

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Dated 30th April, 1992

OA 149/92

A. RADHAKRISHNAN

V.

THE GENERAL MANAGER,  
SOUTHERN RAILWAY,  
PARK TOWN, MADRAS & 2 OTHERS

Shri P.V. Mohanan appeared for the applicant

Shri M.C. Cherian and Shri T.A. Rajan appeared for  
R 1 and 2

Shri K. Jaju Babu appeared for R-3

OA 837/91

E. SETHUMADHAVAN

V.

THE GENERAL MANAGER,  
SOUTHERN RAILWAY,  
PARK TOWN, MADRAS & 2 OTHERS

Shri P.V. Mohanan, Advocate for the applicant

Smt. Samathi Dandapani, Advocates for respondents 1 and 2

CORAM

The Hon'ble Shri N.V. Krishnan, Member (Administrative)

and

The Hon'ble Shri N. Dharmadan, Member (Judicial)

Index

Whether reporters of local papers may be allowed to see the  
judgment? *Yes*

To be referred to the Reporter or not? *Yes*

Whether their Lordships wish to see the fair copy of the  
judgment? *Yes*

To be circulated to all Benches of the Tribunal? *Yes*

...../

N. Dharmadan, M(J)

Identical question of law and fact arise for consideration in these two cases. Hence they are heard and disposed of by this common judgment based on the consent of the parties. For convenience we deal with the facts enumerated in OA 149/92.

2. Though the applicant is challenging Annexure-IV list of candidates selected for promotion to the post of Assistant Personnel Officer, Group-B (APO for short) in 75% quota, he has limited his prayer only to get the benefit of judgment of this Tribunal in OA:389/89 and a direction to the respondents 1 and 2 to promote him to the post of APO without insisting minimum of 15 marks for the viva voce examination.

3. The applicant joined the Southern Railway as Typist in 1963. He was promoted as Stenographer and Senior Stenographer in the years 1964 and 1972 respectively. Further promotions as Confidential Assistant Grade-II and I were given to him in 1985 and 1989 respectively. He has put in 28 years of meritorious service in the Southern Railway and he has received certificates of merit and cash awards from the Chief Medical Superintendent in 1978 and 1989. According to him he is fully qualified

and fit enough for promotion to the post of APO against 75% quota set apart for the departmental candidates. As per the notification, Annexure-I, he appeared for the written test held by the Railways on 29-12-90 and by the proceedings dated 25-2-91 he was declared to have ~~xxxx~~ qualified in the said test and assigned rank No.33 in the Annexure-II list. He also attended viva voce test held on 20-3-91 pursuant to Annexure-III order and fared well. He reliably understood that he got more than 35 marks in the written test and 20 marks for the records of service but he was given less than the minimum marks in the viva voce in spite of the fact that he fared well in viva voce test with a view to weeding him out of the select list of candidates which <sup>1</sup> Annexure-IV/~~was~~ published on 25-3-91. Persons who were at Sl.No. 34, 37 and 38 in Annexure-II list are juniors to the applicant but were included in the list only because of their close relation with the higher officials and personal affinity with them. Similarly rank holders at Sl.No.39,41,43,44,45,46 and 49 were also included in the list inspite of the fact that they are juniors to the applicant with low merits. The applicant further alleges that the candidates ranked as 20 & 27 in Annexure-IV list got lesser marks in written test and records of service. The aggregate marks obtained by these selected candidates are much lessor than that of the applicant. It is, therefore, apprehended that the applicant could have been weeded out from the select list because of the arbitrary manner of

award of marks to the candidates in viva voce test. It was done deliberately by the members of the interview Board. The discretion of the interview Board in granting marks in viva voce test was exercised in arbitrary and unreasonable manner which really caused prejudice to the applicant. It resulted in his non-selection and <sup>non</sup> inclusion in Annexure-IV list. Aggrieved by the illegal act of the interview Board, the applicant submitted representation before the second respondent on 18-4-91 placing reliance on the judgment of the Tribunal in OA 389/89. Connected OA 837/91 has been filed by Shri Sethumadhavan, whose rank in Annexure-II list is 36. In his case this Tribunal passed an interim order making it clear that all promotions to the cadre of A.P.O. from select list Annexure-IV shall be subject to final decision of the Tribunal in OA 837/91. When 18 persons from Annexure-IV list were promoted and posted as APO, the Railway informed them that their appointments are subject to the result of the judgment in OA 837/91, which is pending before the Tribunal. Subsequently, the Railway Board also issued clarification on 30-9-91 deleting the minimum marks for viva voce. The revised selection procedure reads as follows:

