

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH TRIBUNAL

O.A.No. 879/96

Date of Decision 21.2.97

P.N.Patil & Ors.

Petitioner

Shri G.K.Masand.

Advocate for the Petitioner.

Versus

Union of India & Ors.

Respondent

Shri M.I.Sethna & Shri S.C.Dhawan.


Advocate for the Respondents.

Coram:

The Hon'ble Mr. B.S.Hegde, Member(J),

The Hon'ble Mr. P.F.Srivastava, Member(A).

1. To be referred to the Reporter or not? ✓
2. Whether it needs to be circulated to other
Benches of the Tribunal?


(B.S.HEGDE)
MEMBER(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 879/1996.

Today, this the 21st day of February 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri P.P.Srivastava, Member(A).

1. P.N.Patil,
F/19, Shivdarshan,
Central Railway Housing
Society, Mahul,
Mulund,
Mumbai - 400 080.
2. D.N.Dadilwar,
R-301, Ram Apartment,
Azamshah layout,
Nagpur - 9.
3. R.R.Tiwari,
RB-3/314, Block-C,
Habib Ganj, in front of
Divisional Railway Manager's Office,
Bhopal.

... Applicants.

(By Advocate Shri G.K.Masand)

V/s.

1. Union of India through the
General Manager, C.R.,
Chatrapati Shivaji Terminus,
Mumbai.
2. Chief Personnel Officer,
Central Railway, CST,
Mumbai.
3. Shri S.K.Mishra,
Assistant Personnel Officer
Solapur Division,
Solapur.
4. Shri S.N.Deshmukh,
Assistant Personnel Officer,
Zonal Training College
at Bhopal.
5. Shri Iqbal Khan,
Assistant Personnel Officer,
Bhusaval.
6. Shri V.G.Nair,
Assistant Personnel Officer(Engineer)
at Headquarters Office at
Mumbai.
7. Shri S.D.Barhate,
Asstt. Personnel Officer
at Nagpur.
8. Shri H.G.Gosavi,
Asstt. Personnel Officer,
Jhansi.

.... Respondents.

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9. Shri B.K.Panigrahi,
Asstt. Personnel Officer
(Court) Headquarters
Office,
Mumbai.
 10. Shri A.K.Nama,
Personnel Inspector,
Office of the D.R.M.,
Bhopal.
 11. Smt. N.C.Mistry,
Office Superintendent-I,
Office of Chief Works Manager,
Parel.
 12. Ms.G.K.Punjabi,
Office Superintendent-I in
the Office of DRM, Mumbai
Division,
Mumbai.
- (By Advocate Shri M.I.Sethna along with
Shri S.C.Dhawan).

.... Respondents.

O R D E R

(Per Shri B.S.Hegde, Member(J))

By this O.A. the applicants are challenging the impugned order dt. 8.8.1996 selection to the post of Assistant Personnel Officer and also posting orders.

2. The applicants No.1 and 2 are working in the cadre of Law Assistants being designated as Chief Law Assistants and applicant No.3 is working as Office Superintendent. The grievance of the applicants relates to the non-selection to the post of Assistant Personnel Officer in the grade of Rs.2,375-3,750.

3. The learned counsel for the applicant Shri Masand state that the post of Assistant Personnel Officer is a Group 'B' post and the same is filled by promotion from amongst eligible Group 'C' employees. There are two methods for filling the post, one by limited departmental examination against 30% which is open to all the employees who have put in 5 years service in the feeder

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grade and is based on open competition where seniority plays no part. The second method is 'General Selection' against 70% vacancies which is strictly based on seniority. The present application deals with the appointment to the post of Assistant Personnel Officer against 70% vacancies for 'General Selection' for which the zone of consideration is restricted.

4. The respondents notified vide their letter dt. 21.11.1995, twelve vacancies against 70% quota for 'General Selection' and one for SC candidate. The eligibility prescribed under the said Notification was three years non-fortuitous service in the grade of Rs.1600-2660 and above as on 31.10.1995 are eligible for consideration for selection to the above post. The contention of the learned counsel for the applicants is that they are otherwise eligible to be considered and also submit that promotion to Group 'B' posts are governed by the provisions as contained in Chapter - II of the Indian Railway Establishment Manual Vol.I. Rule 203.8 dealing with selection to the post of A.P.O. provides that all employees who are eligible and who volunteer for the selection should be considered, without any limitation of number. However, the Railway Board vide their letter dt. 9.6.1970 have provided that while any number of employees in the feeder posts could be called for the written test, insofar as viva voce test is concerned, only successful candidates in the written test to the extent of six times the number of vacancies should be called for viva voce in the order of marks obtained in the written test. It was further contended that seniority has always played dominant role on all the selection held prior to the impugned selection and

