

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No. 37/86

Shri Subramaniam Nagarajan,  
7 - Pitru Chaya Bldg.,  
Kolsa Wadi,  
Kalyan,  
Distt. THANE.

... Applicant

V/s.

Divisional Railway Manager,  
Central Railway,  
Bombay V.T.,  
Bombay - 400 001.

... Respondent

Coram: Member S.P.Mukerji  
Member(J) M.B.Mujumdar

JUDGMENT: (Per Mukerji, Member)

Date: 12-9-1986

The Petitioner Mr.S.Nagarajan who was working as Head Parcel Clerk, Byculla Parcel Depot, Central Railway, in the cadre of Commercial Clerk/Inspector in the Bombay Division moved the Tribunal on the 18th of February 1986 under Section 19 of the Administrative Tribunals Act praying that the panel of 220 names published under the letter of 12.8.1985 for promotion to the posts of Commercial Clerks/Inspectors in the grade of Rs.455-700 may be quashed and the promotions made on that basis may be set aside. He has also prayed that the employees like him already working in the next lower grade of Rs.425-640 should not be subjected to the selection procedure for the purpose of promotion to the grade of Rs.455-700.

2. The matrix of the relevant facts can be summarised as follows. On 20-12-1983 the Railway Board issued orders on Cadre Review and restructuring of non-gazetted cadres (exhibit 'A' to the petition) including the cadre of commercial clerks/weigh bridge clerks to which the applicant belongs. The order purported to

increase the percentages of posts in the scale of Rs.425-640 and above and reducing the percentages of posts in the scale of Rs.330-560 and below so as to ensure accelerated promotions to the higher grades and remove stagnation. It was also provided for in that order that promotion to the next higher scales even though to selection posts will be based only on scrutiny of service records without holding any written or viva-voce tests. But, promotions by two levels and more will be made on the basis of normal selection procedure. It was further laid down that this "modified procedure of selection as aforesaid will be applicable only to the first such promotion(if that post happened to be a "Selection Post", the second and subsequent promotion, if any, will be based only on the normal rules relating to filling in of "selection" or "non Selection" posts(as the case may be)" It was also laid down that the modified selection procedure will be applicable only to the vacancies existing as on 31-12-1983 and the vacancies arising on 1-1-1984 due to restructuring of the cadre in terms of this orders. The letter exhorted the various Railways to complete the process of selection within a period of 3 months.

3. So far as the applicant is concerned he was working as Commercial Clerk in the scale of Rs. 330 - 560 as on 31-12-1983 and in accordance with the aforesaid order he was given one step promotion without the normal process of selection to the next higher grade of Rs.425-640. It appears that for the next higher grade of Rs.455-700 which the applicant is claiming, the one-step-promotion with relaxed standard of selection was completed through a panel of 94 persons on 7-7-84. In the grade of Rs.455-700 as on 1-1-1984 there were 240 posts in the cadre against which only 27 officials were working leaving a balance of 213 unfilled vacancies, 94 of which were filled up by one-step-promotion panel of 7-7-1984. Thus there were 119 unfilled vacancies as on 1-1-1984. Due to retirement and other casualties as also accelerated promotions to the higher grades the number of vacancies in the scale of Rs.455-700 were calculated as 298 as on December,1984 and these vacancies had to be filled up by normal process of

promotion by selection. Accordingly eligible candidates were invited to take the written test in February, 1985 and those who qualified in the written test were called for

Viva-Voce between the 15th and the 19th of April, 1985. It transpires that the applicant who had already been promoted by the one step promotion under the modified selection procedure from Rs.330 - 560 to the scale of Rs.425-640, also took the written test, qualified and <sup>was</sup> called for viva-voce test. Unfortunately for him he could not make the grade and was thus not included in the panel of General candidates. It is against this non-inclusion in the panel and non-promotion to the grade of Rs.455-700 that the applicant has come up with the present application. The applicant has tried to challenge the process of selection <sup>for</sup> of the panel on various grounds. For instance, he has alleged that 225 ineligible candidates had been called for the written test but were not allowed to appear and certain senior candidates <sup>had</sup> not been included in the panel and certain eligible candidates were not called for the written test. The main charge of the applicant is that the number of vacancies for which the panel was prepared was not correctly assessed.

