

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 379/2005

WEDNESDAY THIS THE 9th DAY OF JULY, 2008.

C O R A M

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

J. Alexander Mathuram S/o S. Joseph Arunachalam
Chemical and Metallurgical Superintendent Gr.I
Coaching Depot Office,
Southern Railway, Trivandrum
permanent Address No. 35-E-1
Periyavilai, Nagarcoil-2 (Tamil Nadu)

Applicant

By Advocate M/s TC Govindaswamy, D. Heera, PN Pankajakshan Pillai &
Sumy P. Baby

Vs.

- 1 Union of India represented by
The General Manager, Southern Railway
Headquarters Office, Park Town PO
Chennai-3
- 2 The Chief Personnel Officer
Southern Railway
Headquarters Office, Park Town PO
Chennai-3
- 3 Shri Jayantha Ghosh
Chief Mechanical Engineer,
Southern Railway
Headquarters Office, Park Town PO
Chennai-3
- 4 Shri Zia-U-Haq, Assistant Chemist and Metallurgist
Southern Railway, Engineering Workshop
Arkonam, Tamil Nadu.
- 5 The Railway Board, New Delhi
through its Secretary.

Respondents

By Advocates Smt. Sumathi Dandapani, Sr. and
Ms PK Nandini for R 1-3 & 5
Advocate Smt. K. Girija for R -4

The Application having been heard on 30.5.2008 the Tribunal delivered the
following on 9.7.2008

ORDER

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

The applicant in this O.A. is working as Chemical and Metallurgical Superintendent Grade-I in the Coaching depot office of the Southern Railway, Trivandrum. On 18.5.2004 the respondents issued a notification for selection of candidates for promotion from Group-C to Group-B service in the CMT Department for filling up one unreserved post. The applicant being eligible for participation in the selection process applied for appearing in the examination. The applicant appeared in the written examination held on 23.8.2004 and was declared as qualified as per letter dated 31.8.2004 (A-3). Subsequently he was called for a viva voce test. But after the viva voce test the 4th respondent was selected for the post. Aggrieved by the non selection, the applicant represented to the respondents. Vide the communication dated 19.1.2005 the applicant was informed that he was not found suitable for being placed in the panel as he did not obtain the qualifying marks for viva voce held on 2.11.2004(Annexure A-7). Aggrieved by the rejection of his representation he has filed this O.A seeking the following reliefs:

(a) Call for the records leading to the issue of Annexure A-7 and quash the same.

(b) Declare that fixation of minimum qualifying marks in Viva voce for promotion to the Group-B services as notified in Annexure A2 is arbitrary, discriminatory and unconstitutional

© Direct the respondents to consider the Applicant for promotion to the post of Assistant Chemist and Metallurgist (ACMT) Group-B services and promote him accordingly against the vacancies notified in Annexure A-2 and direct further to grant all consequential benefits arising therefrom including arrears of pay and allowances from the date his junior was so promoted.

(d) Award costs of and incidental to this Application

(e) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2 It is contended on behalf of the applicant that the prescription of a minimum qualifying mark for viva voce was declared illegal by this Tribunal in O.A. 389/89. The Chairman of the Selection Committee (R-3) had insulted the applicant during the interview for failure to adopt family planning. The applicant had made a detailed representation to the Vigilance Organisation of the Southern Railway. Fixing of minimum qualifying marks for the viva voce would result in exclusion of even the most experienced candidate if the power is exercised arbitrarily and capriciously by the authority. The elimination of such candidates would be arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution. The applicant has been given less qualifying marks deliberately and arbitrarily. The order of this Tribunal in O.A. 389/89 has become final.


3 The respondents have contested the O.A. In the reply statement filed on behalf of the official respondents, it has been contended that Annexure A-2 notification has not prescribed any minimum qualifying marks for viva voce. Hence the prayer in the O.A. is misplaced. In the communicated dated 19.1.2005 addressed to the applicant, it was wrongly mentioned that he did not obtain the qualifying marks in the viva voce held on 2.11.2004. This was an oversight. No minimum mark is prescribed as qualifying marks for viva voce. However, there is a minimum mark required in respect of record of service and viva voce together. For both the items put together the minimum required is 30 out of 50 marks. A candidate has to secure a minimum of 15 marks out of 25 for record of service. No

minimum is prescribed for viva voce. Maximum marks for viva is 25. The aforesaid scheme of marking has been brought about after the judgment of this Tribunal in O.A. 389/89. The amendment to the scheme of marking in examination for the purpose of promotion from Group-B to Group-C was introduced by letter dated 20.8.91 (Annexure R-1). The 4th respondent got higher marks in the written test as well as in the record of service also compared to the applicant.

4 Respondent No. 3 who was impleaded in his personal capacity has also filed reply statement. It has been contended by him that the allegations made against him are baseless.

5 The 4th respondent has submitted in his reply statement that there is no discrimination in the selection process. The same criteria has been used in respect of all the candidates who participated in the selection.

6 We have heard the learned counsel for the applicant Shri TCG Swamy, the learned counsel for the official respondents Ms P.K. Nandini and learned counsel for respondent No. 4 Smt. K. Girija. We have also perused the document on record carefully.



