

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NOS.: 982/92 AND 482/92.

Bansidhar R. Chaube & 2 Others ... Applicants in O.A. No. 982 of 1992.

Vikas Eknath Patil & 4 Others ... Applicants in O.A. No. 482 of 1992.

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. Shri S. Natrajan,
Counsel for the applicant. | In O.A. No. 982/92. |
| 2. Shri V. S. Masurkar/Shri G.S. Walia,
Counsel for the respondents. | |
| 3. Shri D. V. Gangal,
Counsel for the applicant. | In O.A. No. 482/92. |
| 4. Shri V. S. Masurkar/Shri G.S. Walia,
Counsel for the respondents. | |

JUDGEMENT :

DATED : 21/10/92

I PER.: SHRI M. R. KOLHATKAR, MEMBER (A)

1. As the facts and prayers in these two O.A.s are more or less identical, we are passing a common order. The reasons for the order given in our judgement are in relation to O.A. No. 982/92. We have however referred O.A. No. 482/92 wherever necessary.

O.A. NO.: 982 OF 1992.

2. In this O.A. there are three applicants and there are 38 private respondents. The applicants are Skilled Mechanics. The case relates to the selection of the applicants for the post of Apprentice Mechanics against 25% quota. It appears that a panel was drawn up earlier in 1983 but the same was required to be scrapped. Applicant Nos. 1 and 3 found a place in 1988 panel. The applicant no. 2 was not in 1988 panel. However, it is not the 1988 panel but the panel dated 18.04.1992 at Annexure-4 which is in dispute. This panel was drawn up consequent on Notification dated 31.10.1990 on the subject of "Recruitment of Apprentice Mechanics drawn from Skilled Artisans Category against 25% quota - Mech. Department." This notification mentioned that the candidates must have put in minimum 3 years' non-fortituous service as Skilled Artisans and they must have passed S.S.C. or equivalent examination and their age should not be more than 45 years as on 1.11.1990. In response to this notification, the applicants applied for the said posts and they appeared for a written test in accordance with letter dated 09.01.1992 and the written test was held on 02.02.1992. The letter dated 09.01.1992 mentioned that the written test should include six components, namely; (i) Essay about 250 words, (ii) General Science (iii) Technical (iv) General Knowledge about Railways (v) Mathematics/Arithmetics (vi) Free hand sketch for components. The applicants qualified in the written test and were called for viva-voce test on 23.03.1992. The Notification dated 19.04.1992 at annexure-4 contains a list of 38 candidates who were empanelled for the post of Apprentice Mechanic as a result of selection. This panel ^{which does not contain applicants' names} has been challenged by the applicant on several grounds: According to the

applicants, the panel has been arranged according to trade-wise seniority whereas it ought to have been arranged and published in the order of seniority. The most important ground of challenge is that the panel has been drawn up in violation of para 219 of the Indian Railway Establishment Manual, especially para 219 (a). This provides that the selection should be made primarily on the basis of overall merit but for the guidance of Selection Board, the factors to be taken into account and their relative weight are laid down as below :-

	<u>Max. Marks</u>	<u>Qualifying Marks</u>
a. Professional ability	50	30
b. Personality, address, leadership and academic/technical qualification	20	-
c. Record of service	15	-
d. Seniority	15	-

According to the Learned Counsel for the applicant, there is a provision for securing 60% in the aggregate, provided that the candidate gets qualifying marks under the head of Professional Ability and the respondents appear to have gone on the basis of the marks secured in viva-voce test and have dis-qualified all the applicants who have dis-qualified in the viva-voce test. The respondents have stated that 378 candidates had appeared for the written test and 167 candidates had passed and thereafter the viva-voce test was held on 26th, 28th and 30th March, 1992 and the final panel was drawn up. The respondents have considered the names of the candidates which are arranged in alphabetical order. However, this is not correct as the final panel because of a clerical mistake, 51 candidates qualified in the viva-voce test and there were only 40 vacancies and the names of the persons who were qualified in the viva-voce test were arranged on the basis of their

seniority except one Shri V. H. Deodhar whose performance was rated as outstanding, and therefore, he was placed at the top of the panel. Out of the three applicants, the first and ^{third} the ~~did~~ not qualify in the selection and the second applicant Shri C. T. Shetty qualified in the viva-voce test but was not empanelled on the basis of seniority. It is contended that none of the applicants' junior is empanelled, therefore, they can have no grievance. According to the respondents, para 219 of the Indian Railway Establishment Manual provides that the selection should be made primarily on the basis of over all merit and this over-riding direction has been complied with.

