

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 275/90

Transfer Application No: --

DATE OF DECISION 1-4-1993

H.C. Misra

Petitioner

Mr. S. Natarajan

Advocate for the Petitioners

Versus

U.O.I. and ors.

Respondent

Mr. A. L. Kasturey

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y. Priolkar, Member (A)

The Hon'ble Shri V.D. Deshmukh, Member (J)

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?

4/4
(M.Y. PRIOLKAR)
Member (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.275/90

H.C. Misra,
Assistant Engineer,
Western Railway,
Ratlam Division,
Naemuch.

.. Applicant

-versus-

1. General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

2. Chief Engineer,
Western Railway,
Churchgate,
Bombay - 400 020.

3. Union of India
through
Secretary,
Railway Board,
Rail Bhavan,
New Delhi - 110 001.

.. Respondents

Coram: Hon'ble Shri M.Y. Priolkar,
Member(A)

Hon'ble Shri V.D. Deshmukh,
Member(J)

Appearances:

1. Mr. S. Natarajan
Advocate for the
Applicant.

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

ORAL JUDGMENT: Date: 1-4-1993
(Per M.Y. Priolkar, Member(A))

The applicant who is working as Assistant Engineer on adhoc basis has the grievance that although he had passed the written test prescribed for regular promotion to the post of Asstt. Engineer and called for viva-voce test, his name was not finally included in the list of successful candidates.

2. Learned counsel for the applicant contended that a number of juniors of the applicant have been included in the panel

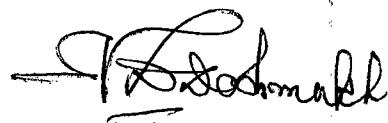
and the applicant having much better educational qualifications, record of service and had also discharged his duties satisfactorily in the present post though on ad-hoc basis, he could not have been superseded by his juniors.

3. We have perused the record. According to the scheme of examination, the written test consisted of maximum 50 marks with 30 as qualifying marks; for record of service, maximum marks were 25 with 15 as qualifying marks and ^{for} personality, address, leadership and technical qualification marks were a maximum of 25 with 15 qualifying marks. It is seen from the record that the applicant failed in the viva-voce test and, consequently, in the selection because he secured only 14 marks out of 25 in the viva voce test whereas the minimum prescribed for qualifying was 15 marks. It is also seen that out of about 111 candidates who had been called for viva-voce test, only three candidates scored total marks which were less than the applicant who had scored 64.16 marks (Total written + record of service + viva voce). All other candidates had scored higher marks than the applicant. The applicant has also not alleged any malafides against any member of the selection committee nor is there any evidence to suggest that his marks in the viva voce had been deliberately reduced for any extraneous reasons.

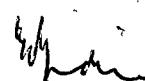
4. Learned counsel for the applicant brought to our notice a number of judicial decisions in which it has been held that any rules making provision for an excessively high percentage for viva voce test would be unreasonable and arbitrary. All the decisions cited by the

learned counsel, however, were in the context of direct recruitment and not for promotion of departmental candidates as in this case. The learned counsel for the applicant then submitted that at least a recommendation should be made by us to the departmental authorities to consider awarding one grace mark to the applicant in the viva-voce test so that the applicant would be declared as successful. He was, however, not able to show us any provision in the rules which empowers the competent authority to award such grace marks, even when enough candidates have secured qualifying marks without resorting to such provision of grace marks.

5. In the circumstances, although this seems to be a hard case where a candidate failed to qualify in the selection just because he got one mark less in the viva-voce test, we are unable to give any relief to the applicant. The application is accordingly dismissed with no order as to costs.



(V.D. DESHMUKH)
Member (J)



(M.Y. PRIOLKAR)
Member (A)