7 The issue for adjudication in this O.A. is whether the non selection of the applicant for the Group-B post has been vitiated by the adoption of minimum qualifying marks for viva voce which has been declared illegal by this Tribunal. The issue of prescribing minimum qualifying marks for viva voce has been subject matter of several judicial orders. After analysing a number of judgments on the subject this Tribunal had held in O.A. 389/89 that :

"15 Having considered the matter in detail in the light of the available records and materials we are of the view that the fixation of 15 marks as minimum for a pass in the viva voce test in this case is unnecessary and arbitrary and unreasonable. The test for selection to the post of APO could be proceeded without giving any room for doubt or dubious action in the exercise of power by the selection committee in viva voce test if no minimum per centage of marks was fixed for such viva voce test. In this view of the matter we hold that the above fixation of minimum marks of 15 for viva voce test is illegal and we hereby quash the same."

8 Subsequent to the above decision of this Tribunal the respondents have modified the scheme of marking for records of service and viva voce and have combined the marks for viva and for record of service as follows:

(Letter No. E(GP)88/2/41 dated 20.8.1991)

	<i>Max. Marks</i>	<i>Qualifying marks</i>
(i) Viva voce	25	-
(ii) Record of service	25	30

9 A careful perusal of the scheme of marking extracted above would indicate that even in the amended scheme, there is a minimum mark required for viva voce because the maximum mark that can be given for record of service is 25. As against that, the minimum required for both record of service and viva voce put together is 30 marks. This would mean that a minimum of 5 marks is required for viva voce. It is therefore not possible to accept the contention of the respondents that the scheme of marking does not prescribe a minimum for viva voce, however small it is. By combining the two parameters, the respondents have indirectly fixed a minimum for viva voce.


10 The learned counsel for the respondents referred to the following recent judgments of the Hon'ble Supreme Court:

- (i) Siraj Vs. High Court of Kerala (2006(2) KLT 923 (SC) decided on 23.5.2006
- (ii) Hemani Malhotra Vs. High Court of Delhi (WP(Civil) 490 of 2007)- decided on 3.4.2008

11 In the first citation mentioned above, the Hon'ble Supreme Court has observed that :

“ In our opinion, the interview is the best mode of assessing the suitability of a candidate for a particular position. While the written examination will testify the candidates' academic knowledge, the oral test alone can bring out or disclose his overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion ability to make decisions, qualities of leadership etc. which are also essential for a judicial officer.”

12 In the second citation mentioned above the subject matter of the WP was the fixation of minimum qualifying marks for viva voce by the Selection Committee after the written test was conducted. The Apex Court had held that prescribing minimum marks for viva voce was not permissible at all after written test was conducted. The Apex Court had also made the following observations while allowing the petition:



“9 From the proposition of law laid down by this Court in the above mentioned case it is evident that previous procedure was not to have any minimum marks for viva voce. Therefore, prescribing minimum marks for viva voce was not permissible at all after written test was conducted. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before the commencement of selection process, the authority concerned cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at viva voce test was illegal.”

13 In view of the above observations of the Hon'ble Supreme Court in the latest judgments, the challenge against fixing any minimum marks for viva voce by providing for it in the rules/orders prior to the initiation of selection process cannot survive. However, as the selection process in the present OA was conducted in the year 2004, much before the aforesaid pronouncements of the Hon'ble Supreme Court supra, we have also considered whether the "implicit" fixation of a minimum qualifying mark of 5 for viva voce by the respondents have adversely affected the applicant's merit. We have called for the selection file and perused the proceedings of the Selection Committee which conducted the viva voce. It is seen from the selection committee proceedings that the applicant and the respondent No. 4 obtained the following marks:

Name	Written Examination		Viva voce		Record of service		
	<i>Mark obtained</i>	<i>Max. marks</i>	<i>Mark obtained</i>	<i>Max. marks</i>	<i>Mark obtained</i>	<i>Max. marks</i>	<i>Grand Total</i>
Applicant	63	100	10	25	17	25	90/150
4 th respondent	72	100	15	25	19	25	106/150


14 It could be seen from the above that the respondent No. 4 had secured higher marks even in the written examination. It can also be seen that even if we assume that there is minimum of 5 marks prescribed for viva voce, the applicant has secured more than the required minimum. In that view of the matter we are unable to accept the contention of the applicant that the selection process has been vitiated.

15 After perusal of the records we are inclined to accept the contention

of the respondents that there is a mistake in the communication dated 19.1.2005 addressed to the applicant. Instead of stating that the applicant failed to get the minimum qualifying marks in the viva voce, they should have stated that he did not secure the minimum qualifying mark in the record of service and viva put together. They also should have informed that the respondent No. 4 secured higher marks in written, viva and records of service. Such a communication giving full information would have perhaps satisfied the applicant.

16 For the reasons stated above, it is not possible to grant the prayers sought by the applicant in this O.A. The O.A. is therefore dismissed. There shall be no order as to costs.

Dated 9th July, 2008


K.S. SUGATHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

kmn