3. So far as D.A. No. 482/92 is concerned, there are five applicants and there are thirty-eight private respondents. In this D.A. several grounds have been raised but some of the grounds relate to the grievance about earlier selection of 1988 and we need not go into the same. It is ^{in relation to 1992 Selection} further contended that the Railway Board instructions were not followed, that the Selection Board was not properly constituted, ~~the~~ the prescribed syllabus was not followed while setting up the questions, that the viva-voce was conducted improperly and that there was bias and malafides in the selection. There was also no yearly selection and there has been bunching of vacancies for a large number of years. It is also contended that dis-proportionate marks have been allotted for the viva-voce test and this action of the respondents goes against the Supreme Court Judgement which have purportedly laid down that when 40% marks are allotted for viva-voce test, the same proportion was excessive and on that ground the test is liable to be quashed.

In our view, the arguments relating to the proportion of viva-voce marks being 45% bias and the malafides, absence of yearly selection and improper constitution of the Selection Committee, etc. do not have any substance. We are primarily to consider to see whether the panel that was drawn up was not in accordance with para 219 of Indian Railway Establishment Manual and in the rest of the judgement we consider this aspect, which is common to both the case. We may note at this stage that some of the private respondents have put in their appearance and have filed their written statement and have opposed the application and we have also heard their counsel alongwith counsel for applicants and official respondents.

4. We had asked the official respondents to produce the file relating to formation of the panel. This panel in the order in which the names appeared in the result sheet in which the applicants figure is as below :-

<u>Sl. No.</u>	<u>Name of the applicants</u>	<u>Remarks</u>
223	Suresh H. Thakur Applicant No. 5 in D.A. No. 482/92.	Written test - 60, Oral - 29 Failed in viva-voce.
252	Chitendra R. Shetty Applicant No. 2 in D.A. No. 982/92.	Written test - 67 Oral - 40. Total - 107 Suitable but not selected on account of being junior.
260	Dinesh B. More Applicant No. 3 in D.A. No. 982/92.	Written test - 76 Oral - 25 Failed in viva-voce.
262	Bansidhar R. Shaube Applicant no. 1 in D.A. No. 982/92.	Written test - 79 Oral - 26 Failed in viva-voce.

263	Vikas E. Patil Applicant No. 1 in O.A. No. 482/92.	Written Test - 72 Oral - 24 Failed in viva-voce test.
275	George Thomas P. Applicant No. 4 in O.A. No. 482/92.	Written test - 77 Oral - 29 Failed in viva-voce test.
291	Pradeep S. Talchar. Applicant No. 1 in O.A. No. 482/92.	Written Test - 64 Oral - 26 Failed in viva-voce test.
371	Pravin R. Patil Applicant No. 3 in O.A. No. 482/92.	Written test - 62 Oral - 26 Failed in viva-voce test.

5. The respondents rely on the judgement of this Tribunal and of this very Bench in O.A. No. 462/89 N.I. Bansal V/s. Union Of India & Anr. decided on 16.09.1994. That was a case in which the main issue involved was, whether in terms of rule 216 it was necessary to get the qualifying marks "under the head of professional Ability before being selected. The Tribunal held that there are three conditions for being selected, namely; getting 60% marks in the written test, getting 60% of the marks under the head Professional Ability and getting 60% of the marks in aggregate. The contention of the applicant that getting of 60% qualifying marks under the head Professional ability is not mandatory, was repelled. The respondents would mean that Professional Ability is adjudged jointly by written test and the viva-voce and it is because the applicants failed in the viva-voce test ^{that} they could not be selected except applicant no. 2 in O.A. No. 93/92. The Bench for the applicants

would urge that N.K. Bansal's case said nothing regarding minimum marks in viva-voce test and the respondents have illegally made the passing in the viva-voce test as a pre-condition for being included in the panel and therefore the panel prepared on this basis is invalid.

