

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

.....

O.A. No. 59 of 1991,
O.A. No. 1048 of 1991,
O.A. No. 1843 of 1991 and
O.A. No. 1108 of 1992.

Monday this the 3rd day of October, 1994

CORAM:

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

(1) O.A. 59 of 1991

1. N. Abubacker, Dy. Chief Controller
Railway Divisional Office,
Southern Railway, Palghat.
2. K. Balagopalan -do-
3. M.D. Balakrishnan -do-
4. P.K. Sukumaran -do-
5. M.P. Poulse -do- .. Applicants

(By Advocate Shri M.R. Rajendran Nair)

Vs.

1. Union of India through
The General Manager,
Southern Railway, Madras-3.
2. The Chief Personnel Officer,
Southern Railway, Madras-3.
3. K.M.Gopinathan Chief Controller,
Divisional Office,
Palghat
4. P. Ramankutty Nambiar, Chief Controller, Railway
Divisional Office,
Tiruchirappalli.
5. P.K.Syed Mohammed Chief Controller, Railway
Divisional Office, Palghat
6. N.S. Narayana Rao Chief Controller, Railway
Divisional Office, Bangalore
7. E.J. Thomas Chief Controller, Railway
Divisional Office, Mysore
8. M.T. Cherian Chief Controller, Railway
Divisional Office, Palghat
9. M.Rajendra Prasad Chief Controller, Railway
Divisional Office, Trivandrum-14

.....2/-

10. K. Gunasekaran Chief Controller, Railway
Divisional Office, S. Railway,
Madurai-10.
11. Leslie M. John Dy. Chief Controller, Railway
Divisional Office, S. Railway,
Mysore.
12. K. Poovendran Railway Divisional Office,
S. Railway, Mysore.

.. Respondents.

(By Advocate M/s MC Cherian & TA Rajan (R.1&2)

(By Advocate Shri TM Poulose (R.8,9,11 & R.12)

(2) O.A. No. 1048 of 1991.

N. Abubacker,
Dy. Chief Controller,
S. Railway, Palghat.

.. Applicant

(By Advocate Shri M.R. Rajendran Nair)
Vs.

1. Union of India through the
General Manager, Southern Railway,
Madras-3.
2. The Chief Personnel Officer,
Southern Railway, Madras-3.
3. Sri. Ajith Chathurvedi,
Dy. Chief Operating Supdt.,
S. Railway, Head Quarters,
Madras-3.
4. Sri P.K. Sukumaran,
Dy. Chief Controller,
S. Railway, Palghat,
5. Sri. V. Vaitheeswaran,
Dy. Chief Controller,
C/o Chief Operating Supdt.
S. Railway, Madras.
6. Sri. M.A. Poulose,
Dy. Chief Controller,
S. Railway, Palghat.
7. Sri Syed Ahammed,
Dy. Chief Controller,
Divisional Office,
Southern Railway,
Bangalore.
8. Sri, K.G. Ravindranath,
Dy. Chief Controller,
Southern Railway,
Divisional Office,
Bangalore.
9. Sri. V. Krishnamoorthy,
Dy. Chief Controller,
Southern Railway,
Divisional Office,
N.G.O. Annex, Madras-3.
10. Sri V.D. Ninan,
Dy. Chief Controller,
Southern Railway,
Divisional Office,
Madras-3.

.. Respondents

.....3/-

11. Sri Alexander Koshy,
Dy. Chief Controller,
Southern Railway,
Divisional Office,
Madras-3.
12. Sri L. Baby,
Dy. Chief Controller,
S. Railway,
Divisional Office,
Madras-3.
13. V. Balakrishnan,
Dy. Chief Controller,
Southern Railway,
Madurai-10.
14. Sri. Stephen Koith,
Dy. Chief Controller,
Southern Railway,
Madurai-10. .. Respondents.