" (a) Written test

(ii) Selection

Prescribed papers	Maximum marks	Qualifying marks	remarks
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One paper of professional subject establishment in financial rates	150	90	(Out of 150 marks the profession subject will carry atleast 100 marks
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(b) Record of service in viva voce Maximum marks Qualifying marks

I. Viva Voce	25	} 30 (Including at least 15 marks in the records of service).."
II. Recon/ of service	25	

4. The respondents 1 and 2 and the third respondents have filed separate reply statements. They have denied all the averments and allegations in the application. Annexure R-III(A) produced along with the reply statement of the 3rd respondent shows that the SLP filed against the judgment of the Tribunal in 389/89 has been rejected.

5. At the time of arguments the learned counsel for the applicant submitted that this case is covered by the decision of this Tribunal in OA 389/89 (K. Yesodharan V. General Manager, Southern Railway, 1991(4) SLR 396). But the learned counsel for the respondents submitted that the decision is distinguishable in the light of the two other decisions in OA 540/90 (Ernakulam Bench) and OA 517/90 (Bangalore Bench). Shri M.C. Cherian, the learned counsel for the respondents 1 and 2 in OA 149/92 submitted that this Tribunal did not <sup>in OA 389/89</sup> strike down the minimum fixation of marks of 15 for viva voce under para 205 of IREM Chapter-II. His contention is that the

decision in OA 389/89 is mainly based on specific malafide allegation raised by the applicant therein against the members of the selection committee who conducted the viva voce test, and this is clear from various portions of the judgments.

6. This contention of Shri M.C. Cherian can be disposed by reading the judgment. It is true that we have examined the facts and available evidence in support of malafides but our ultimate conclusion is as follows:

"Under these circumstances the reasoning adopted by the Supreme Court in Ramachandran Iyers case apply here and we are of the view that the fixation of minimum percentage of marks for the viva voce test under 205 of the Indian Railway Establishment Manual cannot be supported. It seems unreasonable and arbitrary...."

xxxxx      xxxxx      xxxxx      xxxxx      xxxxx

15. Having considered the matter in detail in the light of the available records and materials we are of the view that the fixation of 15 marks as minimum for a pass in the viva voce test in this case is unnecessary and arbitrary and unreasonable. The test for selection to the post of APO could be proceeded without giving any room for doubt or dubious action in the exercise of power by the selection committee in viva voce test if no minimum percentage of marks was fixed for such viva voce test. In this view of the matter we hold that the above fixation of minimum marks of 15 for viva voce test is illegal and we hereby quash the same..."

7. In the light of the clear findings, we see no merit in the argument of the learned counsel Shri M.C Cherian and we reject the same. As stated above, Smt. Sumathi Dandapani, appearing on behalf of the respondents in OA 837/91 place reliance on two unreported decisions in OA 540/90 (Bangalore Bench) and OA 517/90 (Ernakulam Bench). She submitted that the decision in O.A. 389/89

requires re-consideration. She also relied on the decision reported in Mohinder Sain V. State of Pubjab 1991 (1) SCC 662, Vikram Singh V. State of Hariyana, (1991) 1 SCC 868 and State of Pubjab V. Rafiquddin and Others, 1987 (Supp) SCC 401.

9. In O.A. 540/90, this Tribunal considered the claims of a Shutter<sup>n</sup> for promotion and his challenge against Annexure-IV by which some persons were promoted to the post of Passenger Driver. The Tribunal dismissed the application but placed reliance on Asok Kumar Yadav's case, AIR 1987 SC 454, xxxxx Mohinder Sain V. State of Pubjab, 1991 (1) SCC 662 and Vikram Singh's case (supra) and considered the question of fixation of maximum percentage of marks for viva voce test. After considering the decisions the Tribunal held as follows:

"What emerges from the observations of their lordships is that the weightage to be given for interview 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.."

