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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 40 of 1995.

Dated this Tuesday, the 18th day of July, 2000.

T. N. Pillai & 4 Others, Applicants.

Shri G. S. Walia, Advocate for the
applicants.

VERSUS

Union of India & Another, Respondents.

Shri V. S. Masurkar, Advocate for
the respondents.

CORAM : Hon'ble Shri A. V. Haridasan, Vice-Chairman.

Hon'ble Shri Govindan S. Tampi, Member (A).

- (i) To be referred to the Reporter or not ? *Yes*
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ? *Yes*
- (iii) Library.


(A. V. HARIDASAN).
VICE-CHAIRMAN.

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(18) (17)

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Hon'ble Shri Govindan S. Tampi, Member (A).

1. T. N. Pillai.
2. William Bobo.
3. S. M. Dhavade.
4. S. B. Shirke.
5. Rajendra Pawar.

.. Applicants.

(All working as Typists in DRM's Office,
Western Railway, Bombay Division,
Bombay Central, Bombay - 400 008).

(By Advocate Shri G. S. Walia)

VERSUS

1. Union of India through
The General Manager,
Western Railway,
HQ Office, Churchgate,
Bombay - 400 020.
2. Divisional Railway Manager,
Western Railway,
Bombay Division,
Bombay Central,
Bombay - 400 008.

... Respondents.

(By Advocate Shri V. S. Masurkar)

OPEN COURT ORDER

PER : Shri A. V. Haridasan, Vice-Chairman.

The result of the written test/trade test for selection to the post of Typist in the scale of Rs. 950-1500 published by Memorandum dated 22.12.1994 by the second respondent is under challenge in this application filed by the five applicants, who are Class-IV employees belonging to the Mechanical Department but holding the post of Typist on ad hoc basis for a considerably

long time. The applicants were promoted to officiate as Typist with effect from various dates commencing from the year 1973. They were put in the eligibility list for promotion to the post on regular basis, on the basis of a notification issued on 22.11.1991. The proposal was to hold a selection for recruitment to 19 posts including 14 posts for direct recruitments for the regularisation of adhoc typists. Though the applicants participated in the selection process and fared well according to them, to their dismay, they found that in the impugned list their names were not included. The applicants being fairly seniors holding the post on ad hoc basis for a considerably long time, felt that their non-inclusion in the panel was unjustified. The method of deciding the merit for inclusion in the panel, according to the applicants, was not as provided in the rules, because the seniority marks had not been included in the marks obtained by them in the written test for the purpose of considering the eligibility to be called for the viva-voce test. This, according to the applicants, has vitiated the process of selection and, therefore, they claim that the impugned panel may be set aside. They pray that it may be declared that the applicants are entitled to be included in the panel and the respondents be directed to include them in the panel and to appoint them on the post of Typist.

2. The respondents resist the claim of the applicants. In the written statement filed, they contend that the process of selection has been held in conformity with the rules and the contention of the applicants to the contrary, is not correct. It is further contended that the seniority marks would be relevant only in cases where the promotion is made in the same avenue of promotion. In this case, as the examination was held for

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promotion drawing people from all departments and with a view to regularise the adhoc typists working for a long time, they have to clear the test and be successful for the purpose of placement in the panel and no marks is to be awarded for seniority for determining the suitability to be included in the panel for viva-voce. The respondents have indicated that the applicant nos. 1 to 3 and 5 did not secure the required 60 per cent marks in the written test and the 4th applicant, though secured 65 per cent of marks, failed in the typing test and, therefore, the applicants having failed in the written test and typing test, were not eligible to be placed in the panel, to be called for viva-voce, contended the respondents.

3. Shri G. S. Walia, the Learned Counsel for the applicants, argued that applicants being seniors, they should have been given notional seniority marks and the same added to the marks obtained by them in the written test to adjust their suitability. In support of this position, the Learned Counsel relied on P.S. No. 319 No. EP 1025/2 dated 22.12.1984 where a Railway Board's letter dated 05.12.1984 has been reproduced. The relevant part of the Railway Board letter paragraph 2 on which the counsel relied, is as follows :

"2. These instructions, in so far as they relate to the eligibility of a candidate in a selection (where a written test is held) to be called for viva-voce test have been reviewed by this Ministry pursuant to a demand made in the PNM Meeting held between the NFIR and the Board on 16/17.9.1983 and again on 27/28.9.84. Both the recognized Federations were also consul. On the basis of this review, the Ministry of Railways have now decided that 60% of the total of the marks prescribed for written examination and for seniority should also be the basis for calling candidates for viva-voce test (interview) instead of 60% of the marks for the written examination only as at present. This would enable the consideration of some of the senior candidates who under the existing rules, may not be even eligible to be called for interview."

that
The Counsel argued ~~this~~ this circular enjoins on the competent authority a duty to consider the notional seniority marks and add the same to adjudge the suitability of the applicant for inclusion in the viva-voce test and that this having not been done, the procedure has been vitiated. The Learned Counsel further cited paragraph 320 of Volume I of the Indian Railway Establishment Manual which clearly indicates that when officials from various streams compete for promotion to a common post, for the purpose of inter se seniority, the length of service should be counted. In the instant case, according to the Learned Counsel for the applicant, the length of service of the applicants has not been taken into account. Thus, according to the Learned Counsel, the entire selection process having not been held in the manner in which it was required to be done, the panel prepared on the basis of that process has to be struck down.

4. Shri V.S. Masurkar, the Learned Counsel appearing for the respondents, on the other hand, with considerable tenacity argued that the award of notional seniority marks and adding the same to the marks of the written test is to be done only in a case where promotion is being made in the direct channel of promotion and that in this case, the promotion was made to the post of Typists drawing Group 'D' employees belonging to various departments and hence seniority marks are not to be added. We find considerable merit in this argument. The Group 'D' employees of various department do not fall within the common seniority units. Therefore, there is no seniority between the various candidates to be determined. The reliance placed on paragraph 320 of Vol.I of the I.R.E.M. is also baseless in view

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of the ruling of the Apex Court in M. Ramjayaram V/s. General Manager, South Central Railway & Others reported in 1996 (1) SC SLJ 538 wherein it has been clearly held that when employees from different seniority units are being considered for promotion to common posts, the provisions of paragraph 320 of the I.R.E.M. stands excluded. The applicants participated in the process of selection pursuant to the notification dated 22.11.1991, Annexure 'B', wherein it has been made very clear that all those who are officiating as ad hoc Typist have no claim for regular promotion to the post of Typist unless they are selected and placed in the panel for the said post.

5. The applicants participated in the written test and typing test but could not make the grading to be called for viva-voce. No allegations of malafide is made against the Selection Board or any Member thereof. The persons whose names have been included in the panel have not been impleaded in this application. We find no infraction of a rule in the process of selection and no malafide has been alleged. Judicial intervention in matters like this will be justified only if there is patent colourable exercise of powers or infraction of rules. As there is no such infirmity in the selection process, we find no reason for interference.

6. In the light of what is stated above, the allegation fails and the same is dismissed. No order as to costs.

(GOVINDAN S. TAMPI)
MEMBER (A).

OS*

(A. V. HARIDASAN)
VICE-CHAIRMAN.