

(W)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 773/88

Transfer Application No: ---

DATE OF DECISION 18-8-1993

S.A.Sheikh

Petitioner

Mr.G.S.Walia

Advocate for the Petitioners

Versus

Union of India

Respondent

Mr.A.L.Kasturey

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman

The Hon'ble Shri Ms.Usha Savra, Member(A)

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. Whether it needs to be circulated to other Benches of the Tribunal ?

  
(M.S.DESHPANDE)  
VC

M

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.773/88

(S)

S.A. Sheikh,  
Chief Telephone Operator,  
Bombay Central,  
Western Railway,  
Bombay - 400 008.

.. Applicant

-versus-

1. Union of India  
through  
General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400 020.

2. General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400 020. .. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande  
Vice-Chairman

Hon'ble Ms.Usha Savara, Member(A)

Appearances:

1. Mr.G.S.Walia for the  
Applicant.

2. Mr.A.L.Kasturey for the  
Respondents.

ORAL JUDGMENT: Date: 18-8-1993  
(Per M.S.Deshpande, Vice-Chairman)

The question which arises for consideration  
is ~~whether~~ that the applicant could have been called for  
viva-voce test as a result of clubbing together  
of the marks obtained by him on the basis of his  
performance in the written test and his seniority  
in the grade.

2. The applicant was appointed as a Telephone  
Operator and he was found eligible for appearing  
a written test by the letter dt. 19-4-88 where his  
name appeared at Sr.No.5. The applicant gave the  
written test and obtained 19 marks out of 35 in the  
written test. According to the applicant in view of  
the modification which came into existence by virtue

*[Signature]*

of letter dt. 5-12-84, Ex.B, the applicant was entitled to have his marks obtained at the written test clubbed with the marks which he would have obtained on the basis of his notional seniority and if that was done he would have been eligible for being called for viva-voce test. By letter dtd. 10th October, 1988, Ex.C, the applicant was declared failed at the written test but came to be called for the viva-voce test taking into account his seniority marks. Inspite of this position the applicant was not called for the viva-voce test.

3. The justification offered by the respondents is that by application of the formula which gave rating for the seniority the applicant could have in addition to the 19 marks obtained by him would have secured ~~5~~<sup>5</sup><sub>8</sub> marks and rendered him eligible for being called for the viva-voce test even after ~~clubbing together~~ the applicant's performance on the written test and his rating in the seniority.

4. Mr. Walia, learned counsel for the applicant, relied on the modified procedure which was introduced by virtue of letter dt. 5-12-84 (Ex.B). Under the new instructions it was decided that 60% of the total of the marks prescribed for written examination and for seniority should also be the basis for calling candidates for viva-voce test (interview) instead of 60% of the marks for the written examination only as at present, and this would enable consideration of the senior candidates who under the existing rule may not be eligible to be called for interview. Para 3.1 mentions that for removal of doubts, it is clarified that in the modified scheme as per the preceding para, the assigning of marks for seniority at the stage of determining eligibility to be called for interview will be on

notional basis. For those who are actually called for interview, marks for seniority will be awarded again with reference to their relative seniority in accordance with the existing procedure and practice. Para 3.2 says that for the guidance of the Railway Administration the implications of the modified selection procedure have been illustrated in a hypothetical case in the statement attached.

Mr. Walia attached great importance to the statement which was annexed to the letter dt. 5-12-84 and according to him the marks which have been shown for seniority should be the marks which on notional basis should have been allotted to the applicant and not the formula which accompanied the Railway Board's letter dt. 6-10-69 (Ex. 'B') to the reply.

5. We have already pointed out that under para 3.2 ~~the~~ only implications of the modified procedure ~~were~~ pointed out and illustrated. Modified procedure does not lay down any formula for computing the marks for seniority and even the annexure makes it clear that <sup>the</sup> statement shows the implications of the proposed modified rules of selection in a hypothetical case. It is therefore evident that the annexure is only illustrative and designed to explain what has been said in the letter, for instructing the officials who have to club the marks and is not intended to serve as a formula for ~~the~~ grading the marks for seniority. The purpose would be clear also from the body of the letter dt. 5-12-84 which seeks to bring about only a change ~~only~~ by clubbing of marks obtained at the written test and the weight to be given to the seniority. It does not purport to lay down any formula for clubbing the marks for seniority. Since in all other respects the earlier instructions

issued by the Railway Board on 18-9-69 have been left unaffected clearly the formula which was laid down by that letter would prevail.

6. The opening portion of the letter makes it clear that the Board had decided that the relative weight to be given to the factors which are taken into account should be revised and then <sup>assigned</sup> sets out marks for professional ability, personality, address, leadership and academic/technical qualification, record of service and seniority. A note is appended explaining how to calculate marks for seniority and it shows that a formula has been designed to work out the manner in which weightage should be given to the seniority, that formula being  $\frac{X}{A} \times 15$  where X denotes the length of total service in the grade of the employee in question; A denotes the length of total service in the grade of the seniormost employee appearing before the Selection Board, 15 being the number of marks for seniority. Since there is nothing in the subsequent letter to substitute the formula in the letter dt. 18-9-69 mere reference to the notional basis in para 3.1 of the letter dt. 5-12-84 would not make the formula in the earlier letter inapplicable even at the stage of determining eligibility for viva-voce test by clubbing of the marks obtained in the written test and by virtue of seniority.

7. We are therefore not inclined to accept the interpretation which Mr. Salia for the applicant wishes to place on the letter dt. 5-12-84 and we find that the applicant was not ~~being~~ eligible for being called for the viva-voce test on the basis of the performance in the written test and the marks to be