10. There was no finding on the issue considered in this case nor did the Tribunal specifically consider the issue which arises for consideration in this case viz. the fixation of 15% of marks for viva voce test as qualifying minimum. The decision in OA 389/89 was not

brought to to the notice of the Tribunal. However, the decision in OA 540/90 is distinguishable and would not help the applicant.

11. Next decision relied on by the learned counsel is in OA 517/90 which was rendered by the Bangalore Bench of the Tribunal. There the Tribunal was considering the legality of the appointment of R-3 and 4 to the post of Assistant Yard Master/Goods Guard/Mail Guard etc. as per the order No.608(8)/ESE/CON/Vol.III dated 11-4-90 and the scope of Rule 219 of chapter-II of IREM Vol.II which contains the following fixation of marks for the subjects:

	Maximum marks	Qualifying marks
" (i) Professional ability	50	30
(ii) Personality, address leadership and academic qualification	20	--
(iii) A record of service	15	--
(iv) Seniority	15	--

Note: (i) The item 'record of service' should also take into consideration the performance of the employee in essential training schools/institutes apart from the examining CRs and other relevant records.

(ii) Candidates must obtain a minimum of 30 marks in professional ability and 60% marks of the aggregate for being placed on the panel. Where both written and oral test are held for adjudging the professional ability the written test should not be less than 35 marks and the candidates must secure 60% marks in written test for the purpose of being called in viva voce test. The procedure is also applicable for filling up of general posts. Provided that 60% of the total of the marks prescribed for written examination and for seniority will also be the basis for calling candidates for viva voce test instead of 60% of the marks for the written examination..."



Unlike in para 205 of IREM, Rule 219 does not prescribe a separate qualifying minimum of 15% of marks for viva voce test. Considering the observation in para 33 of Mohinder Sain's case, the Tribunal held as follows:

"The applicant cannot, therefore, in this case successfully urge taking recourse to the ruling in Mohinder Sain Garg's case, that the marks allotted under various heads as indicated in Rule 219 is arbitrary..."

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xxxxx

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"There is nothing to show that the marks awarded under these heads are whimsical or haphazard. In these circumstances, we find no merit in the contention urged that the process of selection and the allotment of marks for viva test is arbitrary or that no guidelines have been indicated for proper assessment and awarding of marks under the various heads.."

The Tribunal further held that "there is no allegation of any bias or malafides imputed towards any of the members of the selection committee.." In this case there was also no material to support the allegations of malafides, discrimination and prejudice against the applicant on account of award of marks. Accordingly, the applicant<sup>ion</sup> was dismissed. According to us this decision is distinguishable because the Court did not either consider the fixation of minimum of 15% of marks for viva voce test or the prejudice caused to the candidates on account of the arbitrary exercise of discretion. Moreover under rule 219 of IREM<sup>✓</sup>, the candidates who obtained minimum of 30 marks in the professional ability

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and 60% marks in aggregate alone will be placed in the panel of candidates. The Railway contended before the Tribunal that though the applicant was declared eligible to appear for viva voce test he was not eligible for being placed in the panel as he did not secure minimum marks of 60 percentage in the aggregate for being empanelled. We are of the view that the position is entirely different in the instant case. Since the applicant did not get minimum qualifying marks for viva voce, he was not included in the Annexure-IV list. The applicant has specifically alleged that the persons having ranks 37, 34, 38, 39, 41, 44, 45, 46 and 49 in Annexure-II list are juniors to the applicant but they were selected for the post of APO merely on account of their close relation or personal affinity towards the higher officials of the Railways. Specific allegations of the applicant in para 3 of the application have not been countered with sufficient details. Hence the decision in OA 517/90 is ~~is~~ distinguishable on the facts and does not apply to the fact of the case on hand.

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12. In the two decisions viz. Mohinder Sain's case and Vikram Singh's case, relied on by the learned counsel for the respondents 1 and 2, the question as to the fixation of minimum qualifying marks for the viva voce and the prejudice caused to the candidates on account of the arbitrary award of the marks for the viva did not arise specifically for consideration. In the former case xxxxx the following two contentions were considered by the Supreme Court. (i) For selecting 54 candidates the selection committee called more than 1200 candidates and conducted the interview in a casual, superficial and sloppy manner so that the assessment made at the interview can never reflect the true measure of the personality of the candidates and (ii) keeping 25% marks for interview gave arbitrary power to the selection committee and the selection of candidates on the basis of such higher percentage for interview was contrary to Article 14 of the Constitution of India.

