

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.30/2003

Monday..... this the 5th..... day of December 2005

C O R A M:

HON'BLE SMT.SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

S.Sasi, Senior Section Engineer (Bridges)
Railway Electrification, Indian Railways
Thripunithura, R/o Kallumpurathu Veedu,
Nedumoncavu P.O, Koodal Village,
Adoor Taluk, Pathanamthitta Distt.

Applicant.

(By Advocate Mr. Vadakara V.V.N.Menon)

Vs.

- 1 Union of India represented by the
General Manager, Southern Railway
Park Town, Chennai-3.
- 2 General Manager, Southern Railway, Chennai-3.
- 3 Chief Personnel Officer, Sourthern Railway
Chennai-3.
- 4 Chief Engineer(Civil), Southern Railway,
Chennai-3.
- 5 Chief Signaling and Telecommunication Engineer
Southern Railway, Chennai-3.
- 6 Sri G.L.Goel, Deputy Chief Engineer (Construction)
Southern Railway, Thiruvananthapuram.
- 7 Sri K.Prakasan, Senior Section Engineer
P.Way, Construction, Madras, Egmore, Chennai.

- 8 Sri J.Neelakandan, Assistant Divisional Engineer Southern Railway, Chenkottai, Madura Division, Tamil Nadu.
- 9 Sri.E.S.Selvaraju, Section Engineer(Bridges) Southern Railway, Chennai Division, Chennai.
- 10 Sri R.Srinivasan, Senior Section Engineer(Works) Metropolitan Transport, Sourthern Railway Egmore, Chennai.
- 11 Sri Gourisankar, Senior Section Engineer P.Way, Metropolitan, Chennai.
- 12 Sri K.Rajendran, Section Engineer(Bridges) Construction, Egmore, Chennai Division, Chennai.

Respondents

(By Advocate Smt.Sumathi Dandapani (R1-5)

HON'BLE SMT.SATHI NAIR, VICE CHAIRMAN

O R D E R

The applicant herein is aggrieved by his non selection for promotion from Group-C to Group-B Service to the post ^{of} AXENS/ADEN in the Civil Engineering Department. He seeks the following relief:

“(i) To set aside clause 2005(a)(i),(ii) and (iii) of Anns.A16 in so far as it fixes minimum marks as qualifying marks for viva voce test as 30 out of 50 for professional ability and 15 out of 25 for record of service and 15 out of 25 again for address, leadership and academic/technical qualifications as the same is arbitrary and violative of Article 14 of the Constitution of India etc. etc.

(ii) To call for the records of the Selection Committee Proceedings with regard to the preparations of Annx.A6 Provisional Panel;

(iii) To declare that the applicant has passed the promotional test of ADENS/AXENS and is eligible to be included in Annx.A6 Provisional Panel at the appropriate position for promotion to the grade of AXEN/ADEN;

(iv) To direct respondents 1 to 5 to promote the applicant to the post of ADEN/AXEN with all attending monetary benefits, till the date of promotion; and

(v) To pass any other order as may deem fit by this Honourable Tribunal in the circumstance of the case and also of justice and equity".

2 Facts of the case are briefly summarised as under. The applicant was initially appointed as a Asst.Bridge Inspector and at present he is working as Senior Section Engineer/Bridges, Trivandrum. A selection was conducted for filling up 48 vacancies (41 UR, 5 SC and 2 ST) in the Civil Engineering Department for promotion from Group C to Group B Service against 70% quota vide Notification dated 15.3.2001. A total number of 213 eligible employees (UR 144, SC 50 and ST 10) were alerted for the written examination held on 24.11.2001 (Main) and 15.12.2001 (Supplementary). Out of the above 213 employees, only 165 (108 UR, SC 46, ST 11) appeared. Among the 165, only 68 employees (UR 46, SC 21 and ST 1) including the applicant secured the requisite qualifying marks viz, a minimum of 90 marks out of 150 and they were called for viva voce. All the Group B posts in Civil Engineering Department are classified as Safety posts in terms of Railway Board's letters dated 15.11.83, 20.8.91 and 13.11.92 and thus no relaxation of qualifying marks is admissible to the reserved community candidates. All the 68 employees were then directed for medical examination and they were found medically fit. They all attended the viva voce held on 12.6.2002, 13.6.2002 and 14.6.2002. The case of the applicant is that he possesses excellent service record and he understands that non-inclusion of his name in the panel was due to less award of marks in the viva voce test. Para 205 Chapter II of the Railway Establishment Manual deals with the procedure to be adopted by the Selection Boards. The applicant has an unblemished record of service but it

