

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 172/91 199

DATE OF DECISION 24.5.93

G.Ravindran Nair \_\_\_\_\_ Applicant (s)

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

Versus

Union of India through the Respondent (s)  
General Manager, Southern Railway,  
Madras & 3 others.

Smt.Sumati Dandapani (R. 1-3) Advocate for the Respondent (s)  
Mr.P.Ramakrishnan (R. 4)

CORAM :

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

The Hon'ble Mr. R.Rangarajan, Administrative Member

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

## JUDGEMENT

### MR.N. DHARMADAN, JUDICIAL MEMBER

Applicant, a Senior Stenographer working in the Office of the Executive Engineer (Construction), Southern Railway, Kayamkulam, is aggrieved by the denial of the 2nd respondent to regularise ~~him~~ <sup>him</sup> on to the post of Senior Stenographer considering his seniority without subjecting ~~him~~ <sup>for a</sup> suitability test.

2. According to the applicant, while he was working in the Madras Division he was promoted as Senior Stenographer on 7.5.79 as per Annexure-A1 series, after assessing his suitability for the post. He was sent back to the open line and absorbed at Trivandrum Division in February 1980 in his substantive post of Typist. He was also regularised as

Junior Stenographer as per order dated 17.2.81. He was given ad-hoc promotion as Senior Stenographer in the Trivandrum Division as per order dated 13.8.82. He was reverted from the ad-hoc post of Senior Stenographer with effect from 17.2.83 and he was transferred to work under the Executive Engineer (Construction), Trivandrum. While working in that office he was promoted to officiate as Senior Stenographer after assessing his suitability by Annexure-A3 order dated 20.6.83. While working in that post the applicant was called for an Efficiency Bar Test in the year 1986. He was declared successful in that test when he appeared for the same. Annexure-A4 Office Memorandum dated 11.11.86 shows that the applicant, consequent on passing the Efficiency Bar Test, was given the scale of Rs.425-700 fixing his pay as Rs.515/- p.m. with effect from 1.10.1986. When a vacancy of Senior Stenographer arose in the Trivandrum Division, the applicant and others were called for a test in stenography as per Annexure-A5 letter dated 26.11.90. The applicant attended the test on 30.11.90. Six persons including the applicant were called for the test. The 4th respondent was not called for the test held on 30.11.90. Without publishing the result of the test the 2nd respondent issued Annexure-A6 on 11.12.90 proposing to hold a stenography speed test for considering candidates for promotion to the scale of Rs.1400-2300. According to the applicant, since he has already passed the test held on 30.11.90, he filed the application under Section 19 of the Administrative Tribunals Act challenging Annexure-A6. When the respondents filed the reply stating that the applicant has failed in the suitability test held on 30.11.90 producing Annexure-A9 office memorandum, the applicant amended the O.A. challenging Annexure-A9 also. The prayers in this application are extracted below:-

"(a) to call for the records leading to issue of Annexure-A6 and A9 and quash the same in so far as it appears to the applicant.

to direct the respondents to consider the applicant for being regularly promoted to the post of senior stenographer according to his seniority and without subjecting him to any further stenography test.

to issue such other orders or directions as deemed fit and necessary by this Hon'ble Tribunal in the facts and circumstances of this case. "

3. Respondents 1 to 3 have filed a reply before the amendment of the O.A. The respondents have stated that unless the applicant passes the prescribed suitability test in stenography i.e. 100 words per minute, he cannot be regularised against the post of Senior Stenographer in the scale of pay Rs.1400-2600. The applicant was subjected to a suitability test along with others on 10.11.1982 but he was not successful. Shri P.Krishnan Nair (4th respondent) passed in that test. Annexure-R1 is the note indicating the result of the test. It shows that Shri T.N.Bhaskaran Nair and Smt. S.K.Swarnam who were senior to the applicant were also qualified and hence they have been regularised. When a regular vacancy was likely to arise in the ~~Dept.~~ in 1991 a suitability test was conducted on 30.11.90. The applicant was allowed to appear along with others but he was not successful. The 4th respondent was not called for the test as he had already passed the suitability test in November 1982. As there were some representations from various sources stating that all eligible candidates could not appear in the test held on 30.11.90, another opportunity was also given to such of the candidates who could not appear on 30.11.90 by conducting a further test on 31.1.91. At that stage the applicant approached this Tribunal and obtained an interim order in the following manner:-

" Having heard the parties, we are of the view that since the applicant desires that his performance may be judged on the basis of the test held on 30.11.90, the respondents have no

right to compel the applicant again to appear on 31.1.91. Therefore, we direct the respondents to judge the applicant's suitability on the basis of the examination held on 30.11.90 and the applicant, therefore, cannot be compelled to appear in the examination to be held on 31.1.91 as per Annexure-A6."

4. Having heard the counsel at length we have decided to direct the 2nd respondent to conduct a suitability test for considering the regular promotion of the applicant in which the 4th respondent also should be allowed to participate on the understanding that in case the applicant is found to be suitable in that test, the reliefs claimed by the applicant in this application are to be granted. We passed the following order on 7.4.93:-

" Having heard the learned counsel on both side and taking into account the controversy in this case we feel that it would be fair and proper to direct the 2nd respondent to conduct a fresh suitability test for promotion of the applicant/4th respondent as per the existing rules for the same. The final decision in the case can be taken after getting the report from him. In the suitability test both the applicant and Respondent-4 shall be allowed to participate. The test should be conducted within a period of two weeks after giving due intimation to the applicant and Respondent-4 about the date and time and the venue where the test is going to be held. The 2nd respondent is directed to submit the report/result of the test on the next posting i.e. 28.4.93."

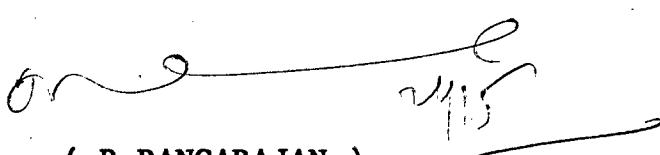
5. After complying with the direction, the 2nd respondent submitted the report stating that both the applicant and the 4th respondent have failed in the suitability test.

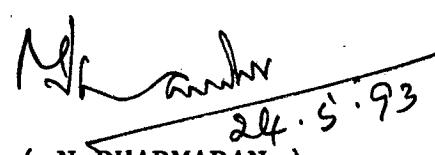
6. The 4th respondent who has been served with the notice and who could not file any reply filed an M.P. Diary No.4280/JI for accepting the reply, along with the reply,<sup>on 27.4.93.</sup> We have heard the M.P. and we allowed ~~the~~ same. The learned counsel Shri P.Ramakrishnan, appearing on behalf of the 4th respondent also appeared before us on 28.4.93 and submitted that his client has already passed a suitability test in the year 1982 and he was exempted from appearing again in the light of the provisions contained in para 214 (c) iv of the Indian Railway Establishment Manual and he did not

appear for the written test. However, as directed by this Tribunal in the order dated 7.4.93, the 4th respondent also appeared for the suitability test but the failure should not be taken to his disadvantage.

7. In the nature of the relief as extracted above, it is not necessary for us to go into the contention of the 4th respondent and other issues. We leave it open.

8. In view of the fact that the applicant was not successful in the suitability test conducted pursuant to the order of this Tribunal dated 7.4.93, the O.A. is to be dismissed and accordingly we do so. There will be no order as to costs.

  
( R. RANGARAJAN )  
ADMINISTRATIVE MEMBER

  
24.5.93  
( N. DHARMADAN )  
JUDICIAL MEMBER

v/-