

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 602/90 199  
xx1xxxxxx

DATE OF DECISION 23.7.91

Smt.P.Prabhavathy \_\_\_\_\_ Applicant (s)

Mr.K.Ramakumar \_\_\_\_\_ Advocate for the Applicant (s)

Versus

Union of India represented \_\_\_\_\_ Respondent (s)  
by the General Manager,Southern Rly,Madras and 5 others

Smt.Sumathi Dandapani \_\_\_\_\_ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

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 S.P.Mukerji, Vice Chairman)

In this application dated 22.7.1990 the applicant who has been working as a Chief Clerk in the Personnel Branch of the Trivandrum Division of the Southern Railway on an adhoc basis has prayed that the written test conducted by the respondents for filling up the vacancies of Chief Clerk is illegal and void and to restrain the respondents 1 to 3 from holding the viva-voce test for selection to the aforesaid post and to direct them to make fresh selections in accordance with the rules. The brief facts of the case are as follows.

2. The applicant who has been working as a Head Clerk had been given officiating adhoc promotion to the higher grade of Chief Clerk in the Personnel Branch of the Trivandrum Division against short term vacancies intermittently

from 1.6.89 to 9.11.1989 and again from 27.12.1989 to 29.7.1990. It is admitted by the applicant that promotion to the post of Chief Clerk on a regular basis is by selection. Her contention is that according to the rules the selection shall be made by a selection board consisting of three members who should be officers of Junior Administrative rank. There were three posts of Chief Clerk and volunteers were called for in March 1990. The written test was held on 8.4.1990 in which the applicant along with a few others participated. Her contention is that the written test was conducted by two Junior Clerks and there were rumours afloat that the question papers had already been made available to some of the candidates in advance. She has alleged that one of the superiors was noticed to be assisting a lady candidate. The matter was brought to the notice of the Personnel Officer. Her further contention is that the answer papers instead of being evaluated by the three persons of the selection board, were evaluated by a Senior D.P.O. The three candidates, i.e., respondents 4 to 6 were alone found successful in the written test even though they were far junior to the applicant. Complaints were made by the Labour Union right upto the Chairman, Railway Board but in spite of this respondents 4 to 6 were scheduled to be interviewed on the 27th July 1990.

3. The respondents 1 to 3 have asserted in the counter affidavit that the selection board consisting of one Junior Administrative Grade Officer and others was regularly constituted by relaxing the rules about the consti-

tution of the selection board vide Annexure-R2 dated 15.11.1989. The Board consisted of two Senior Divisional Personnel Officers, <sup>the</sup> Senior Divisional Operating Superintendent and <sup>the</sup> Divisional Personnel Officer. The first three members were all in the Junior Administrative Grade and the 4th member, i.e., the Senior DPO was a member of the Scheduled Caste. The question papers had been kept in a sealed cover, and shown to the candidates appearing in the examination the signatures of two of whom were obtained on the cover and only thereafter it was opened and the question papers were distributed. Besides the Clerks, the 3rd respondent (APO) was also present during the time of examination. Besides the Invigilators no other person was present in the examination hall, so the question of the Mazdoor Union objecting about the manner in which the examination was conducted does not arise. The answer papers with code numbers were put in a sealed cover in the presence of the Invigilators by the Supervisor and delivered to the Divisional Personnel Officer. The question of the husband of the applicant being present and objecting to the alleged assistance being given to the candidates by the Invigilators also did not arise as her husband was at that time on duty between 6.00 and 14.00 hours while the examination was conducted between 10.00 and 13.00 hours. The applicant herself had not raised any complaint regarding the mode of the test. The respondents have denied that the answer papers were kept for a week before evaluation or they were not evaluated by the members of the committee. They have indicated that in the written test the applicant could score only 5.1 marks

out of 35. Being the seniormost candidate she was given 15 out of 15 marks on seniority. Their contention is that for qualifying a candidate must obtain 30 out of 50 marks of which 35 marks are allocated for written test and 15 marks for interview. Even if she had obtained 15 marks in the interview her total of interview and written test would be less than 30 out of 40. They have also stated that it was only after coming to know of the results of the written test on 25.6.90 did the applicant's husband make a complaint at Annexure-A and enquiry was conducted and none of the Invigilators supported the allegation of giving assistance to the selected candidates.

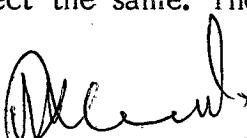
There was no protest from any quarter either. They have asserted that the 3rd respondent had been approached by the husband of the applicant for getting the code number assigned to the <sup>answer book of the</sup> applicant which was refused.

They have explained that the selection board for holding viva was reconstituted and the interview postponed because the Senior Divisional Operating Superintendent was indisposed and another member away in connection with attending a training at Baroda. Since the applicant had appeared in the written test without any protest and failed to get the required marks, she cannot question its validity.

4. Respondent 3 by a separate counter affidavit has denied any assistance given to any candidate or <sup>that</sup> there were any Trade Union activists present at the time of the examination. He has asserted that no written complaint was received either from any candidate or anybody else. He has also solemnly affirmed that three days after the written test, the husband

of the applicant approached him for getting the code number of the written test this he had flatly refused.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant has signally failed to establish any of her allegations regarding the alleged irregularities in conducting the written test. No rejoinder has been filed by the applicant to counter the averments of the respondents 1 to 3 in their counter affidavit denying her allegations. The applicant having participated in the written test cannot question it on the ground that it was conducted in an illegal manner after she failed to qualify in the written test. The Supreme Court in Om Praakash Shukla vs. A.K Shukla, AIR 1986 SC 1043, held that having appeared in a test one cannot question its validity after one fails in the test or finds oneself unlikely to pass. The applicant having failed to qualify in the written test cannot claim being considered for selection through viva. Accordingly we see no force in the application and reject the same. There will be no order as to costs.

  
(A.V. Haridasan)  
Judicial Member

23/7/91

  
(S.P. Mukerji)  
Vice Chairman

n.j.j