(By Advocate Shri M.C. Cherian for R. 1 to 3)

(3) G.A. No. 1843 of 1991

1. K.M. Prabha,
Enquiry-cum-Reservation Supervisor,
Southern Railway,
Trivandrum Central .. Applicant

(By Advocate M/s R. Santhosh Kumar &
K.M. Anthru)

Vs.

1. Union of India through the
General Manager,
Southern Railway, Madras-3.
2. The Chief Personnel Officer
Southern Railway, Madras-3.
3. The Chief Commercial Supdt.,
(C.R.) S. Railway, Madras-3.
4. B. Mugundan Through the Chief Personnel Officer,
(E&RS) SBC Southern Railway, Madras-3.
5. A.J. Justin -do-
E&RS/PGT
6. B. Pandurangan -do-
E&RS/SBC
7. P.H. Bestowith -do-
E&RS/MAS
8. P.M. Lourdu Swamy -do-
E&RS/MAS
9. R. Padmanabhan -do-
E&RS/MAS
10. V.J. Thomas -do- .. Respondents
E&RS/TVC

11. M.I.Abraham
E&RS/TVC Through the Chief Personnel
Officer, Southern Railway, Madras-3.
12. G. Raghavan
E&RS/SBC -do-
13. D. Gopalasamy
E&RS/MAS (VI/MAS) -do-
14. V. Rajan
E&RS/TBJ -do- .. Respondents

(By Advocate Smt. Sumathi Dandapani for R.1-3)

(4) O.A.No. 1108 of 1992

N. Abubacker,
Dy. Chief Controller,
Southern Railway, Palghat. .. Applicant

(By Advocate Mr. M.R. Rajendran Nair)

Vs.

1. The Union of India through
General Manager, Southern Railway,
Park Town.P.O., Madras-3.
2. The Chief Personnel Officer,
Southern Railway, Hqrs. Office,
Madras-3.
3. The Sr, Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
4. G. Emperumal,
Dy. Chief Controller,
Divisional Office,
Southern Railway,
Thiruchirappally,
5. M. Pitchamany, Dy.Chief Controller,
Divisional Office, Southern Railway,
Madras-3.
6. M.K. Narayana Unnithan,
Dy. Chief Controller,
Divisional Office, Southern Railway,
Madras-3.
7. K.R. Unnithan,
Dy. Chief Controller,
Divisional Office, Southern Railway,
Trivandrum-14.
8. K. Kandaswamy,
Dy. Chief Controller,
Divisional Office, Southern Railway,
Thiruchirappally.
9. M. Nagarajan,
Dy. Chief Controller,
Divisional Office,
Thiruchirappally.
10. C.Govindan Nair,
Dy. Chief Controller, Divisional Office,
Thiruchirappally. ... Respondents

11. S. Sreekandaswamy,
Dy. Chief Controller, Divisional Office,
Mysore,
12. K.R. Sreetharamoorthy,
Dy. Chief Controller,
Divisional Office, Southern Railway,
Mysore.
13. M.T. Ramachandran,
Dy. Chief Controller, Divisional Office,
S. Rly., Mysore.
14. K.B. Ravindranathan Nair,
Dy. Chief Controller, Divisional Office,
Southern Railway, Trivandrum-14.
15. K. Kannan,
Dy. Chief Controller, Southern Railway,
Divisional Office, Mysore.
16. J.A. Rodrigues,
Dy. Chief Controller, Southern Railway,
Divisional Office, Thiruchirappally.
17. C M. Chandra Sekharan Nair,
Dy. Chief Controller, Southern Railway,
Divisional Office, Palghat,
18. P. Jayachandran,
Dy. Chief Controller,
Southern Railway, Divisional Office,
Madras-3.
19. Chairman, Railway Board,
Rail Bhavan, New Delhi. .. Respondents.

(By Advocates M/s MC Cherian & TA Rajan for R.1-3 & 19)

O R D E R

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN

Contentions raised in these applications are similar, and so are the reliefs sought. The core question for consideration is whether allocation of 70% of the total marks for viva voce vitiates the selection, as arbitrary.