13. The Supreme Court after an exhaustive consideration of all the cases on the subject found that the directions in Ashok Kumar Yadav case, AIR 1987 SC 454, which was decided in 1985, that the P.S.C. should follow the allocation of marks for viva voce test as done by the UPSC, which was 12.2 per cent of the total marks, should have been followed by the Govt. in this case also. The decision reads as follows:

"We deem it proper to lay down after taking the view the dictum of all the authorities decided so far that the percentage of viva voce test in the present case at 25% of the total marks is arbitrary and excessive...."

The above extract is from the judgment of the Supreme Court in Mohinder Sain's case. But the Court added one more sentence and it reads as follows:

"...but taking note of the situations and conditions prevailing in our country, it would not be reasonable to have the percentage of viva voce marks more than 15% of the total marks in the selection of candidates fresh from College/School for public employment by direct recruitment where the rules provided for composite process of selection namely written examination and interview.

This sentence does not import the idea that individual minimum for viva voce test shall be 15%. However, it can only be interpreted to mean that the total marks for the viva voce beyond 15% would be unreasonable and arbitrary. But this was not the real issue arose for consideration in that case. The Court considered only the validity of the fixation of the 25% of the total marks for viva voce test and held that it is arbitrary and excessive and because of the failure to follow earlier dictum to fix 12.2 of the total marks, the selection is bad. However, even if the observation of the Supreme Court in Mohinder Sain's case is considered as law under Art.141 of Constitution, it can only be treated as guidance and general directions to be followed in future. It only says that it would be unreasonable to fix more than 15% of the total marks in the selection for viva voce test where the rules provide for a composite process of selection namely written test and interview. It does not specify the fixation of minimum

marks for viva voce test and does not invalidate the fixation of 15% of marks as qualifying minimum for a viva voce test as has been done in the instant case. Hence the decision would not apply to the facts of the case in hand. It is distinguishable on this ground.

14. It is also to be remembered in this connection that there are vast differences in its operation when 15% is fixed as the maximum marks for a viva voce test and as a minimum qualifying marks for an interview. A candidate who gets only one mark in the viva voce <sup>may</sup> get selection if on a comparative evaluation he gets the compensatory marks in the written test and records in cases where 15% of marks is fixed as the maximum percentage for viva voce test. On the other hand if 15% is fixed as minimum marks for viva voce even if a candidate gets cent percentage for the written test and records he would fail if he does not get 15 marks and qualify for viva voce test. This causes greater prejudice to meritorious candidates. Where the selection committee has some grudge against any candidate, he can be easily awarded less than the minimum and ousted from the field for the scope for arbitrary award of marks in the viva voce test is very much greater in such cases. Candidates can be weeded out by denying the qualifying minimum fixed for viva voce. Generally, in the case of viva voce test it would be difficult to make a cross verification about the award of marks at a later stage after the interview as in the case of written test for no fixed formula had been followed by the authorities in this behalf.

15. The same judges who decided Mohinder Sain's case decided the case reported in Vikram Singh's case (1991 (1) SCC 686) also on the same day taking identical view. In the opening paragraph of the judgment it has been made clear that there was no minimum marks for the viva voce test in that case. So the court did not consider the issue and this case is also distinguishable applying the same reasoning stated above. The next case, Mohinder Kumar V. Rajiv Goil, AIR 1991 SC 1807, followed Mohinder Sain's case in regard to the fixation of 15% marks to be kept for interview as the maximum and held that this maximum can be reduced to 10% if the mode of selection includes a group discussion so that 5 % marks can be allotted to the Group discussion as well. But in all these cases the only question which comes up for consideration is the fixation of maximum marks in the viva voce test and the bad effect on the selection thereof.

