

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI  
NEW BOMBAY BENCH

O.A. No. 496/87

198

Exxxxx

DATE OF DECISION 18-10-1988

Ravindra Kumar Jha

Petitioner

Mr. Ashok Mehta

Advocate for the Petitioner(s)

Versus

Union of India &amp; another

Respondent

Mr. P. R. Pai

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. B.C. Gadgil, Vice-Chairman

The Hon'ble Mr. P. S. Chaudhuri, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? ]
3. Whether their Lordships wish to see the fair copy of the Judgement? ]
4. Whether it needs to be circulated to other Benches of the Tribunal? ]

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

O.A.496/87

Ravindra Kumar Jha,  
1012-B, Karel Scheme,  
G.T.B.Nagar,  
Allahabad.

.. Applicant

vs.

1. Union of India  
through  
The General Manager,  
Central Railway,  
Bombay V.T.
2. Additional Chief  
Mechanical Engineer/APLE  
Central Railway,  
Matunga,  
Bombay - 400 019. .. Respondents

Coram:Hon'ble Vice-Chairman Shri B.C.Gadgil

Hon'ble Member(A)Shri P.S.Chaudhuri

Appearances:

1. Mr.Ashok Mehta  
Advocate for the  
Applicant.
2. Mr.P.R.Pai  
Advocate for the  
Respondents.

JUDGMENT

Date: 18-10-1988

(Per B.C.Gadgil,Vice,Chairman)

The applicant who is working as a Turner in the Central Railway Workshop at Matunga is challenging the action of the department in not selecting him to the post of Intermediate Apprentice for Chargeman 'B' Grade. The process of selection of such apprentices took place in the year 1986. A written test was held on 12-1-1986 and 29-3-1986. The result of that test was declared on 29-5-1986. A list of 26 persons who have passed in that test was prepared vide page 16 of the application. Thereafter a trade test was held on 7-6-1986. It was followed by the <sup>to be</sup> viva voce examination on the same day. On the

(a)

basis of written test, trade test and viva voce examination a list of 16 selected persons was prepared. The applicant's name does not find a place in that list. He therefore challenges non inclusion of his name in the list.

2. The main contention of the applicant is that the procedure prescribed for preparing the select panel has not been followed. Reliance is placed on the procedure as is found on page 88 in the Book "Railways Establishment Manual" written by M.L.Jand. It is stated on that page that the allotment of marks for a selection should be as follows:

	<u>Total</u>
(a) Professional ability-	
(i) Written = 35 }	50
(ii) Viva = 15 }	
(b) Personality leadership address, academic and Technical qualifications.	20
(c) Record of Service	15
(d) Seniority	20

The grievance is that this procedure was not followed. It appears that in this selection process the department has provided that there should be 100 marks for written test and 100 marks for trade test. The third item of 100marks is for viva voce examination. It was therefore contended that the marks assigned for written test and viva voce test should have been 35 and 15 respectively. It was further contended that no marks were assigned or prescribed for the above mentioned headings (b),(c) and (d). It is in this way that the applicant has alleged in paragraph 16

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that the respondents have not followed the prescribed procedure and have arbitrarily prepared the selection list. The applicant then contends in paragraph 18 that the applicant is a highly qualified employee and that on account of his earlier performance, education and other things he was entitled to be selected. In paragraph 19 it was further contended that the applicant being a member of the Territorial Army and an entry to that effect being required to be made in the service record, the Selection Board should have taken notice of it. In paragraph 21 it was alleged that the oral interview of 26 candidates was completed in a period of  $2\frac{1}{2}$  hours and that every candidate was interviewed only for a few minutes. The contention is that the candidates were not at all interviewed in a proper sense of interview. After making the above allegations the applicant prays that he may be declared to have passed the test and the respondents may be directed to promote him to the post of Chargeman 'B' Grade.

3. The respondents have resisted the application. In substance they contended that the procedure as mentioned in paragraph 2 was not applicable and a separate procedure for selection of Intermediate Apprentices was followed. As far as the viva voce test is concerned there is a mention

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in paragraph 2 that 100 marks were allotted for such examination and that in addition there were written and practical tests.

4. For the reasons mentioned in the following paragraphs we do not intend to consider as to whether in this case the procedure mentioned in page 88 of Jand's book is to be followed or the procedure as pleaded by the respondents has to be followed. This is so inasmuch as, we think, that the application would not be tenable as the 16 selected candidates have not been made parties. During the course of the arguments we have put a specific query to the applicant's advocate as to whether the applicant would like to join those 16 persons as parties. Mr.Mehta, advocate for the applicant, stated that the applicant does not intend them to join as parties and the matter may be decided as itself.

5. Any adverse decision about the validity of the selection process would undoubtedly prejudicially affect the 16 selected persons,inasmuch as their selection would stand nullified. Ordinarily the persons likely to be aggrieved are necessary parties. Mr.Mehta, however, contended that he does not intend to challenge the selection of those 16 persons and all that he wants is that the applicant should be declared passed in the said test. In our opinion this would amount to blowing hot and cold. The allegation is made that the

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entire selection process is vitiated as the marks for the written test and viva voce test have not been allotted according to the rules. In addition the assessment of the candidates on the basis of items no. (b) <sup>(c)</sup> and (d) have not at all been made.

We are unable to accept the contention of the applicant that the applicant can be declared as successful even on the basis of the selection test which is alleged to be vitiated as contravening the rules.

