

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
XXXXX.

377/ 1990

DATE OF DECISION 31.8.1990

P. Mammu and another Applicant (s)

M/s. P. Sivan Pillai & Advocate for the Applicant (s)
R. Sreekumar

Versus

The Union of India Respondent (s)
Through the General Manager,
S. Railway, Madras-3 and 2 others

M/s. M. C. Cherian, Advocate for the Respondent (s)
Saramma Cherian & T. A. Rajan

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

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

Two of the Chief Bridge Inspectors of Railway, working in the highest grade of Group 'C' posts in the scale of Rs. 2375-3500 approached this Tribunal under Section 19 of the Administrative Tribunals Act attacking the method, modalities and the very constitution of the Board for conducting departmental examination for their next promotion to Group B post (Gazetted).

2. Facts in brief. (i) Both the applicants are working as Chief Bridge Inspectors. They have meritorious, unblemished and excellent past record of service. Annexures A1 series and A2 series are testimonials to support the same. They are seniors in Group 'C' posts. The next promotion to a Group 'B' Class II post is to be made by the General Manager, in terms of Rule 210 of Indian Railway Establishment Manual, Vol. I, strictly

12.4.88. There were 43 vacancies against the 75% quota from Group 'C'. The applicants were not selected. Only 17 persons were placed in the panel. Thereafter Annexure A4 notification dated 10.11.89 for filling up 49 vacancies was issued by the respondents. 216 persons including the applicants were alerted for the selection. By Annexure A5, dates for the written examination were notified as 6.1.90 for Paper I (Part A) and 7.1.90 for Paper II (Part B). The names of the applicants were not included in the list when Annexure A6 list of persons qualified in the written examination was published on 23.4.90. Annexure A7 representation was filed on 4.5.90. But without considering the same the respondents proceeded with the viva voce on 17.5.90. Hence the applicants filed this application challenging Annexure A4 and Annexure A6.

3. The respondents filed detailed counter affidavit dated 11th July 1990 and additional counter affidavit dated 30th July 1990. They have denied all the allegations of the applicants. The applicants in their rejoinder dated 9.8.90 answered the statements in counter affidavit and additional counter affidavit respectively and produced Annexures A11 to A13.

4. The contentions of the applicants:

(i) The examinations were conducted by the respondents without following the statutory procedure. They have not even constituted the Board for conducting.

2.

in the order of placement of Group C employees in the panel recommended by the Board of Selection after conducting an examination, written as well as viva-voce. It is an all Southern Railway selection. 75% of the vacancies is reserved for seniors. The remaining 25% of the vacancies is being filled only through competitive examination among junior departmental candidates. The applicants come under the 75% category.

(ii) The procedure of examination as alleged by the applicants is as follows.

"(1) The actual number of vacancies for each of the selection should be assessed separately.
(2) The employees who would be within the field of consideration with reference to the vacancies to be filled in at each selection starting with the earlier selection should only be considered for each selection.
(3) A panel should be prepared for each of the selections.
(4) All the panels should be consolidated by placing the earlier period above the one for the next and so on. In para 205 of the Manual the procedure to be adopted by selection Boards are prescribed. It is provided that selection should be made primarily on the basis of over all merit, but for the guidance of selection Boards the factors to be taken into account and their relative weight are laid down; professional ability shall normally be adjudged through a written test which should form part of the selection. The question papers for the written test shall have a practical basis, i.e., they should be designed to test the ability of candidates to tackle the practical problems, they are likely to face rather than their theoretical knowledge".

(iii) The different feeder categories to be considered for the selection are Permanent Way Inspectors, Inspectors of Works, Bridge Inspectors, Shop Superintendents and Foremen, Track Maintenance CDA, CDM etc.

(iv) The applicants were alerted by the respondents for the written test to be conducted in connection with selection to Group 'B' posts as per letter dated

the examination. The examinations and the resultant steps for promotion are bad and illegal.

(ii) Though the examinations are biennial as per rules after fixing the vacancies, the respondents conducted the same in every year. The zone of consideration was fixed after bunching the vacancies of 1988 and 1989 and adopting the carry forward formula resulting in deprivation of the chances available to the applicant for separate consideration for the 1988 carry forward vacancy. This is illegal.

(iii) The percentage of marks allotted for the written examination is against the provisions and the questions were set in such a way as to favour only one set of feeder category, which resulted injustice to the applicants. Further, selections for viva voce were based on written examination marks, which is against the rules.

(iv) The pre-promotional training given by the respondents before the examination on the basis of syllabus was restricted to employees in the Workshops and Track Mechanic staff and it is discriminatory.

