters for conducting selection to the different classes of posts may be different. For recruitment to posts from among fresh graduates or from persons fresh out of educational institutions, a different standard of assessment on interview has to be made from the method of recruitment to posts of technical nature from among candidates who had already been in service for some time and had training in the same line. If the applicant had in his application or atleast in the rejoinder put forth a case that the allocation of more marks for viva voce than 12.2% or 15% is arbitrary and illegal, the respondents

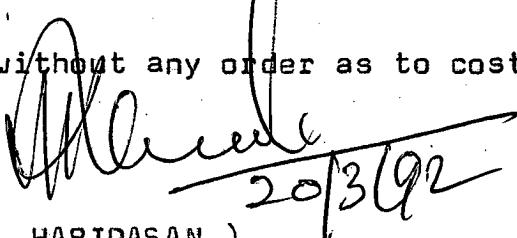
could have put forth their views in the light of the requirement of the service and we would have had an opportunity to go into that question. Even in Ashok Kumar Yadav's case, AIR 1987 SC 454, the Hon'ble Supreme Court has observed that there cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against 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 and that it is essentially a matter for determination by experts. In Leela Dhar vs. State of Rajasthan and others, a Bench of three judges of the Hon'ble Supreme Court considered the validity of the selection to Rajasthan Judicial Service by written examination as well as viva voce test in which 25% marks were kept for viva voce. The high percentage of marks set apart for viva voce was attacked mainly on the ground that it violated the dictum laid down by Constitution Bench of the Hon'ble Supreme Court in Ajay Hazia's case. The Hon'ble Supreme Court in Leela Dhar's case, (1981) 4 SCC 159, distinguished the decision in Ajay Hazia's case on the ground that that was a case concerning admissions to colleges. It was observed that provision for marks for interview need not be the same for admission to colleges and entry into public service. Advertising to the words "or even in the matter of public employment" used in Ajay Hazia's case, the Hon'ble Supreme Court in Leeladhar's case observed that the above observation was made primarily in connection with the question

of admission to colleges where academic performance should be given prime importance and that the observation relating to public employment was made per incuriam as the matter did not fall for the consideration of the Court in that case. It was also observed that the interview test in Leela Dhar's case was conducted by a body consisting of a judge of the High Court, Chairman and Members of the Public Service Commission and a special expert and that there could be no legitimate grievance or hint of arbitrariness against such a body. It was further observed that an important factor which was worthy of consideration is that the candidates expected to offer themselves for selection are not raw graduates freshly out of college but are persons who have already received a certain amount of professional training and that the source material is such that some weightage must be given to the interview test and it was in that circumstances that their Lordships of the Supreme Court took a view that 25% of the total marks allocated for interview was not an unreasonable weightage. What emerges from the observations of their Lordships is that the weightage to be given for interview ^{differs} ~~differs~~ from post to post and service to service and the question whether the candidates being considered for selection are persons from out of educational institutions or those who have had professional experience would be a vital consideration in determining the percentage of marks to be allocated for viva voce. Therefore, with the available pleadings in this case, we are not inclined to enter a finding that the percentage of marks allocated for interview is excessive and that for that reason the selection

is vitiated.] As the selection proceedings have not been challenged on the ground that for allocation of unreasonably high percentage of marks for interview the same is vitiated, we do not intend to lay down finally anything on that question. For the purpose of this case, as it is seen that the applicant did not make the grading sufficient to be included in the panel and as no vitiating circumstance in the method of selection had been brought to light, it is sufficient to observe that the applicant is not entitled to have the Annexure A4 and Annexure A6 orders quashed.

6. The claim of the applicant for a direction to the respondents to conduct another selection for the unfilled posts reserved for ST in Annexure A4 basing on the instructions contained in the P.B. Circular at Annexure A11, the respondents have made it clear that these instructions are not applicable to the case of selection to posts included in the safety category. In the rejoinder filed by the applicant, this has not been contraverted. Therefore, the applicant is not entitled to this relief also.

7. In the light of the above discussion, we find that the application is devoid of merit and, therefore, we dismiss the same without any order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

20.3.1992

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