

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 367/90
XXXXXX

199-

DATE OF DECISION 19.12.91

GK Unnirajan

Applicant (s)

Mr PK Madhusoodhanan

Advocate for the Applicant (s)

Union of India rep. by its
General Manager, Southern Respondent (s)
Railway, Park Town, Madras-1
and others.

Mrs Sumathi Dandapani

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

and

The Hon'ble Mr. N Dharmadan, 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

Sh NV Krishnan, A.M

The applicant is a Traffic Porter in the Southern Railway, Trivandrum under Respondents 2 & 3. His claim is that he is entitled to be considered for promotion from Group D to Group C against the 33 $\frac{1}{3}$ per cent promotion quota in the Traffic & Commercial Department. The respondents issued ~~the~~ Annexure VI notice regarding filling up of the Group C vacancies for the period from 1.4.84 to 31.3.89 by holding a test followed by an interview. The applicant had passed in the written test and he was called for the interview. He was, however, not selected as will be seen from the Annexure VIII proceedings dated 23.4.90 giving a list of 36 persons who have been selected and placed on the provisional panel for the post of

TC/TNC.

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2 The applicant/aggrieved by the Annexure VI notice and Annexure VIII proceedings on various grounds like malafide in selection, improper assessments, etc. He has, therefore, filed this application seeking the following reliefs:

- " i) call for the entire records including the tabulation sheet of the Selection Board.
- ii) Set aside order No.V/P 531/III/V0/III dated 23.4.90 and Annexure VI in so far as it includes catering also in the Commercial department.
- iii) Issue necessary directions to the respondents to include the applicant also in the panel for promotion to the post of TC/TNC and to promote him to class III post for which he may sent for training also."

3 The respondents have filed a reply denying the allegations made and have contended that as the applicant had already appeared in the examination and has failed, he cannot now challenge the selection. They have also urged that the selection has been done in accordance with law by holding a written test followed by an interview. The applicant and 51 others passed in the written examination. They were interviewed. The applicant failed in the viva voce test held on 27.3.90 and 28.3.90. 36 employees were declared selected against the 37 vacancies (Annexure VIII) one of which has been kept reserved for a Scheduled Tribe candidate. It is also stated that as the applicant failed in the viva voce test, he could not be empanelled. 34 candidates in the panel (Annexure VIII) have been sent for initial

training at the Zonal Training School at Tiruchirapally from 7.5.90 and two more employees were directed to attend to such training from 4.6.90.

4 When the application came up for final hearing, the learned counsel of both the parties submitted that a similar matter (OA 440/90) has already been disposed of by the judgment on 22.11.91 and that this application can also be disposed of on the basis of that judgment.

5 We have perused the judgment in OA 440/90. That application was also filed by a person who was not selected, allegedly on the basis of the viva voce test and therefore, his name was also not included in the Memorandum dated 23.4.90 exhibited as Annexure VII in that OA i.e., Annexure-II in the present application. That application was allowed on two important grounds:

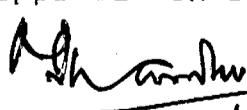
i) As the Respondents had stated that the qualifying mark is a total of $37\frac{1}{2}$ marks in both written examination and interview, they cannot be heard to say that the applicant was not selected because he failed in the interview, because, admittedly, a separate qualifying mark for interview had not been fixed and therefore, failure therein does not arise.

ii) The selection was made against the total vacancies for the period from 1.4.84 to 31.3.89 taken together instead of considering selection for the vacancies of each year separately and has thus been vitiates.

In the circumstances, that application was disposed of with the following directions:

"In the conspectus of facts and circumstances we allow the application, set aside the panel dated 23.4.90 at Annexure A7 and direct the respondents to prepare yearwise separate panel for yearwise vacancies arising between 1.4.84 and 31.3.89. For preparing yearwise panels only those vacancies which arose during that year should be taken into account, only those candidates who were eligible during that year should be considered and the confidential reports subsequent to that year should not be taken into account. The marks in the written test and the interview of the candidates, however, should not be altered but as per rules the qualifying marks should be taken as 50 per cent of the total of marks obtained in the interview and the written test. Those candidates who have already been selected, trained and promoted, however, should be allowed to continue till the annual panels are available on the above lines and such of those who are not included in any of the panels should either be reverted to give place to empanelled officials or allowed to continue on an adhoc basis if necessary. There will be no order as to costs."

