

001. in
OA 18/92

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

OA 19/92

Duplicate
for Issued

O.A.18/92, O.A.19/92 & O.A.700/92

WEDNESDAY, this the 26th day of MARCH 1997.

CORAM:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

HON'BLE SHRI D.C.VERMA, MEMBER(J)

1) P.LOURDSAMY
Section Officer
O/O Senior Divisional
Accounts Office,
Central Railway,
Mumbai - 400 001. .. Applicant in
O.A.18/92

2) N.N.Jadhav,
Section Officer
O/O Divisional Electrical
Engineer(General Services)
Dadar, Central Railway,
Mumbai. .. Applicant in
O.A.19/92

By Advocate Shri B.Ranganathan

3) M.B.Srinivasa Rao
Section Officer,
O/O Financial Advisor and
Chief Accounts Officer,
Central Railway
Mumbai. .. Applicant in
O.A.700/92

By Advocate Shri D.V.Gangal

-versus-

1. Union of India
through
Respondent No.2
2. The General Manager,
Central Railway,
Mumbai.
3. Financial Advisor and
Chief Accounts Officer
Central Railway,
Mumbai.

And 32 Ors(Respondents in
O.A.18/92 & O.A.19/92)

By Advocate Shri V.G.Rege .. Respondents

-: ORDER :-

(Per M.R.Kolhatkar, Member(A))

As all these three cases have identical
facts and have raised similar issues the judgment

therein is being delivered jointly. The facts in O.A. 700/92 are taken as illustrative.

2. The applicant is Sr. Section Officer in the Office of Financial Adviser and Chief Accounts Officer. He challenges the panel for promotion to the post of Assistant Accounts Officer Group 'B' in the scale of Rs. 2875-3500 regular selection at page 40 of the O.A. The applicant contends that he had appeared for the written test and thereafter the viva-voce, that his name was included in the panel of candidates called for viva-voce but in the final panel dt. 19-9-1991 at page 40 his name does not figure. He surmises that he failed in the viva-voce test and that is why his name does not appear in the panel. We have perused the marklist and this position is substantiated. However, it is not necessary to enumerate the applicantwise mark list for adjudication of the case and we refrain from doing so. The applicant challenges the selection on several grounds.

3. Before considering the same we may notice the position in the Rules. According to Rule 201.1 of the Indian Railway Establishment Manual (Revised Edition-1989) "All vacancies in Group 'B' are filled by promotion on the basis of selection of eligible group 'C' employees and also on the basis of Limited Departmental Competitive Examination, wherever the scheme is in force." It is not disputed that we are concerned with the promotion on the basis of selection. According to Rule 204.1 the selection is based on a written test to adjudge the professional ability, viva-voce and assessment of records by the Selection Committee. The Marks allotted and the qualifying marks under the different heads are as follows :

		<u>Maximum Marks</u>	<u>Qualifying Marks</u>
(i)	Professional ability:		
	Written test	25	30
	Viva-voce	25	
(ii)	Record of service	25	15
(iii)	Personality, Address, Leadership & Academic qualifi- cations	25	15
		<u>100</u>	<u>60</u>

4. Para 204.6 states that Personality, Address and Qualities of Leadership should be assessed at the viva-voce test.

5. It is also not in dispute that the above selection procedure was modified in respect of the selection in question/by the Ministry of Railways order dt. 8-5-1991. This appears at page 36 of the O.A. and the same is reproduced below :

"The Board have considered the matter for selection from Group 'C' to Group 'B' in the Accounts Department and it has been decided in partial modification of the instructions contained in their letter referred to above that the Professional ability should be adjudged through a written test as in the case of selections to Group 'B' posts in other departments.

In view of the foregoing, in the case of promotions from Group 'C' to Group 'B' in the Accounts Department, the maximum marks and qualifying marks for the various processes of selection will be as under :-

	<u>Maximum Marks</u>	<u>Qualifying Marks</u>
1. Written test (to adjudge professional ability)	50	30
2. Record of service	25	15
3. Personality, address, leadership & academic/techni- cal qualifica- tions.	25	15
	<u>100</u>	<u>60</u>

These instructions take effect immediately from the date of issue."

6. Before considering the grounds adduced by the applicant for challenging the selection we may notice a preliminary objection raised by the respondents to the maintainability of the O.A. The counsel for respondents relied on para-9 of the Supreme Court judgment in the case of Madanlal and Others v. State of J & K and others, (1995)3 SCC 486 which reads as below :

"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this

petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla*" (1986 Supp SCC 285) it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

7. The counsel for respondents also relies on even an earlier authority viz. "*Om Prakash Shukla vs. Akhilesh Kumar Shukla & Ors.* 1986 SCC(L&S)644 decided on 18-3-86 where E.S.Venkatramiah .J.(as he then was) speaking for a 3-Member Bench observed in para 24

"Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination."

8. Counsel for the respondents would contend that applicants took a chance and they subjected themselves both to the written test as well as to the vivavoce test. They have not been selected. They had taken a calculated chance and they cannot challenge the selection only because the result of the interview is not palatable to them.

9. In our view the O.A. ^{is} ~~not~~ liable to be dismissed on this preliminary ground. The applicants have challenged the vires of the relevant rules and

taken several other grounds and in our view, merely because the applicants have appeared for the written test and vivavoce test, they are not precluded from challenging the selection on the basis of grounds [other than the grounds regarding process of interview and constitution of selection committee] which are available to them and which need to be examined by this Tribunal.

10. The first contention of the counsel for the applicant is that respondents ought to have followed the applicable principle of selection viz. seniority subject to suitability and once a candidate acquires or gets qualified by getting the minimum number of marks as prescribed under the rules, he should be placed in the panel in accordance with the seniority and under no circumstances his seniority should be ignored. In this connection the applicant refers to the circular dt. 1/89 at page 22 in which it is stated that "It is proposed to hold a selection for empanelment for the posts of Assistant Accounts Officers Group 'B' 75% regular against the assessed vacancies for the year 1989 and 1990. The panel will be formed for 30 persons on the basis of seniority-cum-suitability." According to the applicant this is a special circular issued by F.A. & CAO's office and the 1991 selection was held in accordance with a similar circular and therefore it should be held that the selection was on the basis of seniority-cum-suitability.

11. We are not able to accept this contention. Rule 201.1 clearly states that all vacancies in ~~Group 'B'~~ are filled by promotion on the basis of selection. The term selection has a technical meaning in service jurisprudence. It has to be interpreted in the rules under consideration as selection on merit.

This is also clear from other instructions. For example Rule 204.8 provides that the successful candidates shall be arranged as follows :

- (1) Those securing 80% marks and above graded as 'Outstanding'
- (2) Those securing between 60% marks and 79% graded as 'Good'

The impugned panel evidently follows this instruction because it shows the number of candidates who have been graded as Outstanding as 'NIL' and candidates who have been graded as 'Good'(21). The respondents have also stated that this is a selection of Group 'C' employees for promotion to Group 'B' which are gazetted posts. The contention that there are special instruction of the FA & CAO which would over[^]ride the general instructions in the Railway Establishment Manual has only to be noticed ~~but~~ to be rejected. The instructions in the Railway Establishment Manual have statutory force and the instructions issued by FA & CAO cannot over ride or modify the force of statutory instructions. It is well settled that instructions of the Railway Board are binding on the General Managers incharge of Zonal Railways except that GMs may issue supplementary instructions relating to Gr. 'C' and 'D' staff under them not inconsistent with instructions of the Railway Board. The question of an officer of rank of FA & CAO having issued instructions inconsistent with the statutory instructions of the Railway Board does not arise.

12. It is next contended that the instructions in the circular issued on 8-5-91 have the effect of doing away with the vivavoce test in respect of promotion of Group 'C' Accounts staff to Group 'B'.

This contention is not borne out by a plain reading of the rules. The original rules as incorporated in 204.1 and quoted in para 5 supra provide that

professional ability is to be decided through written test and vivavoce test each of which heads was allotted 25 marks. The revised instruction dt. 8-5-91 provided that the written test would adjudge the professional ability for which 50 marks in lump have been provided. The break up of the professional ability between written test and vivavoce test has been done away with. However, marks are also provided to the extent of 25% for Record of Service and to the extent of 25% for Personality, address, leadership and academic/technical qualifications. As noted above (para 4 supra) personality, address, leadership and academic/technical qualifications are to be adjudged at the vivavoce test. Therefore it is clear that vivavoce test has not been done away with but under the revised instructions effective from 8-5-1991 vivavoce test for assessing the above qualities carried 25 marks. (Earlier it carried 50 marks).

13. Applicants then contended that the allotment of 25% marks for vivavoce test is not in accordance with the law as settled by several judgments of the Supreme Court and this Tribunal. In this connection reference is made to Ashok Kumar Yadav v. State of Haryana, 1985(suppl)SCR 657, Vikram Singh and another vs. The Subordinate Services Selection Board, Haryana and Ors., 1991(2)SLJ 74, K.T.Srinivasan vs. The Union of India and Ors., 1991(3)CAT SLJ 223 and Ashok alias Somanna Gowda and another vs. State of Karnataka, (1992) 19 ATC 68.

14. Ashok Kumar Yadav's case related to recruitment to the posts of Civil Services(Executive Branch) in the State of Haryana. In that case it was directed that hereafter in case of selections to be made to the Haryana Civil Services(Executive Branch) and other allied services, where the competitive examination

consists of a written test followed by a vivavoce test the marks allocated for the vivavoce test shall not exceed 12.2% of the total marks taken into account for the purpose of selection. Vikram Singh's case related to selection for the posts of Excise Inspectors in Haryana and the ratio of A.K.Yadav's case was applied in that case. It was held that the rule, making provision for 28.5% of marks for vivavoce test is unreasonable absolutely arbitrary and against the principle laid down by the Supreme Court. In K.T. Srinivasan's case decided by C.A.T. the Tribunal following the above two cases as well as the case of Ajay Hasia v. Khalid Mujib Sebravaroi, AIR 1981 SC 487, held that allotment of 40% marks for direct recruitment quota of the skilled artisans was an unreasonable percentage. In the case of Ashok alias Somanna Gowda and another vs. State of Karnataka, which was a case relating to recruitment of Assistant Engineers in Karnataka, it was held that the Rules providing for allotment of 50 marks for interview out of total 150 marks is arbitrary. That case followed the ratio in Ashok Kumar Yadav's case and Mohinder Sain Garg's case.

15. Counsel for the respondents however contended that the ratio of above cases does not apply to the facts of the case. Ajay Hasia's case related to admission of students to a college and Ashok Kumar Yadav's case and Vikram Singh's case related to initial recruitment by the public service commission. In those cases, there is a scope for malpractices by arbitrary allocation of marks in case the percentage for the vivavoce test is too high and therefore the Supreme Court held any percentage in excess of 12.2% is excessive. The present case, however, relates not to direct recruits but promotion of serving railway employees and it is the ratio in the case of

Lila Dhar vs. State of Rajasthan and Ors., (1981) 4 SCC 159 which applies to the facts of the case. That was a case relating to interpretation of Rajasthan Judicial service Rules in which 25% of the total marks were allotted to the vivavoce test. The Supreme Court speaking through Chinnappa Reddy.J. after considering international precedents in relation to recruitment to United Nations and national precedents in relation to UPSC, observed that there can be no rule of thumb regarding the precise weight to be given to the written test and vivavoce test and it is not for the courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The Supreme Court considered the nature of the service to which the recruitment has to be made (judicial) and the standing of the rule making authority (Governor in consultation with High Court and Public Service Commission) and also the facts that candidates who have offered themselves for selection are not raw graduates freshly out of college but are persons who have already received a certain amount of professional training. What applies in the case of admission to the colleges or to the initial recruitment would not apply to the persons already in service and the Supreme Court held that the selection cannot be struck down on the ground that more than due weightage was given to the interview test. Our attention was also drawn to the Supreme Court judgment in the case of Indian Airlines Corporation vs. Capt. K.C.Shukla and Others, (1993) 1 SCC 17, in which it was noted that proportion of marks for interview can be higher than the standard proportion for interviews for competitive examination or admission for educational institutions. The Supreme Court had reviewed in that judgment delivered on 23-9-1992

all other judgments including Ajay Hasia, Ashok Kumar Yadav etc. and applied the ratio in Lila Dhar's case.

16. We are, therefore, of the view that the ratio of Lila Dhar's case applies to the facts of the present O.A. and therefore percentage of 25% for vivavoce cannot be considered to be high.

17. Counsel for the respondents have contended that the form of confidential reports shows that personality and similar characteristics^{157c} are assessed through the C.R. and therefore in the case of employees in service especially those who have a good record as in the case of applicants, the selection should be entirely on the basis of seniority supplemented by record of service and that vivavoce test opens a scope for arbitrariness. We are not impressed by these subsidiary arguments. The purpose of CR is quite different from the purpose of vivavoce test, as mentioned in the rules. Mere assessment of the service records cannot therefore be a substitute for assessment through face-to-face interview of the candidates for promotion to the gazetted posts.

18. The last submission of the counsel for the applicants is that the selection committee was wrongly constituted because one of the members (Chief Personnel Officer) was away for about two hours in connection with urgent summons from the GM and therefore selection should be held as bad as the composition of the selection committee was not proper. In support, applicant has filed an affidavit from a fellow interviewee (Hiremath).

In reply respondents have stated that the averment that one of the members was not present during the interview is baseless. It is further contended by the official respondents that some of the affidavits filed on behalf of the applicant adducing to the "fact" of the absence of the CPO have been filed by retired employees merely in order to oblige the applicants. Respondents have filed three affidavits from interviewees who affirm otherwise. In our view it has not been established that the selection committee was not properly constituted. This is apart from the fact that this ground about improper constitution of selection committee cannot be entertained in the light of the ratio of Supreme Court judgments in *Madanlal* and *Om Prakash Shukla*.

19. In the light of above discussion we are of the view that the O.A.^{is} has no merit. ^{They are} ~~It is~~ therefore dismissed with no order as to costs.

(D.C.VARMA)
Member(J)

(M.R.KOLHATKAR)
Member(A)

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