2. Applicants challenge the selections made to fill up posts of Chief Controller of the Railways and Chief Supervisors, Enquiries-cum-Reservation. The procedure for selection is outlined in Rules 213, 215 and 219 of Chapter 2 of the Indian Railway Establishment Manual. It contemplates selection, by

a written examination and interview, or by an interview simpliciter. In the cases on hand, 50% of the marks are set apart for professional ability, 20% for leadership, address, personality and academic qualifications, and these are to be adjudged by an interview. 30% of the remaining marks are to be awarded on the basis of records of service and seniority. 15% of the marks are set apart for each of the two heads.

3. Shri M.R.Rajendran Nair leading the arguments for applicants, submits that a conscious decision must be made by the authority as to whether a written examination should be held or not. He submits further that allocation of 70% of the total marks for viva voce, opens the floodgates of arbitrariness and that the selection on this basis is liable to be struck down, in the light of the decisions of the Supreme Court. Malafides are also alleged.

4. Answering these contentions, counsel for Railways, Shri Cherian and Ms.Preethi, submit that it is for the Railways to decide on the method of selection having regard to the language of Rules 213, 215 and 219, and that the conscious decision required to be taken, is the decision to make a selection by the impugned process. They would also submit that allocation of 70% marks for interview is not illegal.

5. The crux of the matter is whether the process of selection, is vitiated by arbitrariness or absence of fairness. The percentage of marks allotted for interview, by itself would

not be determinative of this issue. The Supreme Court of India had to deal with the reasonableness of allocation of marks for viva voce ,on several occasions. In Chitralkha vs. State of Mysore (AIR 1964 SC 1823), the Court held that the method of viva voce was not an objectionable one. On the contrary an interview held by competent professionals was considered reasonable. In Peria Karuppan vs. State of Tamil Nadu(AIR 1971 SC 2303), the Court held that the method of selection by interview was not illegal provided the allocation of marks was within reasonable parameters. However, in Janaki Prasad vs. State of Jammu & Kashmir (AIR 1973 SC 930) , the Constitution Bench sounded a note of warning. It was observed that an interview should not be the sole basis of selection. The faith, which the Court set in the objectivity of interviewers, was perhaps waning. In Ajay Hasia vs. Khalid Mujib(AIR 1981 SC 487) , the Court held that the prescription of 33 1/3 % of marks for viva voce was arbitrary. The same view was expressed in Nishi Maghu vs. State of Jammu & Kashmir, (AIR 1980 SC 1975). In Miss. Arti Sapru etc. vs. State of J&K and others, AIR 1981 SC 1009 , the Court voided a selection where 30% of the marks were allocated for interview. Still later, in Asok Kumar Yadav vs. State of Haryana, (AIR 1987 SC 454) a Bench of four Judges reviewed the case law, noticed recommendation of an Expert Committee viz., Kothari Commission, and held that an outer limit must be prescribed for interview, at 25% for ex-service officers and 12.2% for general candidates.

6. Some other cases take a seemingly different , but substantially similar view having regard to the special facts. In Lila Dhar vs. State of Rajasthan, (AIR 1981 SC 1777), the Court

upheld a selection where 25% of the marks was allotted for interview. Again in National Institute of Mental Health and Neuro Sciences vs. Dr.K.Kalyanaraman, 1992 (Supp) 2 SCC 481, the Court sustained a selection, based on interview alone. Later still in Airlines Corporation vs. Shukla, 1993(1)SCC 17, the Court found a process of selection valid, where 50% of the total marks were allocated for viva voce. In Ansar Ahmed vs. State of Bihar (AIR 1994 SC 141) a selection wherein 50% of the marks were allocated for interview was upheld. Still later in Andhra Pradesh Financial Corporation vs. C.M.Raj and others(J.T. 1994 (5) S.C481), the Court pointed out that allocation of a high percentage of marks for viva voce, would not taint the process for that reason, and that the question of prescribing an upper limit for interview marks would arise, generally in cases where a written examination and an interview are visualised.