4. The contention of the respondents on the other hand is that the selection by which the panel of 220 names was prepared, was not through the modified selection procedure laid down in the letter December, 1983 but was a normal selection process and that the applicant had been given one step promotion already under the December 1983 order from the scale of Rs.330-560 to Rs.425-640 and hence the question of giving him further promotion under the relaxed selection procedure does not arise. They have also explained that the number of vacancies of 298 had been correctly assessed. They have explained that they had originally invited candidates for written tests three times the total number of vacancies assessed by them i.e.298, but since the immediate two levels below <sup>Rs.</sup>425-700 grade could provide only 613 candidates they had to go to the candidates in the 3rd level of Rs.260-430. However, subsequently when they found that this was not regular they cancelled the invitation to take written test extended to 225 employees in the scale of Rs.260-430 and thus they conducted the written test only of 613 candidates. Those who qualified in the written test, including the applicant, were interviewed by a regularly

constituted selection board and the panel of 168 general employees, 37 SC employees and 15 ST employees giving a total of 220 was published by the impugned order of 12-8-1985. It has also stated that one of the recognised unions represented against alleged irregularities in the process of selection and the whole matter was examined at the headquarters level, all the allegations were probed into and it was found that no irregularities had taken place. It was only after such a clearance that the promotion orders of 220 employees were issued. The Respondents have further clarified that though the applicant was successful in the written test he failed in the viva-voce test and thus could not be placed on the panel. The respondents have explained and rebutted each of the allegations of irregularities levelled in the application. For instance they have explained that 225 ineligible candidates who had been invited to appear in the written test were finally not allowed to take the written test and thus they prevented the very irregularity on which the applicant seems to establish his case in his application. They have also explained that 5 eligible candidates who were left out were called to appear in the viva-voce test along with other employees and thus no inequity was allowed to be perpetrated.

5. We have heard the arguments of the Learned Counsel for both the parties and gone through the documents carefully. The Learned Counsel for Respondents was good enough to show us the original broad sheets on which the assessment marks on each of the candidates who were called for viva-voce test after they had qualified in the written test had been recorded, under the five headings viz. (i) written test, (ii) interview (iii)seniority (iv) record of service and (v) personality including leadership, technical qualification etc. Amongst the General candidates only those who obtained 60 or more marks out of the 100 were included in the panel. We examined closely the marks awarded to the applicant and found that the applicant scored the following marks :

Written Test	.. 19/35
Interview	.. 6/15
Seniority	.. 12/15
Record of service	.. 10/15
Personality	.. 5/20
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Total:	.. <u>52/100</u>

Since the applicant had scored less than 60 marks he could not be included in the panel of 220 names.

6. During the course of the arguments Learned Counsel for the applicant indicated that the applicant suffered because of the low seniority wrongly given to him. In the above context even if the applicant had been given 15 out of 15 for seniority the total marks that he would have obtained would have gone only upto 55 instead of 52 out of 100 and even then he would have been far below the cut-off marks of 60 which had been fixed.

7. Now we come to the main thrust and plank of the arguments put up by the Learned Counsel for the applicant to the effect that there has been an unwarranted overestimate of the vacancies, as a result of which larger number of candidates were included within the selection zone and thus the possibility of selection of the applicant was jeopardised. We have not been able to persuade ourselves to accept this line of arguments for the following reasons :

(a) Basically, as has been admitted, the applicant had failed to qualify in the test, having, obtained only 52 marks as against the 60 marks which was the cut-off point for inclusion in the panel. Having thus failed to qualify for inclusion in the panel itself, the question of any nexus between his selection and the number of vacancies does not arise. It has to be understood that the determining factor in the applicant's case is not a question of relativity of his position in the panel vis-a-vis the position of others who are in the panel so that his chances of appointment would depend upon how

far one would go in the panel for filling up the vacancies. The applicant's case unfortunately however is that of his total disqualification from the panel itself because of his having failed in the ~~viva voce~~ <sup>5</sup> test. He is completely out of the panel and therefore he cannot be helped by increasing the number of vacancies or by decreasing the number of candidates called for written test and viva voce.

