

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 113/92
KXAKX No.

199

DATE OF DECISION 19.3.92

V.K.Velayudhan _____ Applicant (s)

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

Versus

Union of India _____ Respondent (s)

Through the General Manager,
S.Rly, Madras-3 and 2 others.

Mrs.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 submitted on 27th January 1992 the applicant who has been working as Chief Inspector of Works, Southern Railway has challenged the impugned lists of employees of the Civil Engineering Department dated 20.12.1991 and 10.1.1992 at Annexures A2 and A5, who have qualified in the written examination for promotion to Group B service against the 75% quota for appearing in the viva voce test, excluding his name. He has prayed that his answer papers may be called and the respondents directed to get them revalued and include his name in the impugned list on the basis of the revaluation. The brief facts of the case are as follows.

2. The applicant is a member of the Scheduled Caste and has been working as Chief Inspector of Works in the scale of Rs.2375-3500. His next promotion is to Group-B service as Assistant Engineer. In accordance with a notice he gave his

willingness to appear for selection to the post of Assistant Engineer and accordingly appeared in the written examination to be followed by viva voce test. Only who secure 60% or more marks in the written test are called for viva voce . According to the applicant he should have got more than 60% marks and called for viva but in the impugned list at Annexure A2, his name was not included. He represented on 25.12.1991 at Annexure A3 and the All India Scheduled Castes and Scheduled Tribes Railway Employees Association also made a representation at Annexure A4. In his representation at Annexure A3 he had specifically alleged bias against him on account of his activities in the SC/ST Association and requested revaluation of his answer papers. Without giving any reply to his representation the impugned list at Annexure A5 was issued fixing the dates of viva test for those included in the list but not including the applicant's name. He has alleged that his name was actually included in the original list but later deleted because of his Association activities and especially some agitations in Trivandrum Division in which he took a leading part. He has referred to the Railway Board's letter dated 27.4.1959 in which cases of Scheduled Caste and Scheduled Tribe candidates who are found unfit for promotion should at each stage be placed before the General Manager for his information and necessary action. He has also referred to several instructions of the Government to protect the interests of SC/ST candidates and to prevent harassment and also to Rule 208.3 of Chapter II Section A of the Indian Railway Establishment Manual laying down that representations against 'selections on merit should be entertained without any time limit.

3. The respondents in the counter affidavit have stated that there is no provision for revaluation of answer papers and that the applicant who did not qualify in the written examination by obtaining 60% of the marks could not be called for the interview. They have dispelled the possibility of any bias or manipulation by stating that the question papers for each of the three Subjects for for written test are set by three different Examiners who belong to the related Departments in the Railway. Dummy numbers were allotted to the answer papers and the Examiners who evaluate the papers who not know the identity of any candidates. After evaluation of the papers the Examiners send the marks lists with dummy numbers to a Junior

Administrative Grade Officer of the Personnel Department dealing with such selection. The system followed over the years in the past has been found to be sound. They have stated that 179 candidates including the applicant wrote the examination and three officers of Senior Administrative Grade of the respective Departments were nominated for evaluation. The applicant got 86 marks out of 150 whereas the qualifying marks were 90 being 60% of 150. They have stated that the General Manager constituted the selection board with an officer of the Senior Administrative Grade nominated to set the question papers and another officer to evaluate the answer papers. Of 179 candidates who wrote the written test 132 candidates qualified by securing 60% or more marks. 14 out of 132 who qualified belong to SC and 3 to ST. As many as six Scheduled caste employees who are senior to the applicant did not qualify in the written examination. It has further been stated that the representation of the applicant dated 25.12.91 was received by the Chief Personnel Officer on 13.1.92 and is under examination. No other candidate except the applicant has raised any complaint about the written test.

4. In a Miscellaneous Petition dated 10th February, 1992 the respondents have produced a copy of the order issued by the Personnel Branch of the Southern Railway dated 30.1.1992 (Ext.R1) along with a statement by the learned counsel for the Railways that the General Manager has seen the answer papers of the applicant and found that there were no irregularities in awarding the marks, that dummy numbers were given to the answer papers and he was satisfied that the marks were awarded on the basis of the answers written by the applicant and that the totalling of marks also has been done correctly.

5. In the rejoinder the applicant has stated that the averment of the respondents that the question papers for the three Subjects for written examination were set by three different Examiners, show that the examination was held contrary to the Statutory Rules. He has further stated that assigning of dummy numbers is not foolproof for keeping the identity of the candidates secret as the officials concerned sit in the same room. He has quoted Rule 204.4 of the Indian Railway Establishment Manual which



states that the setting up of the question papers and evaluation of the answer books should be done by the same officer of S.A. Grade Level-I, who need not be a member of the selection committee. He has also referred to Rule 202.1 of the Manual which states that the selection committee should be consisted of three Heads of Departments including the Chief Personnel Officer or the Additional Chief Personnel Officer and if none of them belong to Scheduled Caste/Scheduled Tribe a fourth officer belonging to Scheduled Caste or Scheduled Tribe holding the rank not lower than the Junior Administrative Grade may be nominated. He has argued that the selection committee as constituted, consisted of two officers, one to set the question papers and another to evaluate the answer books and this is also in violation of Rule 204.4. He has pointed out a discrepancy in the counter affidavit filed by the respondents inasmuch as while in para 5 they have stated that the question papers on each of the three Subjects were set by three different Examiners, in para 7 it is stated that one officer was nominated to set the question papers and the other for evaluating the answer papers. He has asserted that the General Manager himself did not reevaluate the answer papers and the communication at Ext.R1 is not proper disposal of his application.