none of the senior employees who have qualified in the written test were superceded by their juniors etc. In the written test the applicants were qualified and submit that if the Respondents gone by the strict method of selection and due importance attached to the seniority, all the three applicants who were within the zone of consideration of 12 vacancies of the integrated seniority list would have been selected. Since there were 12 vacancies to be filled in, they can call maximum 72 persons for the viva voce from the general candidates in accordance with the Railway Board's letter dt.9.6.70. Since they were called for viva voce test, it means that they had secured more than 30% of marks in the written test prescribed for the written test etc. However, the respondents have called for viva voce test more than 72 persons, which is contrary to Railway Board's letter dt. 9.6.1970.

5. On the other hand, the learned counsel for the Respondents Shri M.I.Sethna along with Shri S.C.Dhawan have denied the various contentions of the applicants counsel and contend that the promotion to the post of Assistant Personnel Officer is being regulated by the Recruitment Rules as published in the IREM Chapter-II Rules 204 to 210. The feeder cadres for the post of Assistant Personnel Officer comprises of Welfare Inspector cadre, Personnel Inspector, Office Superintendent, cadre of Stenographers and the Law Assistants, therefore, it clear that the APO cadre is formed by promotion from different feeder cadres, belonging to different reasons. Further, the promotions to the post of APO are made strictly on the basis of selection

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and the employees belonging to the above feeder cadres are required to be in the above mentioned grade and were further required to be completed 3 years regular service before they could enter the zone of consideration for selection to the post of APO. The selection to the post of APO cadre is by a higher ranking selection committee, consisting of three senior officers and that Committee's recommendation of the panel dt. 8.8.1996 is being challenged in this O.A.

6. The learned counsel for the Respondents further urged that the Railway Board's letter dt. 9.6.1990 relied by the applicants counsel is totally in a different context and does not affect the subject matter of the present selection. According to applicants, the number of eligible candidates who should form the zone of consideration should be restricted to six times, the number of available vacancies. The said contention has been denied by the Respondents and stated that the selection is required to be done in accordance with the Chapter-II of IREM as per the said Rules, the order is bound to call all otherwise eligible candidates who have scored 60% or more marks in the written test are to be called for the viva voce. The interest of the applicants have not suffered on account of calling more than 78 persons for viva voce. Therefore, it is submitted that for filling up the post of APO being a selection post, the recommendation of the selection committee based on the Rules would apply and not the letter dt. 9.6.1970 and grading given by the selection committee. Since the applicants have not challenged the decision by the selection committee either on the ground of mala fide or arbitrariness,

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the question of quashing the selection and posting orders does not arise. It is further contended that the very basis of selection process contemplates that seniority is not the first principle to be applied for preparing the select list, it is merit and not seniority. Though the applicants are shown in the inter se seniority list at Nos. 8, 10 and 12, they did not qualify on merits. The seniority alone cannot rescue the situation. In such cases seniority becomes relevant when two candidates are found to be on selection being absolutely identical meritorious status. The seniority is relevant only for the purpose of preparing original eligibility list and for the purpose of preparing the inter se seniority list of the selected candidates, therefore, the contention of the applicants that though they are shown as seniors, they have not been selected is not correct.

7. It is not in dispute that the applicants are seniors vis-a-vis the relevant feeder cadre, but this seniority has no consequence as far as the selection process is concerned. It is not the case of the applicants that they refused to appear for viva voce test on the basis that the respondents have called more than the required number of persons for the viva voce test in view of the Railway Board's letter dt. 9.6.1970. On the other hand, they chose to appear for the viva voce after the eligible candidates list was notified; despite their knowledge that the respondents have called more than 78 candidates for the viva voce, they had not chosen to resist this at any appropriate stage and in fact had appeared for the viva voce, it is only after their

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non-selection in the panel they raised this plea that the selection made by the respondents is not in accordance with the Railway Board's letter dt. 9.6.1970. In fact, on the whole pursuant to the circular 317 applications were received, out of which 291 were found eligible and 26 were found ineligible, out of which 100 candidates were declared successful and integrated seniority list was prepared and circulated for comments vide letter dt. 10.7.1996 and were given opportunity to file their objections, if any.