6. Mr. Mehta however relied upon certain decisions of the Supreme Court for the purpose of contending that the selection of 16 persons already made need not be disturbed and at the same time the applicant should be declared to have passed the test. The first case on which he relies is of *Nishi Maghu v. State of J & K* reported in AIR 1980 SC 1975. The dispute was about admission to the MBBS course. 50 marks were allotted for interview out of 150 marks. It was held that the allotment of such <sup>a</sup>high percentage of marks for oral interview would be arbitrary. The Supreme Court, however, gave certain directions. For example in paragraph 15 it is observed that Miss Anita Jain was nominated for admission in one of the medical colleges in Madhya Pradesh. When she went to Bhopal for admission she was refused admission on the ground

that the State of Jammu and Kashmir(to which Anita Jain belongs)has not admitted nominees of the Madhya Pradesh Government and unless they were admitted Anita Jain would not be admitted to any medical college in the State of Madhya Pradesh. In this background the Supreme Court directed that the state of Jammu and Kashmir find her a seat in any medical college outside the State on the basis of reciprocity. This can be seen from paragraph 15 of the judgment. The Supreme Court further found that one Kulbhushan Gupta was wrongly refused admission . A direction was therefore given that he is entitled to a seat in the MBBS class. Another decision of the Supreme Court on which reliance is placed is that of Ajay Hasia v. Khalid Mujib reported in AIR 1981 SC 487. It was a case of admission to the Engineering College for the year 1979-80. Paragraph 17 shows that two grounds were urged viz. excessive marks(i.e. 50 marks) were allotted for the viva voce examination as against 100 marks for the written test and that the viva voce examination was in superficial manner as only two or three minutes were allotted to each of them. The Supreme Court accepted this contention. However, the question arose as to what can be done to meet the ends of justice. Paragraph 21 shows that the respondents viz. the Government and the college authorities

agreed before the Supreme Court that the best fifty students, out of those who applied for admission for the academic year 1979-80 and who have failed to secure admission so far, would be granted admission for the academic year 1981-82 and the seats allocated to them would be in addition to the normal intake of students in the College. On the basis of this agreement the Supreme Court passed appropriate directions to that effect. It is material to note that these two cases deal with the admission to the colleges and it has nothing to do with the particular number of selection to the advertised posts. It would be very difficult for the applicant to contend that we should pass an order that the applicant stands selected even though the entire selection process, according to the applicant's pleading, is vitiated.

7. The third decision on which the applicant relies is that of B.S. Minhas vs. Indian Statistical Institute and Others reported in 1984 SCC(L&S)26. Respondent No.4 was appointed as a Research Professor. Petitioner challenged that appointment. Appointment of Respondent No.4 was quashed as the vacancy was not published though it was required to be done. The Supreme Court therefore directed that the vacancy should be so published before filling it. It may be noted that before the

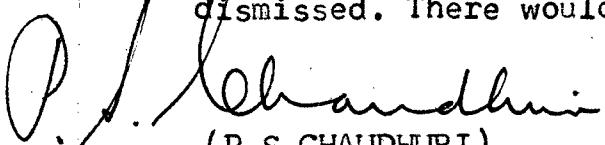
Supreme Court the applicant contended that he himself was better suited to the post as compared to respondent No.4. In paragraph 27 the Supreme Court held that it is not for the Court to determine who is the superior between the two candidates and who should be selected. It is for the authorities concerned to select from amongst the available candidates. This decision therefore does not lay down that a person can be selected at the hands of the Court even though the original selection is held to be bad. Mr. Mehta then relied on case of Ashok Kumar Yadav v. State of Haryana reported in AIR 1987 SC 454. It was a case of recruitment to posts in the Haryana Civil Service. For General candidates the written test would carry 700 marks while for ex-serviceman the marks for such test was 400. However, for both the categories the marks for viva voce examination was prescribed as 200. The Supreme Court held that allotment of 200 marks for viva voce examination is unreasonable in the facts and circumstance of the case. In paragraph 25 the Supreme Court has observed that there cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination and that it would vary from service to service according to the requirement of the service. However, in that particular case the

Supreme Court held that the marks allotted for the viva voce test was excessively high. The Supreme Court directed that the marks should be reduced as directed in the judgment. At the same time the Supreme Court did not cancel or set aside the selections made. The only direction that was given by the Supreme Court is that all the candidates who secured a minimum 45% marks in the written examination but who could not find entry in the select list should be given one more opportunity of appearing in the competitive examination which would be held even though such persons might have passed the maximum age prescribed by the rules for recruitment to the Haryana Civil Services. This decision also does not lay down that the Court or the Tribunal can pass an order selecting a candidate who has not been selected by the selecting authority. The last decision on which Mr. Mehta relies is that of P.K. Ramachandra Iyer v. Union of India reported in AIR 1984 SC 541. It was a case where one Dr. M was appointed as Senior Biochemist though he was not eligible. Dr. G who was fulfilling the essential qualifications challenged that order. In the meantime the said post was abolished. The Supreme Court therefore set aside the selection of Dr. M and passed an equitable order, and suggested

to the respondents as to why Dr.G should not get the pay which Dr.M received. The Supreme Court thereafter passed an order in that respect.

8. All the above mentioned decisions therefore would not help the applicant in the peculiar facts of this case. We have already observed that the applicant has alleged that the entire selection procedure was vitiated as the rules have not been followed. Excessive marks were allotted to certain items while the marks required to be assigned for the items (b)(c)& (d) were not at all given to the concerned candidates. There were also allegations that ~~the~~ excessive marks were prescribed for viva-voce examination. We would like to make it clear that we do not intend to give any finding about all these points as even on the hypothesis that these contentions of the applicant are accepted the applicant would not be entitled to the relief that he should be declared as selected on the basis of the alleged illegal selection process.

9. For the above reasons the application is liable to be dismissed. The application fails and is dismissed. There would, however, be, no order as to costs.

  
(P.S.CHAUDHURI)  
Member(A)

  
(B.C.GADGIL)  
Vice-Chairman