6. In a further petition dated 19.2.92 the respondents have pointed out that the averment of the applicant that para 204.4 of the Manual of 1989 edition states that the same officer should set the question papers as well as evaluate the answer books and therefore, the test was not held according to the rules, is not valid. This is so because para 204.4 was superseded by the Board's letter dated 18.9.1987(Ext.R5) superseding all previous instructions. The 1989 edition of the Manual, referred to by the applicant, did not incorporate the Railway Board's ^{letter} ~~order~~ of 18.9.87. According to the annexure to that letter, the authority to set the question papers ~~and~~ the authority to evaluate the answer books can be different. The respondents have clarified that in accordance with this schedule, the question paper for the departmental portion was set up by the Chief Engineer who is the Principal Head of Department and the answer paper

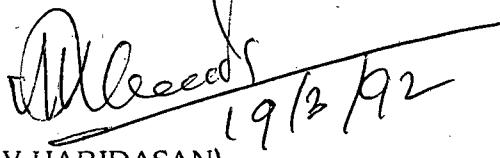
was evaluated by the Chief Track Engineer who is an officer of S.A.Grade. In accordance with the same schedule the question papers on other two Subjects namely Establishment and Financial Rules were set by SA Grade Officers, one for Establishment who has also evaluated the answer books and the other for Financial Rules who has also evaluated the answer books of Financial Rules.

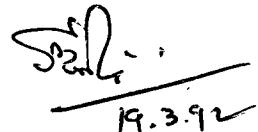
7. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We have also gone through the written arguments filed by both the parties. We also had the opportunity to see the answer papers of the applicant in the written examination. We ^{found} ~~find~~ that the applicant has been awarded 64 marks out of 120 on professional subject, 8 marks out of 15 on Establishment matters and 14 marks out of 15 in Financial Rules. In all he got 86 out of 150 in the written test. The minimum marks for being called for interview was fixed at 60% of 150, i.e., 90. The learned counsel for the respondents stated that persons with even 89.5 marks in the written test were not called for interview. From the perusal of the documents and the statements filed by the learned counsel for the respondents we are satisfied from Ext R1 that the General Manager himself has gone through the answer books and found that there is no irregularity in the award of marks. When the General Manager himself has gone through the answer books and found that there is no irregularity in evaluation of the answers and totalling we do not see any further scope of the applicant pressing for further reevaluation.

8. We do find that the counter affidavit filed by the respondents indicated scope of discrepancy between paras 5 and 7 in the matter of the officers who set the question papers and the officers who evaluated the answer books. It is true that the 1989 edition of the Indian Railway Establishment Manual quoted Rule 204.4 to say that the same officer who set the question paper would also evaluate the answer books, but this rule stood amended by the orders of the Railway Board at Ext R5 which allows for the departmental portion of the written test different officers for setting the question paper and evaluating the answer books. The respond-

ents have clearly indicated in their statement dated 19.2.1992 that the Railway Board's order dated 18.9.1987 were scrupulously followed in setting the question papers and evaluating the answer books. The names of the officers who set the question papers on the professional subject and those who evaluate the answer books have been mentioned. The same Establishment ^{officer} who set the question paper on Establishment matters also evaluated the answer books. The other SA Grade officer who set the question paper on Financial Rules has evaluated the answer books on that subject as prescribed by the Railway Board's order of 1987. The argument of the learned counsel for the applicant that since the 1989 edition did not incorporate the 1987 orders of the Railway Board, therefore, the Railway Board's orders will not be valid is a specious argument which deserves to be summarily rejected. The omission ^{of an order} in the printing of a Manual cannot take away the validity of the Railway Board's orders. The Manual only indicates the substance of the various orders and one has to go to the original orders for their proper interpretation and implementation. Whatever has been said in the prefatory part of the 1968 edition or the 1989 edition cannot undo the validity and authority of the Railway Board's orders at Ext.R5. We are also not in a position to accept a bland and sweeping allegation of bias nursed by the respondents as a class against the Scheduled Caste and Scheduled Tribe candidates. Out of 132 qualified candidates 14 belonged to Scheduled Castes and three to Scheduled Tribes. The applicant cannot be said to have been singled out because of his activities of the Association because as many as six Scheduled Caste ~~Caste~~ candidates who are senior to the applicant have also been disqualified in the written test.

9. In the conspectus of facts and circumstances we see no merit in the application and dismiss the same without any order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN