

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 659/97

Date of Decision: 30.9.97

Smt. P.R. Kashlikar & Ors.

Applicant.

Shri G.S. Walia

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.C. Dhawan

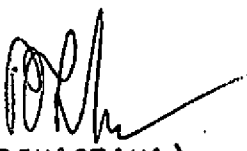
Advocate for  
Respondent(s)

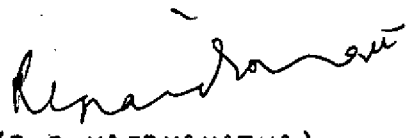
CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri. P.F. Srivastava, Member (A)

- (1) To be referred to the Reporter or not? *Yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *No*

  
(P.P. SRIVASTAVA)  
MEMBER (A)

  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA.NO.659/97

this the 30 day of Sept. 1997

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri P.P.Srivastava, Member (A)

- 1.Smt.Padmaja R.Kashelkar
- 2.Abdul Samad Abdus Sattar
- 3.Smt.Vijaya Damodaran

C/o. G.S.Walia,  
Advocate, High Court,  
Industrial Traders Bldg.,  
Opp.Maha State Co-op Bank,  
Nagindas Master Road,  
Fort, Mumbai-400023.

By Advocate Shri G.S.Walia

... Applicants

V/S.

1. Union of India through  
General Manager, Central Railway,  
Head Quarters Office, C.S.T.  
Mumbai.
2. Controller of Stores,  
Central Railway,  
New Admn. Building,  
C.S.T., Fort, Mumbai.

By Advocate Shri S.C.Dhawan  
C.G.S.C.

... Respondents

O R D E R

(Per: Shri P.P.Srivastava, Member (A))

The applicants in this OA. are the substantive holders of the post of Head Clerks in the pay scale of Rs.1400-2300(RPS). They are presently holding the post of OS-II on ad-hoc basis. The next promotional post is the post of OS-II Grade Rs.1600-2660(RPS), which is a selection post. The respondents by the

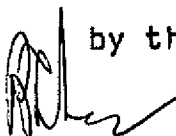


letter dated 2.4.1997 issued a list of the eligible candidates to be called for the written test for 97 vacancies which consisted of 88 General, 7 SC and 2 ST vacancies. The applicants appeared for the written test for the selection, and according to the applicants, they were called for viva-voce test. However, after the viva-voce test the applicants name were not appeared in the selection while their juniors were being selected by a panel dated 30.6.1997 which is placed as Exhibit-'C'. Aggrieved by this non-selection, the applicants have approached this Tribunal through this OA.

2. The applicants have challenged their non-selection on various grounds. Firstly, the applicants have mentioned that in terms of Railway Board Circular dated 19.3.1976 the applicants should have been selected. In Para 2.2 of Railway Board's Circular it has been mentioned that :-

"Care should be taken to see that while forming panels, the employees who are working on ad-hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular, any employee reaching the field of consideration should be saved from harassment."

The learned counsel for the applicant has argued that the Hon'ble Supreme Court considered the above Circular in Civil Appeal No.33 of 1995 arising out of SLP(C) No. 9866 of 1993 wherein the applicant in that SLP was granted relief on the basis of this Circular of the Railway Board. The learned counsel for the applicant has argued that the present case is squarely covered by the judgement of the Hon'ble Supreme Court inasmuch



as the applicants in this case have passed the written test but have not been assessed properly in the viva-voce test and the interview.

3. The ld. counsel for the applicant has also brought out that there is yet another ground on which the case of the applicants should be considered, inasmuch as the Confidential Reports of the applicants in the higher posts of OS-II have been considered as against those persons/employees who have been selected, have been working in the lower posts of Head Clerks. In this connection, it has been held by the Full Bench of this Tribunal in OA.No. 308/90 S.S.Sambas vs. Union of India & Ors. decided by the Full Bench, Hyderabad on 29.10.1991 that in the case of employees shouldering higher responsibilities of the post to which the selection is made, the ACR should be upgraded in comparison to the employees who were working as juniors. Thus, "Good" should be treated as "Very Good" and "Very Good" should be treated as "Outstanding". The ld. counsel for the applicant has argued that in the case of applicants this proposition has not been followed.