5. Findings and decision:

(i) All the complaints of the applicants are confined to the departmental examinations conducted by the respondents. On the facts and circumstances the bonafides of the applicant's attack against the examination is to be tested in the light of their conduct in having tried their chance in the examination without raising any manner of objections. Now after the failure in both the examinations

they have turned round and assailed the method, modalities and even the very constitution of the Board of examination. Admittedly, the applicants sat for the examination in 1988 without any protest. They failed. Same thing happened in the next examination as well. Annexure A7 representation was filed after about five months of the second examination and subsequent to the publication of the results of the written test as per Annexure A6 on 23.4.90. Hence, the applicant's attack against the examinations cannot be accepted. The Supreme Court in Dr.G.Sarana v. University of Lucknow and others, 1976(2) SLR 509 observed as follows while considering the same issue:-

"He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee. This view gains strength from a decision of this Court in Manak Lal's case(AIR 1957 SC 425) wherein more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him."

In Swaran Lata v. Union of India and others, 1979(1) SLR 710, the applicants challenge was negatived by the Supreme Court applying the principle of 'approbation and reprobation' in the following manner:-

"66. In any event, the appellant cannot approve and reprobate. She had willingly, of her own accord, and without any persuasion by anyone, applied for the post, in response to the advertisement issued by the Union Public Service Commission for direct recruitment. She, therefore, took her chance and simply because the Selection Committee did not find her suitable for appointment, she cannot be heard to say that the selection of respondent No.6 by direct recruitment through the Commission was invalid, as being contrary to the directions issued by the Central Government under S.84 of the Act or that the Commission had exceeded its powers,

usurping the functions of the Chandigarh Administration, in relaxing the essential qualifications of the candidate called for interview or that respondent No.6 was not eligible for appointment inasmuch as she did not possess the requisite essential qualifications."

Venkataramiah.J. as he then was, has taken the view in Om Prakash Shukla Vs. A.K Shukla, 1986(1) SLR 699, that an applicant is estopped from challenging the examination and the results when he approaches the Court after his failure in the examination. His Lordship observed:-

"Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there".

(ii) On merits also the applicant has no case.

(a) The procedure for the examination is contained in Annexure A11, the Compendium of Instructions governing promotion from Group 'C' to Group 'B', which appears to be a codification of the relevant provisions in the Railway Establishment Manual Vol.II. The competitive examination contemplated in Annexure A11 though biennial may be conducted in every year because the Rule is not an inflexible one. The relevant extracts from Annexure A11 be examined:

"2. Frequency of Selection - Selection for appointment to Group 'B' posts should be held once in two years. Where due to unforeseen developments, such as creation of new posts, upgradations etc. the panel drawn gets exhausted and the biennial selection is away by more than six months a fresh selection may be held. The need for conducting such selections should however, be rare and due

care should be taken in working out the vacancies for the normal biennial selection."

xxx

xxx

"7. Zone of consideration. The number of employees to be called for the selection will be in accordance with the sliding scale in the order of seniority as shown below:-

1 vacancy	.. 5 employees
2 vacancies	.. 8 employees
3 vacancies	.. 10 employees
4 vacancies and above.	.. employees equal to three times the number of vacancies."

xxx

xxx

"7.3. Where due to exceptional reasons beyond the control of the Administration it is not possible to hold the selection as scheduled and it is delayed by more than one selection period, the first selection that is held thereafter should follow the procedure indicated below:-

- (a) The actual number of vacancies for each of the selection should be assessed separately.
- (b) The employees who would be within the field of consideration with reference to the vacancies to be filled at each selection starting with earliest selection should only be considered for each selection.
- (c) A panel should be prepared for each of the selection.
- (d) All the panels should be consolidated by placing the panel of the earlier period above the one for the next and so on.

7.4. In respect of selections for the Group 'B' posts of Assistant Personnel Officer all employees who are eligible and who volunteer for the selection should be considered, without any limitation of number.

8. Selection procedure - The selection is based on a written test to adjudge the professional ability, viva-voce and assessment of records by the Selection Committee. The marks allotted and the qualifying marks under the different heads are as follows:-

		<u>Maximum marks</u>	<u>Qualifying marks</u>
(i)	Professional ability.	.. 50	30
(ii)	Personality, Address, Leadership & Academic technical qualifications	25	15

(iii) Record of service	..	25	15
		100	60 "

xxx

xxx

"9. Currency of Panel - The panel will be current for a period of 2 years from the date of approval of the competent authority or till a fresh panel on the basis of next selection becomes available whichever is earlier".

xxx

xxx

"12. Supplementary selection - Not more than one supplementary selection should be held to cater to the absentees."

"17. Representations against selection - Representations against selections should be dealt with on merits without restriction of any time limit for their submission."

From a perusal of these rules, it can be seen that the respondents are free to conduct annual examinations in the circumstances mentioned in Rule 2. Since only a fraction of the required candidates passed in the selection process which commenced in 1988 and ended in February 1989, the respondents were forced to make selection for the backlog and fresh vacancies and initiate steps for such selection in 1989 because the next biennial selection would have been only in 1991. There were 49 vacancies. The respondents alerted only 172 employees to appear for the test on 6.1.90 and 7.1.90 even though Annexure A4 list contains 216 employees. Only 134 employees plus 18 in the supplementary list including the applicants participated in the test. 49 persons secured the qualifying marks so as to be considered for viva voce test. Seven Bridge Inspectors appeared for the test and three have passed. They are in the list Annexure A6. The proceedings produced before us by the learned counsel for the respondents disclose that the

examinations were conducted by duly constituted Board of Examiners. The applicants failed twice and are fully aware of all these details. Annexure A7 shows that many of the seniors to the applicant have also failed in the written test. They had not raised any complaint. The respondents have conducted the examinations after following the rules and constituting the Board of Examiners. The contention that the examinations were conducted without following the rules and constituting the Board of Examiners, cannot be sustained.