is seen from the panel not only the applicant has been excluded but the ranking assigned to respondent Nos.7 and 8 as at serial No.1 and 2 are patently irregular and illegal as they are the junior-most. Again, the 9th respondent is having a criminal case registered in Crime No.13/96 pending in the Metropolitan Court at Chennai and respondent No.13 is a person who was abroad in Malaysia unauthorisedly whose absence was illegally condoned for including him in the list. Therefore, according to the applicant, the Selection Committee has not properly assessed the record of service and he has been deliberately awarded lower marks in the viva voce test. He has also mentioned that the 6th respondent was inimically disposed towards him and this officer was present during the interview and he presumes that he would have interfered with the proceedings of the Selection Board which resulted finally in his exclusion. He has also assailed the fixation of the minimum limit viva voce test and relied on the judgment of the Apex Court in (1980) 4 SCC 95 and (1981) 1 STC 722 in Ajay Hasia's case.

3 The respondents have filed a reply statement. They have urged the following: (i) The applicant having challenged Para 205 of the IREM ought to have included the Railway Board as party and hence the O.A is liable to be dismissed on the ground of nonjoinder of necessary party. (ii) The contention that 7th & 8th respondents were brought to the top of the panel against the rules and procedure is not correct as both these respondents have been adjudged as outstanding as they secured 80% or more marks and para 2048 of IREM has been followed. (iii) The respondent No.9 has not been considered now for promotion as a criminal case is still pending trial and in

the case of respondent No.10, his Ex.India leave was cancelled and he had reported for duty on 14.8.2000. (iv) The 6th respondent had nothing to do with the selection process and the applicant's apprehension is without any basis and any cogent evidence. (v) The post of Asstt.Executive Engineer/Asstt.Divisional Engineer is a safety post and the Departmental Promotion Committee has acted by the rules and instructions relating to the selection for promotion from Group-C to Group-B post as laid down in para 205 of the IREM and Railway Board's letter dated 20.8.91 (Annex.R1a). Finally they have submitted that the applicant participated in the selection process without any protest and though he secured the qualifying marks in the written examination, he failed to secure the qualifying marks in the viva voce and record of service put together. Therefore, he could not be placed in the panel for promotion.

4 The applicant has filed a rejoinder affidavit denying the averments of the respondents in the reply statement. According to the old paragraph 205 of IREM, each candidate has to secure 30 out of 50 marks for viva voce and record of service with at least 15 marks for record of service which goes to show that there is a prescribed minimum qualifying mark. The Railway Board have themselves realised the problem and now removed the viva voce test itself. This decision has been communicated vide letter dated 7.8.2003 and that hereafter there will be no viva voce in the departmental selection and the 15 marks allotted for selection will be added to the written test. He has also enclosed a copy of the judgment of this Bench in OA 389/89 and that of the CAT Madras Bench in OA 565/01. He has again reiterated that he has been subjected to hostile discrimination by giving only 8 marks out

of 25 in *viva voce* and by giving 22 marks out of 25 to respondents No.7,10 and 11. It is submitted that he has received several certificate of merits, commendation and awards and copies thereof have also been placed on record.

5 We have heard the learned counsel for the parties and perused the records and the judgments referred to. The respondents have also produced the selection file and the confidential report of the applicant which also we have perused.