4. Respondent administration has submitted a written reply. The administration has brought out that in the written test held for 97 vacancies, 291 candidates were called for written test. Out of 291 candidates called for written test, 271 candidates appeared for the written test out of which 94 candidates including SC have passed the written test and 12 candidates




were found eligible for viva-voce test after adding notional seniority marks in terms of Railway Board's letter dated 5.12.1984. Thus, total 106 candidates were called for viva-voce test. The respondent administration has further mentioned that there were 76 employees including SC/ST who working on adhoc basis as OS-II, out of which 27 were found eligible to be called for viva-voce test. Out of 27 adhoc OS-II, 22 employees have been empanelled and 5 have not found place in the panel. The written reply further brought out that out of these 5 declared failed, 4 were called for viva-voce test after adding notional seniority marks.

5. The respondent administration has further brought out that out of the 3 applicants, applicants No. 2 & 3 did not secure the requisite 60% marks in the written test as required according to rules and were called for viva voce test only after adding notional seniority marks in terms of Railway Board letter dated 5.12.1984. Applicant No. 1 had passed in the written test and was called for viva voce test. The respondents have brought out that it is necessary to secure 60% marks before an employee can be considered for empanellment. The respondents have further brought out that applicants did not secure 30 marks out of 50 and therefore did not qualify for professional ability and therefore declared unsuitable in terms of para 219 (G) of IREM. The respondent administration has further



brought out that in terms of rules, while calling the candidates who have not secured 60% marks in the written test for viva voce test, notional seniority marks are added in terms of Railway Board's letter dated 5.12.1984. However, for computing the 60% marks in the professional ability, these notional seniority marks are not to be taken into account and a candidate must secure actual 60% marks in the professional ability and those who fail to secure these marks are not suitable for being empanelled.

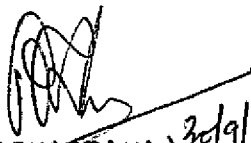
6. The ld. counsel for the respondent administration has argued that the administration has kept in mind the Railway Board instructions dated 25.1.1976 while considering the applicants and other employees who were working on adhoc basis. The ld. counsel has argued that 76 employees who were working on adhoc basis were called for written test, out of which only 27 employees were eligible for being called for viva-voce test including those who were given the benefit of notional seniority marks. Out of these 27 employees, 22 employees have been empanelled. Thus, it would be seen, according to the ld. counsel for the respondents, that the instructions contained in the letter dated 25.1.1976 have been followed in this selection. The ld. counsel for the respondents has argued that the applicants have failed in professional ability not because of marks in record of service. Therefore, the question of upgrading the record of service is not material in this case as the applicants have not failed because of marks under the heading of record of service and have failed because of professional ability.

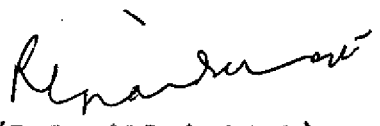


7. The administration has produced the record of selection for the perusal of the Tribunal. The marks obtained by the three applicants in various heads are given there. It is clear from there that the Applicant No. 1 has failed in the professional ability because the applicant No. 1 has obtained six marks in viva voce test and therefore the total of written test and viva voce is 27 which is less for required marks for passing. The Circular which has been relied upon by the applicants concerning passing the employees who are working on adhoc basis in viva voce test mentions that it is necessary for the applicant to have full record of viva voce test. In the case of Applicant No. 1, the 'record of service' shows 7 marks out of 15 and therefore the provisions of the Circular would not be applicable. As far as Applicant No. 2 is concerned, the applicant has obtained less than 30 marks in the professional ability test. In the viva voce test he was given 11 marks which are more than passing marks, i.e. 60% of 15 marks which comes to 9 marks. Since the applicant has been given part of it, but even after he has not secure 60% of marks in professional ability, then it cannot be said that the provisions of the Circular have not been followed. Same is the case of Applicant No. 3 who was given 9 marks which is equal to pass marks but the total professional ability marks are less than 30.



8. After considering the arguments of both the counsels and seeing the record, we are of the opinion that the selection committee has by and large that no violation of circular relied upon by the applicant is established while conducting the selection. We are, therefore, of the opinion that the selection proceedings do not require any interference by this Tribunal. The OA. is dismissed with no orders as to costs.

  
(P.P. SRIVASTAVA) 30/9/97  
MEMBER (A)

  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN

mrj.