6. As we see Rule 219 of Indian Railway Establishment Manual, there is nothing therein which suggests that passing in the viva-voce test is a pre-condition for being included in the panel but a perusal of the panel indicates that all those who secured 60% marks in the written test and 60% marks in the viva-voce test have been considered 'Suitable'. However, there is no basis for doing this. The ratio of Bansal's case is that the applicant must get 60% of the marks under the head - Professional Ability and this 60% of marks may be distributed between 35/50 marks under the written test and 15/50 under the head of Oral. The total of marks obtained under the head - 'Professional Ability', both written and oral, must exceed 60%. The candidate must ofcourse obtain 60% of the marks in the written test and therefore he must obtain atleast 21/35 marks in the written test. In this case, since 100 marks have been allotted for the written test, it is enough if the candidate has obtained 60 marks out of 100 in the written test for being included but for being included in the panel, 60% marks i.e. 30/50 marks in viva-voce are not imperative. The candidate may get more marks in the written test and 15% marks in the oral test. If the total marks under the written and oral test are equal to or exceed 60% of the marks i.e. 60/150, he is entitled to be declared successful. In the scheme of marks followed in Bansal's case, 15 out of 30 were allotted for the head of Oral test. In the present scheme of examination, 50 out of 150 were allotted for oral test. 60% of 150 are out to 90 marks. Therefore, so long as the candidate obtains

90 marks in the written test and viva-voce together subject to minimum 60% in written test, he ought to have been declared as successful because that is the test laid down in the Indian Railway Establishment Manual, para 219. But the criterion applied by the Selection Committee was to insist on 60% marks separately under the viva-voce test and written test. The rules do not support such a procedure. Coming to the present applicants, we notice that all applicants except Suresh H. Thakur and Pravin R. Patil, Applicant Nos. 5 and 3 in O.A. No. 482/92 have got 90 or more than 90 marks and can therefore be said to have qualified in terms of the relevant rules. However, the candidates Shri Suresh H. Thakur and Shri Pravin R. Patil, having received less than 90 marks i.e. less than 60% marks in Professional Ability, can be said to have failed.

7. In the light of the above findings, we hold that all applicants, except applicant nos. 3 and 5 in O.A. No. 482/92 have cleared the test. Their inclusion in the panel will ofcourse depend on their seniority. All those who have cleared the test as held by us and atleast one of whose juniors are included in 1992 panel are entitled to succeed i.e. entitled to be a panellist. As a very large number of applications are involved, in our view, the relief is required to be granted. In view of the fact that the test was held long back, namely: in 1992 and the candidates have probably already started training and it would not be practical to quash the panel as a whole and disturb them. On the other hand, there are several candidates who have not approached us but who could have succeeded if they had approached us. We do not think it proper to grant any relief in favour of such potential panellists, as they have shown lack of vigilance. However,

so far as applicants who are entitled to be empanelled herein are concerned, the ends of justice would be met if the respondents create corresponding number of supernumerary posts of Apprentice Mechanics and send them for training on the footing that they were empanelled. We direct accordingly. In the facts of the case, we are not inclined to grant any other relief to the applicants. Action in terms of our order should be completed within three months. There would be no order as to costs.

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

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

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CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6, PRESCOT RD, 4th FLOOR,

BOMBAY - 400 001.

REVIEW PETITION No.122/95 in ORIGINAL

APPLICATION NO.482/92.

Dated this Thursday the 28 day of Dec 1995.

CORAM : HON'BLE SHRI B.S.HEGDE, MEMBER (J)
HON'BLE SHRI M.R.KOLHATKAR, MEMBER (A)

1. Shri Suresh H Thakur &
2. Shri Pravin R.Patil ... Applicants.

V/s.

UNION OF INDIA & OTHERS. ... Respondents.