16. The only decision cited at the bar which has some bearing on the fixation of minimum marks for the interview is State of UP V. Rafiquddin 1987 (Supp) SCC 401. This case deals with the question of selection and seniority of Munisiffs in the U.P. Nyayik Seva under the U.P. Civil Service (Judicial Branch) Rules 1957. Under Rule 19 proviso a candidate "has to obtain in the viva voce test such sufficiently high marks that he is suitable for service"

The marks obtained in viva voce will be added to the marks obtained in the written papers and the candidates place will depend on aggregate of both. By an amendment to the rule it was no longer necessary for a candidate to qualify independently in the viva voce. The Commission shall approve all the candidates to qualify independently in the viva voce. The commission shall approve all the candidates for appointment who obtained 40% of the marks or more in the aggregate even if they failed to secure the minimum marks for the viva voce test. The Supreme Court held "In

"In the instant case there has been no allegation of malafide or arbitrariness against the commission which held viva voce test. In the circumstances we do not consider it necessary to set aside selection or issue any direction to the public Service Commission or to the State Govt. as rule, relating to viva voce test have already been amended. After the amendment of the Rules on January 31st 1972, no minimum qualifying marks can be fixed by the Commission for viva voce test and therefore it is not necessary to issue any direction in the matter..."

In the light of the clear and unequivocal findings this case is not an authority to support the contention now raised by the learned counsel for respondents 1 and 2 that our decision in OA 389/89 requires re-consideration. We reject that contention.

17. It is well settled proposition of law that no case is an authority for the proposition not arising and considered in the case. "subjectum secundum material" is the principle. The Supreme Court in State of Orissa V. Sudhansu Sekhar Misra, AIR 1968 SC 647, held "

"A decision is only an authority for what it

it actually decides. What is the essence in a decision is its ratio and every observation found therein, not what logically follows from various observations made in it." It was held that logically it follows from the ratio.

The Supreme Court in State of U.P. V. Ram Chandra, AIR 1976 SC 2547 said

"It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusions based upon facts which may appear to be similar. One additional or different fact make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts. See also Regional Manager V. Pawan Kumar, AIR 1976 SC 1765.

18. The learned counsel for the applicant cited the decision reported in Asok V. State of Karnataka, AIR 1992 SC 80.

The Court observed as follows:

"However, the Rules are clearly in violation of the dictum laid down by this Court in the above referred cases and in case the marks for viva voce would have been kept say at 15% of the total marks, the appellants before us were bound to be selected on the basis of marks secured by them in interview, calculated on the basis of converting the same to 15% of the total marks..."

This case does not help the applicant for the Supreme Court followed the earlier cases, Asok Kumar Yadav and Mohinder Sain<sup>and</sup> held that the fixation of 33.3% of the total marks for the interview is bad. However, the applicant is bound to succeed in the light of this Tribunal's decision in OA 389/89.

19. Recently a more or less similar issue concerning the fixation of minimum marks for interview came up for consideration before this Bench (same bench) in OA 21/91 and connected case. We have held as follows:



"23. We can now consider the "spread" of marks in the present case to find out if allocation of marks for the interview out of a total of 100 marks is totally unreasonable and arbitrary and has resulted in using this as a lever to select candidates who otherwise might not have stood any chance for selection.

24. The persons included in the panel of 1990 examination are shown in Annexure-I. The records of the original selection have been produced. It is seen therefrom that the maximum mark scored was 201.5 out of 300, as against a minimum of 50% i.e. 150, required to be considered for viva voce, which is less than the minimum of 155 actually scored. The spread of marks is thus 51.5 out of total of 300, which works out to around 17%. This will be 15.5 only if the lowest mark secured is concerned. As against this, assuming that in the viva voce test also a minimum of 50% (i.e. 15 marks) was prescribed-Annexure-R.2 memo suggests that there was no minimum-the maximum marks secured out of 30 is 29. The spread is 14 out of a maximum of 30 marks i.e. 47%. The spread will be more significant (70%) if reckoned from the minimum mark of 8 given."

XXXXX            XXXXX            XXXXX            XXXXX            XXXXX

Is it possible to establish this, for noboday has a record of

27. It is neither necessary to establish that the high marks in the interview have been given without being deserved, nor what transpired in the interview. But three facts stand out viz. that the 'spread' of marks is unusually large and that the first three position in the panel have been determined entirely by marks given in the interview and that the marks given are unusually large. That is sufficient for us to hold that this selection is vitiated by the deliberate use of the interview as a lever to manipulate the results and this calls for interference.."