7. The law as we understand is that subjective element should not outweigh the objective element in the process of selection. What should be the percentage of marks to be allocated for viva voce is a matter to be decided with reference to the context of selection, nature of the post concerned, and the modalities available in making the selection. Viva voce or interview is one of the effective methods that could be adopted for assessing the merit of a candidate. Some facets of personality can be effectively assessed in a viva voce. Responses, capacity to comprehend and expression, deportment, composure and so on are matters that can be so evaluated. But, the element of subjectivity may outweigh the element of

objectivity if undue accent is put on viva voce . To cite an example,- if the marks allotted for professional competency in an interview is 50% , and 15% on the basis of records, assessment on the basis of records namely confidential rolls, can be made insignificant by awarding high marks in the viva voce. To use the language of the Supreme Court, 'the twain must meet somewhere.' Where it should meet, is to be determined with reference to the considerations we have indicated earlier in this paragraph. The principles of fair action enunciated by the Supreme Court in Smt. Menaka Gandhi vs. Union of India and others, AIR 1978 SC 597 and in State of Punjab and another vs. Gurdial Singh and others, AIR 1980 SC 319, afford a guideline in these areas. To subject a person to a written examination in the later years of his life, might be cruel, as observed by the Supreme Court in Lila Dhar vs. State of Rajasthan (AIR 1981 SC 1777). No legal litmus test is available in these areas . What has to be ascertained is whether subjectivity is likely to dominate over objectivity. The objective element could be the written test or service records. Even here a measure of subjectivity is inevitable. But, an interview which spreads over a decisive segment of the selection process can be subjective. A balance has to be achieved. The Supreme Court has indicated that a reasonable ratio should be maintained between the written examination (Records of service in cases like this) and the viva voce . It is not for us to prescribe any ratio, but in similar cases the Supreme Court has held that 50% marks for the records of service and remaining 50% of the marks for viva voce, would be reasonable. (See Airlines Corporation vs. Shukla, 1993(1) SCC 17; Ansar Ahmed vs. State of Bihar, AIR 1994 SC 141. A cue can be taken from this.

8. In this background we have examined whether allocation of 70% marks for the viva voce is arbitrary. We think it is. 15% of the total marks is allocated for ascertaining professional competency on the basis of records of service. At the same time, 70% of the total marks are allocated for assessing professional ability, leadership, address, academic qualifications etc. There is no precise allocation among these various elements. There could be instances of a person getting outstanding entries in his service records. The most he may get in the assessment is 15% of the marks under this head. He may perhaps, get low marks in the interview for the same. At once, a candidate who may get 5% or even less for professional ability on the basis of records may get 40% of the marks under that head for professional ability in the viva voce. That would be an instance where the subjective element overrides the objective element in assessment. We consider that the method adopted is unreasonable and arbitrary.

9. As for the conscious decision, we do not think that such a decision need be in writing. If the competent authority takes a decision to make an appointment on the basis of viva voce, that would be enough compliance with the provisions in the Railway Establishment Manual.

10. We hold that the process of selection is arbitrary. However, we do not propose to quash the selections. By now all the applicants have been promoted, and all that needs be done, is to evolve a proper method of selection for now and for future, re-examine the matter and ascertain if the order of selection or seniority needs variation. If it needs, it will

be carried out within six months from today. This order/judgment would govern only the selections impugned and no other selection already made and remaining unchallenged. Those selections remaining unchallenged would be governed by the rule in Bhoop Singh's case (AIR 1992 SC 1414).

11. Applicants raised a contention that malafides vitiate the selection. An allegation of malafide has been levelled and that has not been answered by a proper counter affidavit. However, we think it unnecessary to examine this contention, as the decision should turn on other considerations.

12. For the reasons stated in the preceding paragraphs, we allow the applications to the extent indicated herein before. Parties will suffer their costs.

Dated the 3rd October, 1994.



P.V.VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN