

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. : 166 OF 1992.

~~TRANSFERRED APPLICATION~~

Date of Decision 11.10.95

Shri K. S. Venkat Raman,

Petitioner/s

Smt. N. V. Masurkar,

Advocate for
the Petitioner/s

Versus

Union Of India & Others,

Respondent/s

Shri Subodh Joshi,

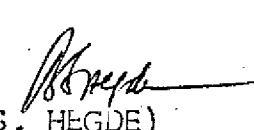
Advocate for
the Respondents

CORAM :

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

Hon'ble Shri. M. R. Kolhatkar, 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).

OS*

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 166 OF 1992.

K. S. Venkat Raman ... Applicant
Versus
Union Of India & Others ... Respondents.

CORAM :

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

Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Smt. N. V. Masurkar,
Counsel for the applicant.
2. Shri Subodh Joshi,
Counsel for the respondents.

JUDGEMENT

DATED : 11.10.95

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

1. In this O.A., the applicant has challenged the action of the respondents in not recounting and revaluating the answer books of the applicant in relation to the Written Examination conducted by the respondents in pursuance to the notification dated 14.08.1991 for the post of Section Officer Group 'C' Service. The main contention of the applicant is that he was not selected due to lacunas in the ~~conduct~~ of the examination, the eligibility criterias and the final selection. The marks awarded to the applicant are similar in two or more papers frequently, for the last five times of the examination for which he appeared and his failure in the said examination.

2. The brief facts of the case are that the applicant has been appointed as a Clerk Grade-II in the

(11)

grade of Rs. 260-400 with effect from 17.11.1979. The applicant was eligible to appear for the Appendix-III A (I.R.E.M.) Examination after completion of 5 years of service. Accordingly, he first appeared for this examination in the year November 1985 and was declared unsuccessful. Since then, he was availing every opportunity for appearing the examination late till December 1990 but failed. He made representation to the Railway Board on 29.08.1991 but no reply is received by the applicant. He is presently working as Accounts Assistant. In accordance with the channel of promotion, the promotion for the post of Section Officer/ Inspector Of Stores Accounts/Inspector of Station Accounts is to be made from the post of Accounts Assistant/Junior Accounts Assistant. Admittedly, the post of Section Officer is a selection post and the selection should be made primarily on the basis of overall merit. The contention of the applicant is that though he made representations to the Competent Authority but he did not receive any reply, hence he filed this O.A. praying for the following reliefs:-

- (a) That this Hon. Tribunal be pleased to call for records pertaining to the written tests held in November 1988, 1989 and 1990 and after examining the legality, validity and propriety of the same be pleased to quash and set aside the selection made on the basis of the results of written tests of 1988, 1989 and 1990.
- (b) That respondents be directed to recount the marks re-assess the papers of applicant for 1990 examination and produce the said record before this Hon. Tribunal and if the applicant is found successtul in the said examination, he should be promoted with all consequential benefits.

(12)

3. The respondents in their reply controverted the various contentions of the applicant and denied that there was any lacunas in the conduct of the examination, eligibility criteria and the final selection. The examinations were conducted strictly as per the rules and procedures laid down from time to time by the Railway Board. The marks obtained by the applicant in the last 5 times of the examination at Annexure-II to the reply clearly shows that he has not qualified in any of the examination. Any representation made by the employees directly to the Railway Board other than through proper channel will not be entertained by the Board under any circumstances. Since the applicant has sent the representations directly to the Railway Board, they did not ~~sent~~ any reply to the same. There is no reason to doubt the correctness of the result and no scope for any suspicion, since the examination is conducted on all India basis. In any case, para 214 of Indian Railway Establishment Manual is not applicable to the qualifying exam for promotion to posts of Section Officer/ISA/TIAS which is conducted as per Appendix-III of Indian Railway Establishment Manual. The eligibility for appearing in Appendix-III examination is as follows :-

- (i) The candidate should have passed the Appendix-II examination.
- (ii) He/She should have completed 3 years service in case of graduate and 5 years service in case of non-graduate.

The eligibility list for the examination have been compiled strictly as per the above criteria and as such, seniority has nothing to do with the eligibility criteria. It is pertinent to point out that the applicant has quoted the paras ^{of IREM} in this O.A. which ^{are} ~~is~~ particularly concerned to other that Accounts Department, where ~~that~~ promotions are not based on the qualifying examination conducted by the

(13)

Railway Board. The posts of S.O./ISA's/TIAS is conducted as per Rules in Appendix-III of I.R.E.M. ^{and} this is known as Appendix-III exam. It is undisputed fact that selection is made primarily on the basis of overall merit but for the guidance of selection Boards, the factors to be taken into account and their relative weight are laid down below :-

	<u>Maximum Marks</u>	<u>Qualifying Marks</u>
1. Professional Ability	50	30
2. Personality, Leadership & Academic technical qualifications	25	-
3. Record of service	25	-

In the light of the above, candidates should obtain a minimum of 30 marks in professional ability and 60% on the aggregate for being placed in the panel. Admittedly, the applicant did not obtain the aforesaid percentage.

Promotion is dependent, including other things, on passing a qualifying examination and passing in the examination depends solely on his performance and ^{the} number of chance, etc. The said procedure is applicable equally to all eligible staff of Accounts Department and there is no discrimination nor any violation of Article 14 or 16 as alleged by the applicant. The further contention of the respondents is that, since the applicant has not challenged the rules and the selection made by the Competent Authority, it is not open to him to challenge the selection already made and since he has already appeared for the examination and having failed in the examination, it is not open to him to challenge the same on the ground of infructuous contention. Since the applicant has not filed any rejoinder to the counter reply filed by the respondents, the contention of the respondents should be taken as ^{representing the correct facts,} ~~that on record.~~

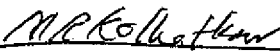
(14)


4. Heard the Learned Counsel for the parties and perused the records. It is not the contention of the applicant that the examination conducted by the respondents is vitiated on the ground of malafide or arbitrariness. Admittedly, the examination is conducted on All India basis. There was no leakage of papers nor any such things happened. Since the applicant did not pass through the examination, he cannot question the authenticity of the examination subsequent to his failure on the ground of seeking revaluation of the papers, which is not warranted under the circumstances. The procedure prescribed in para 216 of the Indian Railway Establishment Manual (I.R.E.M.) is applicable in case of selection posts ear-marked within the particular department such as promotion for Office Superintendent-II and I and other selection i.e. Group 'C' to Group 'B' and not for selection/competitive/qualifying examination conducted by the Railway Board. In Accounts Department, the promotion from Accounts Clerk to Clerk Grade-I is conducted at Zonal Railway level as per Appendix-II of I.R.E.M. and from Clerk Grade-I to Section Officer/ISA/TIAS grade Rs. 1640-2900 selection at the Railway Board's level as per Appendix-III of I.R.E.M. i.e. on All India basis to test the professional ability of the candidates. Therefore, it is clear that the procedure prescribed in para 216 of the Indian Railway Establishment Manual is applicable in case of selection posts ear-marked within the particular department such as promotion for Office Superintendent-II and I and other selection from Group 'C' to Group 'B' and not for selection/competitive/qualifying examination conducted by the Railway Board.

Infact, the examination itself is known as Appendix-III examination *for which provision is made in Rule 171 of I.R.E.M.* Therefore, the reference to general rules

for written examination and viva-voce test are not relevant to the qualifying examination (Appendix-III) in Accounts Department. The Appendix-III examination are based both on theoretical and practical aspects of the working of the various branches of Accounts Department on the Railway. Therefore, the contention of the applicant is not based on facts but on surmises and conjectures. It is an admitted fact that Appendix-III examination is conducted on All India basis and lot of advance arrangements had been made and the success of the candidate depends upon his performance in the examination and not upon any relevant seniority. It is a well settled principle that promotion is not a fundamental right and it is dependent upon passing the qualifying examination. In the instant case, the applicant admittedly has not passed the qualifying examination and therefore, the question of seeking revaluation or recounting of the answer papers hardly arise.

5. In the result, we see no merit in the O.A. and the same is dismissed. No order as to costs.


(M. R. KOLHATKAR)
MEMBER (A).


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