6. As the impugned memorandum dated 23.4.90 has already been quashed in toto by the earlier judgement in OA 440/90, it is not necessary to quash it again at the instance of the present applicants. We also do not find it necessary to issue any further directions as to how the selection should thereafter be conducted because directions in this regard have also been given in that judgement. Therefore, for all practical purpose, the judgement in OA 440/90 indirectly gives the important reliefs sought by the applicant. In the circumstances, we find that whatever grievance the applicant had already stands remedied by the directions given in OA 440/90. Nothing is left for adjudication now. Therefore, this application is closed.



(N. Dharmadan)
Judicial Member



(N. V. Krishnan)
Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
XXXXXX

440 OF 1990

DATE OF DECISION 22.11.1991

G. Ashokan

Applicant (s)

M/s P.Sivan Pillai &

Advocate for the Applicant (s)

R.Sreekumar

Versus

Union of India, General Respondent (s)

Manager, Southern Railway, Madras
and 38 others

Mrs.Sumati Dandapani- (for R-1-3)

Advocate for the Respondent (s)

CORAM:

Mr.P.C.Joseph-R.36
Mr.M.C.Nambiar(R.4,5,10,11,12,15,16,17,20,25,26
28,30,31,32,33,37,38 and 39).

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

JUDGEMENT

(Hon'ble Mr.S.P.Mukerji-Vice Chairman)

In this application dated 31.5.90 filed under Section 19 of the Administrative Tribunals Act the applicant who has been working as Lascar in the Trivandrum Division of the Southern Railway has challenged the selection proceedings relating to promotion from Class IV to Class III post in the Operating and Commercial Departments in the promotion quota vacancies which occurred between 1.4.84 and 31.3.89 and have prayed that respondents be directed to hold separate selections for vacancies arising in each of the years during the aforesaid period.

2. The brief facts of the case are as follows.
The applicant is at present working as a Lascar in the

Operating (Traffic) Department of the Southern Railway in Group 'D' category. Promotions to Group 'C' posts are on the basis of selection through a written test and an interview ^{where} ~~were~~ considered necessary. The qualifying marks in the written and oral test are prescribed by the General Manager and the ^{qualified} candidates are to be arranged in the order of seniority for annual vacancies. A minimum of 5 years of service in Class IV Railway service has been prescribed for promotion. This was subsequently reduced to three years. Clubbing of vacancies of more than one year has also been considered to be irregular by the Railway Board. (Railway Board's letter dated 19.2.88 at Annexure.A.2). The applicant submitted an application in response to the notice at Annexure A.3 which was issued for selection to fill up the vacancies which occurred between 1.4.84 and 31.3.89. He ~~has~~ ^{had} appeared in the written test on 3.3.90 and attended the viva test on 28.3.90. In the interview, according to the applicant, the discussion was around that charge memo issued against the applicant on 25.1.88 which resulted in minor penalty of loss of increment for 12 months. In the list of selected candidates at Annexure.A.7 his name did not find a place. The applicant has challenged the selection on the ground that annual tests were not held for annual vacancies. By holding ^a single test for five years' vacancies, the applicant has been denied equality of opportunity by ^{negligible} extending the field of eligibility. This has also ~~reduced~~ ^{affected} his being considered more than once if annual selections had been held. By clubbing the vacancies ^{of five years}, the record of service was also considered by clubbing earlier and subsequent vacancies in subsequent years. The respondents

also did not prepare an ~~above~~ integrated Seniority List of eligible candidates coming from different Seniority units. The applicant has also challenged the holding of viva-voce test and prescribing the qualifying marks for the same. He has also pointed out various discrepancies of candidates not invited to write the examination being included in the list of those ^{who} ~~also~~ passed the written examination and ^{also} substitution of answer papers.