(b) The argument of the applicants that the bunching of the vacancies and conducting tests giving opportunity to more candidates in the fresh selection would deprive their number of chance cannot be accepted. For as indicated earlier the selection in 1989 by Annexures A4 and A5 was conducted in accordance with the provisions of Rule 2 above. This is not a case where Rule 7.3 applies, whereunder the vacancies for each year should be separately assessed, because this selection was made immediately after the 1988 selection. There is no illegality in the procedure. The decision reported in 1974 Lab. IC 1501 does not apply to the facts of this case. So there is no force in this contention.

(c) The applicants have raised a serious allegation in ground 'H' that the fixation of the percentage of marks in the written examination is illegal and against Annex AIII. According to him Annexure A-3 directed that 60%

of the marks prescribed for the written examination and seniority should also be the basis for calling candidates for viva voce test adopting the formula stated therein. But the respondents have fixed this 60% for the written examination alone. The respondents have answered this argument both in the counter affidavit and additional counter affidavit. They have stated that Annexure-A3 is not at all applicable to the selection of persons from Class III to Class II posts(Group 'C' to Group 'B') and it was not adopted or followed in any of the previous selections in the Engineering branch. According to the respondents, Annexure A3 itself indicates that it applies only to Non-Gazetted staff(Class III employees) and not Gazetted staff(Class II employees) in this selection. Only the provisions and procedure prescribed in Annexure A11 alone would apply to the selection of the applicants. We have examined this contention. The letters 'E(NG)' in Annexure A III means 'Establishment(Non-Gazetted)' and the words 'Joint Director(Estt)(N)' means 'Joint Director(Establishment)(Non-Gazetted)'. At the same time it can be seen from Annexure A11 that it deals with promotions from Non-Gazetted post to Gazetted post, because the words 'E(GP)' in Annexure A11 means 'Establishment(Gazetted Promotion)'. We are satisfied that there is no merit in the argument of the applicants.

(d) The further allegations against setting of question papers, giving of pre-promotion training confined to limited feeder categories etc. are unacceptable and not

serious enough for interference by this Tribunal. These are done by the respondents strictly on the basis of the practice and procedure hitherto followed by them in these examinations. The percentage of marks had been fixed as guided by the rules and the question papers were set on the basis of the prescribed syllabus for the examination. No arbitrariness is writ large in these matters. The pre-selection training was given to only 16 employees who are working in Engineering Workshop, Arkonam and 42 employees belonging to SC/ST as seen in Annexure R1(j) and this is because of their lack of experience in open line ^{like} un in the case of PWIs, IOWs and BRIs who are well conversant with open line works. Such practice of giving pre-selection training to these categories of employees was in vogue from 1982 onwards. It is open to the Board of Examiners, an expert body to decide the issues in connection with the conduct of the examination in a manner most beneficial to the interest of the department without doing any violence to the rules, regulations and practice adopted in these examinations. It is not for the Courts or Tribunal to lay down any hard and fast rules regarding the selection procedures in the examinations as held by the Supreme Court in Javid Rasool Bhatt and others v. State of Jammu and Kashmir and others, 1985(2) SCC 631 and Lila Dhar v. State of Rajasthan ,

(AIR 1981 SC 1777). The grounds of attack must fail for the same reasons as already explained.

6. Having regard to the facts and circumstances of this case, we are of the view that the applicants have ^{legally} filed this application without any ^{legally} basis and justification and it is liable to be dismissed. We do so.

7. There will be no order as to costs.


(N.DHARMADANY)

31.8.90.

JUDICIAL MEMBER


(N.V KRISHNAN)
31.8.90.

ADMINISTRATIVE MEMBER

n.j.j

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM
R. A. 109/90 in
O. A. No. 377/90
T. A. No. 499

DATE OF DECISION 29.10.90

Mr. P. Mammu _____ Applicant (s)

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

Versus

U.O.I. rep. by General Manager Respondent (s)
S. Rly and others

Mr. M. C. Cherian _____ 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? Yes
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

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant by filing this Review Application is attempting a rehearing of the Original Application. It is not permissible. There is no substance in the grounds raised in the application. The files were produced by the learned counsel for the respondents and we have gone through the relevant portions for our satisfaction before pronouncing the judgment. We were satisfied after going through the files that the Selection Board was constituted before the selection. There is no error apparent on the face of the records or other mistake in the judgment warranting a review of the judgment already passed by us on

31.8.90. The Review Application is only to be dismissed.

We do so.



(N. Dharmadan)
Judicial Member 19.8.90



(N. V. Krishnan)
Administrative Member

KMN