20. We have also considered the objection raised by the respondents that the application is to be dismissed due to the failure of the applicant to implead all the persons selected for appointment as A.P.O. The applicant has not challenged the appointment of selected candidates. His limited prayer is only to consider his claim for promotion to the post of A.P.O without insisting minimum qualifying marks for viva voce test fixed under the Rules. This Tribunal has already considered this issue and quashed the relevant rule. The applicant only seeks the benefit of the judgment. Further

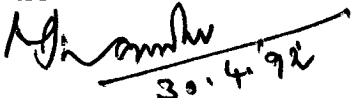
it is revealed from the reply statement and the order of appointment to the persons who have already been promoted that their appointment is subject to the out come of the application pending before the Tribunal. This is sufficient ~~xxxxxxxxxxxxxxxxxxxx~~<sup>b</sup> notice to such appointees. If they are really aggrieved by the pendency of this case and decision there-to they could have filed an applications for impleading in this case. No such applications <sup>have</sup> been filed in this case. Under these circumstances, we see no force in the contention of the respondents and accordingly we reject the same.

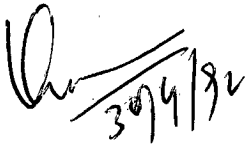
21. In the result, we follow the judgment in OA 389/89 and allow the application with the following directions.

Accordingly, we direct the respondents to consider the applicant to the post of A.P.O. as if there is no minimum marks for the viva voce test fixed under the para 205 of the I.R.E.M. Chapter-II. If he is found eligible for promotion in terms of aforesaid directions he should be promoted to the post of A.P.O. along with other persons already included in the select list giving appropriate place in accordance with his marks with all consequential benefits. This shall be done within a period of three months from the date of communication of this judgment. Same direction is to be followed in the connected case also.

22. The Original Applications <sup>are</sup> accordingly allowed.

There shall be no order as to costs.

  
(N. S. Dharmadan)  
Member (Judicial)

  
(N. V. Krishnan)  
Member (Administrative)

30-4-92

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

R.A. 74/92 in  
O. A. No. 149/92  
P. A. No.

189

DATE OF DECISION 2.6.92

The General Manager, Southern Applicant (s)  
Railway, Park Town, Madras and another

Mr. M.C. Cherian Advocate for the Applicant (s)

Versus

A. Radhakrishnan & another Respondent (s)

Mr. P. V. Mohanan Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? <sup>9</sup>
2. To be referred to the Reporter or not? <sup>no</sup>
3. Whether their Lordships wish to see the fair copy of the Judgement? <sup>no</sup>
4. To be circulated to all Benches of the Tribunal? <sup>no</sup>

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The respondents 1 & 2 in the original application have filed this review application. The main ground of the review is that the Tribunal proceeded on the ground that the select list Annexure-4 need not be disturbed for the promoting the applicant and that this is a misreading of the contentions of the respondents.


2. We have considered <sup>the</sup> aspect in the proper perspective based on the pleadings and contentions. Para 20 and 21 of the judgment deal with this issue. The persons who were already included in the select list were aware of the pendency of this case and they did not care to come on the

party array. Moreover, we only directed to include the petitioners also in the select list granting appropriate place in the same. We did not give any adverse direction which would cause any difficulties or inconvenience to the respondents. The respondents <sup>by right</sup> have not <sup>been</sup> bound to seek review of the judgment for safeguarding the interest of persons who are not parties to the original case. However, we see no ground for interference in this matter and entertain the review application. There is no ground for review. Hence, it is only to be dismissed. Accordingly, we dismiss the Review Application.



(N. Dharmadan)  
Judicial Member

2.6.92



(N. V. Krishnan)  
Administrative Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

R.A.99/92 in  
O. A. No. 149/92  
~~XXXXXX~~

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DATE OF DECISION 18.9.92

M.Subramanian & 5 others Applicant (s)

Mr.R.Singaravelan Advocate for the Applicant (s)

Versus

A.Radhakrishnan & 3 ors. Respondent (s)

\_\_\_\_\_  
Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. **N.V.Krishnan, Vice Chair man**

The Hon'ble Mr. **N. Dharmadan, Judicial Member**

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

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

This Review Petition has been filed by six petitioners who are not parties in the original application. On a perusal of the petition it can be disposed of by circulation.