(b) The Learned Counsel for the applicant argued, that according to him the number of vacancies would not be 298 but it would be much less say 188 if the selection had been made within 3 months of December 1983 and the vacancies as on 1-1-84 only had been taken into account. His argument is that if the vacancies had been less, the applicant would have found lesser competition than what has been in this case. We cannot accept the view that the respondents have over estimated the vacancies. If that were so of the 220 candidates who were included in the panel could not have been absorbed straightaway.

8. The peculiar situation of the cadre position in this case on the other hand tilted the situation in favour of the applicant. The total number of vacancies estimated for the selection was 298. In accordance with the normal procedure the selection zone would have extended to three times that is 894 but because of the paucity of the candidates in the next two lower levels, only 613 candidates were considered. Thus the peculiar situation of the cadre gave an undue advantage to the applicant and other candidates rather than a disadvantage inasmuch as instead of facing competition from about 900 candidates they had in this case to face competition only from 613 candidates. Even this number of 613 candidates is less than 3 times the number of candidates actually included in the panel i.e. 220 and from that angle also the applicant had to face a lesser degree of competition than normally he would have had to.

9. In the above context we ~~have~~ <sup>are</sup> fully convinced that there has been no <sup>q</sup> <sub>h</sub> inequity or injustice or any degree of unfair competition to which the applicant can be deemed to have <sup>been</sup> <sub>h</sub> subjected. Having agreed to take the selection test both written as well as viva-voce the petitioner cannot, having failed to qualify, challenge the regularity or legality of the selection process on un<sub>u</sub>substantiated technical grounds.

10. Finally the applicant having already enjoyed the one-step-promotion from his original scale of Rs.330 - 560 to the next higher grade Rs.425 - 640 by relaxed standards of selection cannot claim as a matter of right still another promotion to the next higher grade of Rs.455 - 700 by the relaxed standard of selection.

11. It is a widely established principle of law that where a regularly constituted selection committee has assessed the merits of a candidate this Court cannot question the merits of the assessment unless and until there is a *prima-facie* case of prejudice, malafide or abuse of discretion. Since none of these grounds has been advanced by the applicant we do not propose to question in any manner whatsoever the assessment made by the Selection Committee. Further, it has been laid down by the Supreme Court in State of Mysore V/s. Sayed Mahmood AIR 1968 SC 1113 and Gurdial Singh Fijji V/s. State of Punjab AIR 1981 S.C. 2015, that though right to be considered for promotion exists, no right can be claimed for actual promotion when one is found unfit after consideration by the competent authority.

12. The Learned Counsel for the applicant has brought to our notice the judgment of the High Court of Judicature at Bombay in Appeal 377/1985 (in Writ Petition 1245 of 83 - Union of India and Another V/s. Indian Naval employees Union and others) in which the panel of promotion was allowed to be quashed in view of the fact that the number of vacancies was not correctly determined. We have gone through the judgment carefully and find that the judgment is not applicable to this case in any manner. In that case ~~for~~ the zone of selection had been expanded unrealistically by overestimating the number of vacancies by including 35 imaginary non-existent posts which were not sanctioned even in principle by the Government, much less sanctioned in specific terms. In this case however, the vacancies were actually in existence and as a matter of fact the zone of selection had to be abridged from 660 to 613 for selecting 220 candidates. Further, since in this case the applicant was not included in the panel at all but was disqualified on merits, as already explained, the question of

relating his appointment with the number of vacancies or with the zone of selection does not arise. In this respect, his very standing in questioning the estimates of vacancies is suspect.

13. In view of the facts and circumstances we find no merit in the application and reject the same. There will be no orders as to cost.

The judgement has been pronounced in the open Court in the presence of the Applicant and Respondents.

*S. Mukerji*  
(S.P. ~~MUKERJI~~) 12.9.86  
Member

*M.B.*  
(M.B. ~~MOJUNDAR~~)  
Member (J)