3. In the counter affidavit the respondents 1 to 3 have stated that on the basis of written test and viva-voce some panel was to be prepared but the same was not published as it was necessary to reassess the number of vacancies. The Tribunal when moved by some candidates directed that the process of drawing ^{up} of a panel based on the selection which was initiated in 1984 should be completed and those who had passed both in written and viva-voce tests on the previous occasion, their names could be included in the panel. In compliance with that order, 18 persons were included in the panel against 18 vacancies and the applicants ^{therein} were declared to be successful and their names included in the panel. Subsequently six more candidates challenged the selection on the ground of number of vacancies not ^{having been} taken into account, in O.A.K.590/88 but the application was rejected. Subsequently against 37 vacancies of Train Clerks, Ticket Collectors and Commercial Clerks, applications were invited by the impugned notice dated 15.11.89 at Annexure A.3 and written examination was held on different dates. ^{Seventy two} employees including the applicant passed the written examination. The applicant was called for viva-voce also but he failed in the viva test. Since the selection conducted

for the period ending 31.3.84 was questioned in O.A. 235/87 the respondents could not initiate any action for fresh annual selection subsequently. When that O.A. was disposed of on 24.6.88 the respondents could initiate action thereafter. The applicant should have questioned the legality of the examination before appearing in the written test. Having appeared in the test he cannot challenge its legality. The respondents have conceded that all those ^{who} _{^h} were eligible in 1989 were allowed to appear in the selection "irrespective of the period in which the vacancies might have occurred." They have also indicated that there was no necessity to publish any combined Seniority List prior to selection. They have also indicated that 50 marks have been allotted to written test, 25 marks for interview and 25 marks for service records and ~~not~~ qualifying marks of 37½ out of 75 for written and interview and an aggregate of 50 out of 100 have been fixed. They have explained that the two instances quoted by the applicant of candidates being called for written test or for viva-voce without their names being in the list of such candidates by stating that their names were erroneously left out. They have denied substitution of answer papers.

4. In the rejoinder the applicant has stated that the respondents's averment that he had failed in the viva is false because a pass in the written examination will qualify for empanelment irrespective of the performance in viva. He has also stated that the candidates from Catering Department who were not eligible were wrongly considered for promotion. He has also challenged the single panel prepared for vacancies arising over six years ^{has argued} _{^h} as illegal and that

the applicants acquiescence by appearing is not a licence for including ineligible persons.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. This Tribunal has been consistently taking the view that preparation of a single panel by clubbing the vacancies is illegal as it makes persons who were ineligible for vacancies in an earlier year, ~~an~~ eligible for the same vacancy, if that vacancy is clubbed with those of the subsequent years. The Government of India also have been issuing instructions to the effect that where annual promotions could not be made for certain reasons, yearwise panel should be prepared against the vacancies arising in each year by considering those candidates who were eligible in each particular year. Clubbing of vacancies for a number of years also distorts the assessment of confidential reports by bringing in reports of those years which were not available when the vacancies in a particular year arose or including confidential reports of earlier years which would not have been relevant against vacancies of later years. The respondents have admitted that "it was the single panel that evidenced and showed that the selection was lumpsum and there was no separate selections." As a matter of fact there should have been separate selections for each years vacancies. By the preparation of single panel the entire selection process is vitiated.

6. The argument that the applicant did not raise any objection to the notice which indicated that vacancies

of 5 years are being taken into account cannot be held against him. This is because one could still have concluded from the notice that even if the vacancies are clubbed together the selections could have been on the basis of each year's vacancies. The respondents having stated that qualifying marks is $37\frac{1}{2}$ in the combined marks of written examination and interview cannot be heard to say that the applicant was not selected because he failed in the interview. Since no qualifying marks in the interview per se have been fixed, the question of failure in the interview does not arise.

7. In the conspectus of facts and circumstances we allow the application, set aside the panel dated 23.4.1990 at Annexure.A.7 and direct that the respondents to prepare year-wise separate panels for year-wise vacancies arising between 1.4.84 and 31.3.89. For preparing year-wise panels only those vacancies arose during that year should be taken into account, only those candidates who were eligible ~~eligible~~ during that year should be considered and the confidential reports subsequent to that year should not be taken into account. The marks in the written test and the interview of the candidates, however, should not be altered but the qualifying marks should be taken as 50 per cent of the total of marks obtained in the interview and the written test. Those candidates who have already been selected, trained and promoted, however, should be allowed to continue till the annual panels are available on the above lines and such of those who ~~was~~ ^{are} not included in any of

the panels should either be reverted to give place to empanelled officials or allowed to continue on an adhoc basis if necessary. There will be no order as to costs.

~~(A.V.HARIDASAN)~~
JUDICIAL MEMBER

~~(S.P.MUKERJI)~~
VICE CHAIRMAN

CERTIFIED TRUE COPY
Date 28/11/91

SECTION OFFICER

Ks.

Dr Jay 28/11/91 Ar 28/11/91