8. The viva voce test was conducted on the following days i.e. 15.7.1996, 16.7.1996, 30.7.1996, 31.7.1996 and 2.8.1996 respectively. The committee after due observation of Rules and Procedures for selection selected 13 candidates vide its order dt. 8.8.1996 and pursuant to this panel, 11 candidates have already been posted and have taken charge as A.P.O. For the purpose of selection of A.P.O., the candidate must secure 60% of marks in the respective three heads. All the three applicants could not qualify in the viva voce test due to obtaining less than 60% of marks in individual three heads as stated earlier. Though they have higher position in the inter se seniority list they could not qualify the viva voce test and secure less than 60% of marks. The allegation as regards ignorance of seniority, it is submitted that the seniority of the individual candidates has been fixed as the candidates are belonging to different stream and categories and seniority is considered only for preparation of inter se seniority and as such seniority has got no nexus with selection. The finalisation of panel is based upon

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the passing of three heads individually. Accordingly, we directed the respondents to furnish the selection proceedings for our perusal. As per the direction the respondents ^{have} furnished the selection proceedings and on a perusal of the same, we are satisfied that all the three applicants did not secure 60% of marks on individual heads. Therefore, they could not be qualified further. A candidate has to secure minimum 15 Marks against record of service and 30 Marks for record of service and viva voce test put together, on the whole 60 Marks in aggregate in order to qualify for empanelment in terms of Railway Board's letter dt. 20.8.1991. As stated earlier after perusal of the selection proceedings it is made out that all the three applicants both in the personality and record of service did not obtain 30 marks and they secured less than 30 marks. It is an undisputed fact that ^{for} the selection of A.P.O. seniority is not the criteria and the senior person has got no right until and unless the competent selection committee members find them suitable for promotion and they have to pass by obtaining 60% of marks in individual head as referred to in Rule No.204.1 of IREM Chapter-II.

9. It is noticed that the respondents have called for more than the required numbers to be called for the number of vacancies to be filled, but the excess candidates were not selected. Further, even assuming that the Railway Board's letter dt.9.6.1970 would apply to the facts of this case (in fact not), the excess, if any, by itself does not vitiate the selection because the said letter is not a statutory one. They do not deny that the post of A.P.O. is being regulated by Recruitment Rules as published by IREM Chapter-II.

10. The learned counsel for the Respondents in support of their stand cited the following decisions.

(1) Smt. Nutan Arvind V/s. Union of India & Anr. (1996(1) SCSLJ 238) wherein the Apex Court has held that "The DPC which is high level committee considered the merits of the respective candidates, the appellant though considered was not promoted. It is for the DPC to consider ^{at} the time when the assessments of the respective candidate is made. When a high level committee had considered the respective merits of the candidates assessed the grading and considered their cases for promotion this Court cannot sit over the assessment made by the DPC as an appellate authority. The DPC would come to its own conclusion on the basis of review by an officer and whether he is or is not competent to write the confidentials is for them to decide and call for report from the proper officer. It had done that exercise and found the appellant not fit for promotion. Thus we do not find any manifest error of law for interference."

(2) In Sarat Kumar Dash and Ors. V/s. Biswajit Patnaik and Ors. (1995) 29 ATC 351 wherein the Apex Court has held that "In case of merit-cum-suitability seniority should have no role to play when the candidates were found to be meritorious and suitable for higher posts. Even a juniormost man may steal a march over his seniors and jump the queue for accelerated promotion. This principle inculcates dedicated service, and accelerates ability and encourages merit to improve

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excellence. Seniority would have its due place only where the merit and ability are approximately equal or where it is not possible to assess inter se merit and suitability of two equally eligible competing candidates who come very close in the order of merit and ability." In the light of the above the question to be seen here is whether the selection is made by the DFC is in accordance with the relevant Recruitment Rules or not.

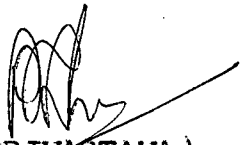
(3) Madan Lal & Ors. V/s. The State of Jammu & Kashmir and Ors. (JT 1995(2) S.C. 291) wherein it is held that "a person is subjected himself before the authority, thereafter, it is not open to him to agitate the selection, as he has no locus standi to challenge the said selection. It is a selection process and not on the basis of seniority.

11. For the reasons stated above, and in the facts and circumstances of the case, we are of the considered opinion, that the cases relied upon by the Respondents will have close proximity to the facts of this case and the ratio laid down there would fully apply to the present case and accordingly we are of the considered opinion that since the applicants could not qualify themselves in the viva voce test and having participated in the viva voce test they do not have any locus standi to challenge the panel prepared by the Selection Committee of having not selected for the post of A.P.O. As stated earlier, since they have not challenged the decision of the selection committee in this O.A. it is not open to them to seek a direction for cancellation of the panel which was duly constituted by the


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Competent Authority. In the result, we do not see any merit in the O.A. and the same is dismissed. But in the facts and circumstances of the case, no order as to costs.



(P.P. SRIVASTAVA)
MEMBER (A)



(B.S. HEGDE)
MEMBER (J).

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