

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 263 of 1999

Thursday, this the 2nd day of August, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. A. Ramachandran,
S/o V.K. Narayana Panicker,
Server, Trivandrum-Rajkot Express,
C/o Catering Inspector, Base Depot,
Southern Railway, Trivandrum,
Permanent Address: C/o C.K. Ravindran,
Chutheth House, Pachalam PO, Kochi-12Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Union of India represented by the
Secretary to the Government of India,
Ministry of Railways,
Rail Bhavan, New Delhi.
2. The General Manager,
Southern Railway, Headquarters Officer,
Park Town PO, Madras-3
3. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division, Trivandrum-14
4. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum-14
5. C. Lakshamanan, Server, Southern Railway,
Kerala Express, through the Senior Divisional
Personnel Officer, Southern Railway,
Trivandrum Division, Trivandrum-14
6. P. Sivadasan, Server, Southern Railway,
Trivandrum Central, through the Senior Divisional
Personnel Officer, Southern Railway,
Trivandrum Division, Trivandrum-14Respondents

[By Advocate Mr. K.V. Sachidanandan (R1 to R4)(rep.)]
[By Advocate Mr. P.N. Purushothama Kaimal (R6)(rep.)]

The application having been heard on 2-8-2001, the
Tribunal on the same day delivered the following:

.....2.

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks the following reliefs:-

- "(a) Declare that the interview conducted on 26.11.98 in terms of Annexure A2 is arbitrary, discriminatory, contrary to law and unconstitutional.
- (b) Call for the records leading to the issue of Annexure A3 and quash the same to the extent it includes the respondents 5 and 6 and excludes the applicant.
- (c) Direct the respondents to prepare a fresh panel of selected candidates including the candidates who have qualified in the written examination and arranging them in the order of seniority duly including the applicant in the same and to grant the consequential benefits thereof.
- (d) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. The applicant is working as a Server in Southern Railway Trivandrum Division. In terms of A1, applications were invited from eligible employees for filling up of 33 1/3% vacancies in the category of Commercial Clerks from among suitable Group D staff of Operating and Commercial Departments. He appeared for the examination and he qualified in the written examination as brone out by A2. In A2 it is indicated that there was a viva voce on 26-11-1998. He was not aware of the legal position on that date being a Group D employee. He participated in the viva voce. Final panel was published as per A3. As per A3, respondents 5 and 6, who are junior to the applicant, have been included in preference to him. As per para 189 of the Indian Railway Establishment Manual Vol.I, interviews are held as part of the selection only where considered necessary. To the best of his information, it has

not been considered necessary to conduct an oral test/viva voce for the selection in question by the General Manager. That is the reason why in A1 it has been clearly indicated that the selection is based only on the written test.

3. Official respondents resist the OA contending that a candidate who took part in the examination cannot make a complaint after completion of the selection proceedings merely on the ground that he has not been selected. A1 specifically mentions of written test and viva voce. Instructions on the subject of promotion of Class IV staff to Class III service (25% quota) stipulate that the examination will consist of a written test followed by an interview. It is further stated that marks for the final selection will be allotted as 50 for written test, 25 for the interview and 25 for service records. Interview in the instant selection was done as provided for in the standing instructions from the competent authority.

4. The 6th respondent contends that the applicant appeared in the selection test and came out unsuccessful. He is estopped from raising the contention that the viva voce is unnecessary.

5. The learned counsel appearing for the applicant argued that the official respondents have gone wrong in not arranging the name of the candidates who have come out successful shown in A2 in the order of seniority. At this juncture, it is pertinent to note that in para 4-E of the OA it is specifically stated thus:-

"In Annexure A2, the applicant is at Sl.No.6. Annexure A2 is arranged in the order of inter-se seniority."

..4..

So, the argument advanced across the bar by the learned counsel for the applicant is diametrically opposed to the pleadings contained in the OA. That being so, this plea cannot be accepted.

6. Another ground pressed into service by the learned counsel for the applicant is that the test should consist of written test only and not of interview and further that an interview if at all to be done, it is to be done only if so considered necessary by the General Manager and the General Manager has not considered it necessary.

7. In the OA it is stated that in A1 it was clearly indicated that the selection is based only on written test. We are constrained to say that this averment is totally incorrect and the applicant could not and should not have made such an averment in the light of A1, wherein it is specifically stated in the penultimate paragraph that:

"The selection consists of written test and viva voce test."

So, this is a clear case that the applicant, having been aware of A1 and having produced it, is putting forward a plea which is against what is specifically mentioned in A1.

8. The applicant is now challenging the legality of the viva voce conducted. He appeared for the viva voce without any murmur. It cannot be said for a moment that he was not aware of it, since it is his admitted case that it is in pursuance of

..5.



At notification he applied for the post. That being so, he was very well aware of the viva voce and cannot now pretend ignorance of it having lost in the selection.

9. With regard to the stand of the applicant that viva voce was not conducted after having found the same necessary by the General Manager. Official respondents have clearly stated in paragraph 5 of their reply statement that instructions on the subject of promotion of Class IV staff to Class III service (25% quota) stipulate that the examination will consist of a written test followed by an interview. It is not denied by filing a rejoinder.

10. The learned counsel for the applicant during the course of argument submitted that MA No.724/2001 was filed by the applicant for production of the standing instructions and the official respondents have not produced the same. The MA No.724/2001 was dismissed on 16-7-2001. That being so, the submission of the learned counsel for the applicant that though an MA was filed for production of the standing instructions by the official respondents they have not produced the same, cannot be accepted.

11. The learned counsel for the applicant further argued that there is no provision for awarding 25 marks for service records since there is no confidential report kept for Class IV employees. On this aspect, official respondents have specifically stated that as per instructions on the subject of promotion of Class IV staff to Class III service (25% quota) it is stated that marks for the final selection will be allotted


as 50 for written examination, 25 for interview and 25 for service records. This is also not denied by the applicant by filing a rejoinder.

12. The position is that A1 specifically mentions that the selection will consist of a written test and viva voce, that the applicant after publication of A2, the list of candidates who have come out successful in the written test, appeared for the viva voce without any murmur and that now having lost in the final selection is turning round and saying that the whole selection is vitiated.

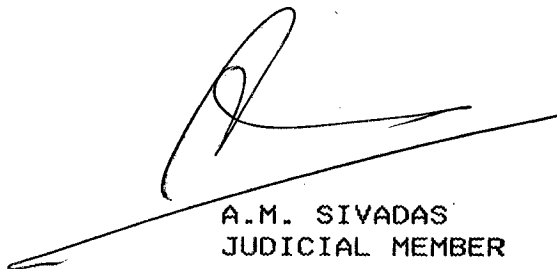
13. In Madan Lal & Others vs. State of J&K & Others [(1995) 3 SCC 486] it has been held that the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful.

14. We do not find any merit in this Original Application and accordingly, the same is dismissed. No costs.

Thursday, this the 2nd day of August, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A1 True copy of the notification No. V/P.531/III/CC/Vol.5 dated 25-6-98 issued by the 4th respondent.

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2. A2 True copy of the letter No. V/P.531/III/C/
Vol.5 dated 18-11-98 issued by the 4th
respondent.
3. A3 True copy of the letter No. V/P.531/III/CC/
Vol.5 dated 7-12-98 issued by the 4th
respondent.