2. The main grievance of the petitioners is that this Tribunal did not consider the decisions of the Supreme Court before disposing of the two connected cases and they were not impleaded in these cases. They also contended that if the direction in para 21 of the judgment in O.A. Nos. 149/92 and 837/91 is implemented they may be affected adversely.

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3. All the decisions of the Supreme Court and Tribunal relevant for the disposal of the cases and cited at the bar were duly considered by us while passing judgment in these connected cases on 30.4.1992.


4. These petitioners were not parties, but the respondents 1 to 3 in the O.A. have raised this objection at the time of hearing and contended that affected parties are not impleaded and they would be adversely affected if the application is allowed accepting the contentions raised by the applicants in O.A.149/92 and 837/91. This contention was specifically considered in para 20 of the judgment. These petitioners were given sufficient notice by the Railway when appointment orders were issued to them. Their appointments were subject to the outcome of the pending cases viz. O.A. 149/92 & 837/91 referred to above. In spite of notice they did not choose to come to the party array before disposal of the cases. Hence, they are defaulters and they cannot now be allowed to come to the party array in these cases. This review application cannot be allowed for giving them a further chance in this behalf as contended by them in this review application.

5. Further, from a reading of the direction it is clear that the implementation of the direction would not adversely affect the petitioners. We only directed the Railway to consider the petitioners in the O.As. to the post of A.P.O. as if no minimum marks for the viva-voce test and promote them as A.P.O. only in case they are found eligible for promotion on a consideration of their claim in the light of the directions. No injury or injustice would be caused to the petitioners in this review application. They have no case that the consideration of the

applicants in the O.A. 149/92 and 837/91 as indicated above would affect their chance of <sup>posting and ✓</sup> promotion in any manner.

6. In this view of the matter we see no justification in allowing the review petition. In fact the applicants have not made out any ground for review of our judgment dated 30.4.92. The review petition is only to be rejected. We do so. M.P.No.1078/92 is also to be dismissed. Accordingly we dismiss the same. R.A.No.74/92 already filed by the Railway raising similar ground for review and rehearing was dismissed as per our order dated 2.6.92. That order is also extracted below:-

"2. We have considered this aspect in the proper perspective based on the pleadings and contentions. Para 20 and 21 of the judgment deals with this issue. The persons who were already included in the select list were aware of the pendency of this case and they did not care to come on the party array. Moreover, we only directed to include the petitioners also in the select list granting appropriate place in the same. We did not give any adverse direction which would cause any difficulty or inconvenience to the respondents. The respondents have no right to seek review of the judgment for safeguarding the interest of persons who are not parties to the original case. However, we see no ground for interference in this matter and entertain the review application. There is no ground for review. Hence it is only to be dismissed. Accordingly, we dismiss the Review Application."

  
18.11.92

( N.DHARMADAN )  
JUDICIAL MEMBER



( N.V.KRISHNAN )  
VICE CHAIRMAN

v/-

PSHM & ND

(14) Mr PV Mohanan  
Mr MC Cherian

Learned counsel for the respondents to file reply to the CCP within 10 days with copy to the learned counsel for the applicant, who may file rejoinder, if any, within 1 week thereafter. Post on 26.8.92.

ND

PSHM

10.8.92

PSHM & ND

CCP 102/92 in  
OA 149/92

Mr PV Mohanan for applicant.

Mr. MC Cherian (R.1-2) } Represented by  
Mr. Jaju Babu (R.3) } Sr. Advocate,  
Mr. Tyaga Rajan.

Mr. Tyagarajan, Sr. Advocate who appeared on behalf of the respondents produced an order dated 20.8.92, copy of which has been served on the applicants. From the order it is clear that both the applicants have been absorbed in terms of the direction of the judgment. The learned counsel for the applicant is satisfied with that order. Hence we close the CCP and notice discharged.

(N Dharmadan)  
Judicial Member

(Habeeb Mohamed)  
Administrative Member

26.8.92

Counter Affidavit  
by R-1 Filed on  
21/8/92

Counter Affidavit  
by R-2 Filed on  
21/8/92

24/8  
26/8

P.O.  
27/8  
m BSM

Pencil  
order in case  
issued on  
28/8/92

92