

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 803/91

Transfer Application No: ~~xxxxxxxxxxxxxx~~

DATE OF DECISION: 4.8.1994

S.R. Naik & Ors. Petitioner

Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Mr. J.G. Sawant Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri V. Ramakrishnan, Member(A)

1. To be referred to the Reporter or not ? NO
2. Whether it needs to be circulated to other Benches of the Tribunal ? NO


V.C.

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

O.A.NO. 803/91

S.R. Naik & 5 ors.

..Applicants

v/s

Union of India & Ors.

..Respondents

Coram : Hon. Shri Justice M.S.Deshpande, V.C.

Hon. Shri V. Ramakrishnan, Member(A)

ORAL JUDGMENT:
(Per: M.S.Deshpande, Vice Chairman)

DATED: 4.8.94

None for the applicants. Mr. J.G. Sawant, counsel for the respondents heard.

2. By this application the six applicants challenge the selection held in pursuance of letter dated 30.11.1990 and for a direction to quash the panel published on 19.3.1991 for selection to the post of Office Superintendent Gr.II in S&T Department in respect of 13 vacancies for the post of Office Superintendent Gr.II. The applicants appeared for the written test. A supplementary written test was held at which applicant no.6 appeared. None of these candidates qualified at the written test and they were not therefore allowed

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to appear at the Viva-Voce Examination. The contention of the applicants is that their seniority marks were not assessed and the mandatory question on language policy was not asked and the number of vacancies had not been properly assessed.

3. All these objections have been controverted by the respondents, according to whom it was only at the supplementary test which was held on 29.12.90 that the mandatory question was not asked but at the first written test which was held on 22.12.90 that question had been asked and even after adding their seniority marks they did not get 60% marks which were necessary for appearing at the Viva-Voce examination.

4. We perused the marks sheets and we find that marks sheets in respect of examination dated 22nd and 29th October 1990 that seniority marks were properly assessed and taken into consideration for considering the eligibility and even after adding the seniority marks the applicants had not secured the minimum qualifying marks for the Viva-Voce examination. There is no substance in the plea that seniority marks had not been allotted to the applicants.

5. With regard to applicant no.6 who appeared at the second test, his submission was that the mandatory question had not been asked at the second examination held on 25.2.91 though it was asked in the written test held on 22.12.90. The first written test at which the applicants 1 to 5 appeared ^{did} ~~would~~ not therefore ~~succumb~~ suffer from the

vice of the absence of mandatory question of language policy and in any event the applicants 1 to 5 will not be entitled to get any benefit out of the omission of mandatory question in the test held on 25.2.91.

6. With regard to applicant no.6 the respondents pointed out that the applicant no.6 appeared at the second written test but did not raise ^{any} objection to the omission of mandatory question on language policy at the second test, immediately after the examination or even in the representation which was made to the respondents. That objection has been raised for the first time in the present application. We do not think that the omission to put ^a question on language policy can now be used as attack by applicant no.6 who had given the written test and had not objected to it. In any case it cannot be regarded as vitiating the entire examination process. We, therefore, do not think that the applicant no.6 is entitled to succeed on this ground.

7. With regard to the assessment of vacancies for which the selection was to be made the respondents have pointed out that the vacancies have been properly ^{assessed} ~~done~~ by including the actual number of vacancies plus the anticipated vacancies. Nothing is apparent from the record which would justify the conclusion that the vacancies had not been properly assessed. In any event the applicants ^{having} ~~were~~ failed at the written test and could not qualify for the viva voce examination, cannot be allowed to attack the selection process at which they

did not qualify. Assessment of number of vacancies even if it were done wrongly ~~it~~ cannot avail them any benefit.

8. There was no appearance for the applicants at the time of hearing. We heard Mr. J G Sawant, the learned counsel for the respondents and went through the relevant record for the purpose of ascertaining whether the grievance of the applicants was well founded. We see no merit in the pleas which have been raised. In the result there is no merit in the application. It is dismissed. No order as to costs.

V. Ramakrishnan

(V. Ramakrishnan)
Member(A)

M.S. Deshpande

(M.S. Deshpande)
Vice Chairman