6 The learned counsel for the applicant mainly relied on the judgment of this Tribunal in OA 389/89 which has been followed in the subsequent judgment of the Madras Bench. This decision in OA 389/89 has been extensively discussed in the decisions of the Hon'ble Apex Court and the Hon'ble High Court of Kerala in Ajay Hasia's case wherein the Hon'ble Supreme Court had observed that oral interview is not a very satisfactory test for assessing and evaluating the capacity and calibre of candidates. It had also taken into account the decision in P.K.Ramachandran Iyer Vs. Union of India, AIR 1984 SC 541 holding that fixation of minimum 40 percent for *viva voce* was in contravention of the Rules. The O.A was allowed on the ground that fixation of 15 marks as minimum pass was unnecessary, arbitrary and unreasonable. On behalf of the respondents a detailed argument note was submitted. They have clarified that Para 205 of IREM was subsequently amended as Para 204.1. As per Railway Board's orders dated 20.8.91 (Annex.R1(a) no minimum marks has been stipulated for *viva voce* alone. The record of service and *viva voce* are to be taken together and the minimum qualifying marks is 30 with a minimum at least

15 marks in the record of service. Even if it is admitted for argument that there is a minimum,^{ak} the most the minimum for viva voce could be only 5 marks. The marks for record of service are given on the basis of confidential reports and other service records. The procedure laid down in Board's letter dated 16.1.01 (Exhibit P.3 the argument note) Para 219 under Chapter II of IREM pertains to Group-C non-gazetted staff and since there is no specific provision for gazetted staff, the same system is followed in all the Railways. They also relied on the judgment in Vijay Syal & Anr. Vs. State of Punjab (2003) 9 SCC 401 and Jasvinder Singh & Ors^{ks} State of J&K & Ors (2003) 2 SCC 132. Finally it was argued that since the applicant appeared for the selection having fully understood the rules and procedures, he cannot turn around and attack the same and that he has challenged the old provision in the IREM which is no more in existence and therefore there is no merit in the O.A.

7 The main challenge in the O.A is to Paragraph 205 of the IREM in so far as it fixes the minimum qualifying marks for the viva voce test as well as professional ability as being violative of Article 14 of the Constitution. The respondents have stated that para 205 is no longer in existence and has been modified as 204.1 in accordance with the Railway Board's letter dated 20.8.01 (Annx.R1a). The technical objection raised by the respondents is regarding maintainability over ruled as the scheme of examination/viva voce for promotion and selection by and large remains the same except for certain modifications regarding the percentages allocated for the written test and the viva voce. Under the revised stipulations 50 marks have been allotted for record of service and viva voce together and the qualifying

marks are 30 including at least 15 marks in the record of service. Hence the respondents argued that there is no separate stipulation of minimum qualifying marks for viva voce and therefore the earlier judgments referred by the applicant side have no relevance. This argument cannot be accepted at face value. Though stipulation regarding minimum pertains to record of service, since the total qualifying marks has been fixed as 30 it cannot be denied that there is a certain element of minimum marks stipulated for the viva voce. It has been admitted by the respondents themselves that following the various rulings of the Apex Court on the viva voce test they have further modified the scheme of examinations stating that there would be no viva voce in the departmental selections and the marks hitherto awarded to be added to the written test marks. However, it is noted that these instructions will have only prospective effect and cannot apply retrospectively into the situation in this case. For the same reasons, the respondents cannot rely upon the judgements in Jesvinder Singh's and Yadav's cases for deciding the issue in hand.