: O R D E R : (BY CIRCULATION)

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

1. In this RP the review petitioners has sought review of our judgement dated 30/10/1995 by which we disposed of two OAs namely 982/92 and 482/92.
2. In our judgement, we had stated that we are not concerned with challenge ^{terms of} to selection ⁱⁿ 1988 panel ~~and~~ also observed that the arguments relating to the proportion of viva-voce marks being 45%, bias and the malafides, absence of yearly selection and improper constitution of the selection Committee etc. do not have any substance. The Review petitioners have agitated the same points which we had rejected. The only new point which according to the applicant amounts to an error apparent on the face of the record is that marks which have been shown against Shri Pravin Patil in the judgement are against

Sr.No.371 and the name of the candidate at Sr.No. 371 is Shri S.Prabhakaran. Infact, the applicant ^{allegedly} has been/awarded the marks of Shri Prabhakaran and the applicant has not been correctly awarded marks against Sr.No.372. In our view the Serial Number does not matter and we have reproduced the marks ^{by name} of the respective candidates/as could be seen from the result sheet. There can be no confusion between Shri S.Prabhakaran and Shri Pravin Patil. We therefore do not find any error apparent on the face of the record.

3. We are therefore of the view that no grounds have been made out for review of our judgement in terms of rules under order 47 of CPC. The Review Petition has no merit and RP is therefore dismissed. Order of dismissal is being passed by circulation as permissible under rules.

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

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

ccp.
Copy to:-

1. Mr. S.H. Thakur & Anr.,
C/O. Mr. D.V. Gangal, Adv.
2. The Union of India & Ors.,
through Mr. V.S. Masurkar, Adv.

SECTION OFFICER.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

REVIEW PETITION NO: 121 OF 1995 IN

O.A.NOS. 982/92 and 482/92

Monday

, this the 1st day of JANUARY 1996

HON'BLE SHRI B.S.HEGDE, MEMBER(J)

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

D.D.Dudhwadkar

.. Review
Petitioner

-versus-

Union of India & Ors.

.. Respondents/
Original Respondents

O R D E R (BY CIRCULATION)

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

This Review Petition is filed praying for review of our order dt. 31-10-95 in O.A.Nos.982/92 and 482/92. In terms of this order we had granted relief to applicants in O.A. 482/92 except applicant 3 and 5 in that O.A. but we had stated as below :

"As a very large number of applications are involved, in our view, the relief is required to be moulded keeping in view the fact that the test was held long back, namely: in 1992 and the successful candidates have probably already started training and it would not be practical to quash the panel as a whole and disturb them. On the other hand, there are several candidates who have not approached us but who could have succeeded if they had approached us. We do not think it proper to grant any relief in favour of such potential panellists, as they have shown lack of vigilance."

The review petitioner is one D.D.Dudhwadkar who is not a party to the original application. According to the petitioner the observations of the Tribunal referred to

above run counter to judgment of the Hon'ble Supreme Court in the case of Union of India & Ors. vs. Vigyan Mohapatra & Ors, 1993 SCC(L&S) 432 which is reproduced below :

"The tribunal ,unfortunately, instead of dealing with the matter from this angle merely adopted an easy course on the assumption that two posts of Junior Clerk were available, in which posts there there respondents were directed to be accommodated. This approach is wholly wrong. For ought one know, there may be other claimants who would be entitled to promotion; their claims required to be considered. Therefore, straightway, these respondents cannot be fitted in. Accordingly, the order of Tribunal is set aside, upholding the order of reversion."

The petitioner also contends relying on Full Bench judgment of the Tribunal in this respect regarding filing of review petition by an affected party.

2. The parameters of review jurisdiction are narrowly circumscribed vide rules in Order 47 of CPC. In our view no grounds ^{for review} relatable to rules in Order 47 are made out. The judgment of the Supreme Court referred to by the petitioner has no applicability to the facts and circumstances of the O.A. in which we had given reasons for restricting the relief.

3. We are of the view that the Review Petition has no merit which is accordingly dismissed. The order of the dismissal is passed by circulation as provided by rules

(M.R.KOLHATKAR)
Member(A)

(B.S.HEGDE)
Member(J)