8 On going through the Selection File, we find that the applicant secured 95 marks under "professional ability" out of 150 and was placed at serial No.40 in the list of candidates. He secured 8 marks in viva voce out of 25 marks and 16.2 marks in the record of service. Mr.E.S.Selvaraju, the 9th respondent who is alleged to be involved in a criminal case has secured 103 marks in professional ability, 15 marks in the interview and 20.8 in the record of service. Mr.R.Srinivasan who alleged to be on leave abroad has secured 105 marks in professional ability 19 marks in viva voce and 22.1 in the record of service. We find that both these candidates seem to have more

outstanding record than the applicant according to the marks allotted and also secured higher marks in the written test. It is also seen that all the other private respondents viz, respondent 3, 8 and 12 except respondent 11 have secured more marks in the written examination i.e. 124, 119 $\frac{1}{2}$, 114 and 20 $\frac{1}{2}$ respectively. We have also gone through the ACRs of the applicant for the period under consideration. He has 'Very Good' and 'Outstanding' reports. It is contended that awarding of marks under the head has not been done properly and the awards and certification^{ee} acquired by the applicant have not been taken into account. Under Chapter II, Section "B" governs the promotion of Gr.C staff. Under para 204.7 for promotion to Gr.'B' Post, 'marks for record of service' should be given on the basis of confidential reports and relevant service records. Integrity of character should receive special consideration. The procedure for award of marks has been laid down in Board's letter dated 16.1.2001, according to which marks corresponding to the grading for 5 attributes in the C.R should be awarded for each year and average over 5 years should be calculated. This procedure does not give any room for awarding of marks for awards and merit certificates. We have gone through the record relating to assessment of the CRs and find that the above procedure has been followed. It is not the role of this Tribunal to sit in judgment over the assessment made by a duly constituted Selection Board. Though allegations have been made against the 6th respondent, who is not a Member of the Selection Committee, and the applicant's apprehension regarding this officer appears to be only speculative and not supported by any evidence. We reject the contention of the applicant in this regard.

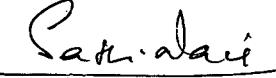
9 Consequently, the issue raised in this O.A is to be exclusively decided on the basis of the legal position. The legal position that emerges is that right from the first judgment of the Tribunal in O.A 389/89, this Tribunal was of the view that any prescription of minimum qualifying marks for viva voce test is unsustainable. The Special Leave Petition against the above judgment was dismissed. On the same lines, the subsequent OAs 839/91 and 149/92 were also allowed by this Tribunal. SLPs against the same were also dismissed. Though the Madras Bench took a different view, the same was over turned by the Hon'ble Supreme Court in the decision in Prabhakar Rao Vs. Union of India reported in AIR 2002 SC 205 and it was directed that the case of the appellant therein should be considered as if there is no qualifying marks for viva voce. The Madras Bench has also in a subsequent decision in O.A 565/01 taken the stand that the record of service of the applicant therein ~~were~~ not properly assessed and directed that a review of the selection should be held. Therefore, in view of the totality of the legal pronouncements, this Tribunal has been consistently holding that the qualifying marks prescribed whether separately for record of service or cumulatively for viva voce and the record of service is arbitrary and the applicants are entitled to be considered in accordance with their over all merit without insistence on a separate minimum. We are bound by these decisions. More so, as the department themselves have accepted these observations of the Hon'ble Supreme Court and the law laid down in this regard and modified their Scheme of selection.

10 In keeping with the above decisions and the legal position set out above, we hold that the applicant was entitled to consideration as if there

was no individual qualifying marks for viva voce test and the record of service and if he was found eligible, he should be promoted to the post alongwith persons in the panel. However, we find from the selection file that even if this procedure is adopted, the applicant has secured a total of 119.2 marks only which is less than the total marks secured by all other candidates and hence by any standards he was not eligible to be selected. The applicant is, therefore, not eligible for the reliefs prayed for in para 8 (iii) and (iv). The relief asked for in para 8(i), does not hold good any more in view of the Board's decision communicated in PBC No.124/2003 dated 12.8.2003 dropping the viva voce test from the Scheme of departmental selections. O.A is dismissed accordingly.

Dated the 5th day of December, 2005


(George Paracken)
Judicial Member


(Sathi Nair)
Vice Chairman.

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