

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

OA.921/93  
and  
OA.1100/91

date of decision : 12-8-1993

1. T. Ramakrishnarao : Applicant  
② M. Venkatachalam in OA.1100/91  
(Applicant no. 2 Dismissed as withdrawn as per court order dt. 16.11.92)

- 1. Krishna Charya
- 2. R. Ramamurthy
- 3. N. Srimannarayana
- 4. K. Nadabrahmam
- 5. K. Veerabhadraiah
- 6. P. Venkat Rao
- 7. O.P. Thomas
- 8. Sultan Mohiuddin
- 9. R. Krishnaswamy
- 10. Noor Mohammed
- 11. K.S. Ramaswamy
- 12. Ch. Satyanarayana
- 13. D. Ramamohana Rao
- 14. L. Mallesha
- 15. P. Devakinandana Rao
- 16. B. Mallikarjuna Rao

: Applicants in OA.921/93

versus

1. Union of India, rep. by  
The Secretary  
Railway Board  
New Delhi

2. The General Manager  
South Central Railway  
Rail Nilayam  
Secunderabad

3. The Financial Adviser &  
Chief Accounts Officer (FA&CAO)  
South Central Railway  
Rail Nilayam  
Secunderabad

: Common respondents in both the OAs.

\* Counsel for Applicants in both the OAs

: N. Ram Mohan Rao  
Advocate

Counsel for the respondents in both the OAs

: N.V. Ramana,  
SC for Railways

CORAM :

HON. MR. JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON. MR. P.T. THIRUVENGADAM, MEMBER (ADMINISTRATION)

Judgement

(As per Hon. Mr. P.T. Thiruvengadam, Member (Administration))

Heard <sup>4</sup> ~~proxy~~ to Sri N. Rama Mohan Rao, learned counsel for the applicants and Sri N.V. Ramana, learned counsel for the respondents.

2. These two OAs relate to the holding of selection for filling up Group B posts in the Accounts Department of South Central Railway, against 75% of the ~~posts. vacancies~~.

3. The procedure for <sup>ass</sup>essing professional ability of the candidates for promotion from Group-C to Group-B services in the Accounts Department was modified in 1974 and instructions were issued vide Railway Board's letter No.E(GP)74/2/44 dated 22/23-6-74. The relevant details are extracted as under :

"3) In view of the foregoing, in the case of promotions from Class III to Class II in the Accounts Department, marks shall be allotted to the Candidates on the following basis.

<u>Professional ability</u>	<u>Maximum marks</u>	<u>Qualifying marks</u>
i) a) Written test	25	30
b) Viva-voce test	25	
ii) Record of service	25	15
iii) Personality, address leadership and academic, technical qualifications	25	15
	<u>100</u>	<u>60</u> "

4. As per above instructions, all candidates who appear in the written test <sup>and</sup> ~~should~~ <sup>at least</sup> obtain 15 marks out of 25 in the written test ~~were~~ eligible to be called for viva-voce test. This pro+

cedure was partially modified by the Railway Board vide their letter No.E(GP)74/2/44 dated 8-5-1991 (Annexure R-2). The relevant portion pertaining to assessment of professional ability etc. is as under :

"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 and academic/technical qualifications	25	15
	--- 100 ---	--- 60 ---

5. Financial Advisor and Chief Accounts Officer (FA&CAO), South Central Railway, issued a notification dated 19-6-1991 addressed to the officers in charge of various Accounts offices advising that it was proposed to hold a written test for promotion to Group-B and (AAOS) some time during the last week of July, 1991. This notification was followed by a further notification dated 21-6-1991 indicating the number of vacancies (total 24 comprising 19 OC, 4 SC, and 1 <sup>ST</sup> ~~SC~~) and enclosing the list of eligible candidates. The candidates were given an opportunity to give their willingness or otherwise for appearing in the selection and for contesting the seniority list, if they had any objection. On 26-7-1991, a final list of eligible candidates was notified and the candidates were advised that the written examination will be held on 9-8-1991.

6. After holding the written examination on 9-8-1991, R-3 issued a notification dated 27-9-1991 listing the names of the candidates who had secured the qualifying marks in the written examination for appearing in the viva-voce test <sup>(as per 8.5.91 letter of Board)</sup> <sub>(for adjudging ^ Personality etc.)</sub> The list also included SC/ST candidates, who had not obtained the qualifying marks in the written examination but were yet

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being called for viva-voce test for assessing suitability for imparting 'in service' <sup>training</sup> eligibility. The applicants in these two OAs belong to OC community. They had not obtained the <sup>relevant</sup> qualifying marks in the written examination and were not included in the notification issued by FA&CAO ~~issued~~ on 27-9-1991.

7. It has to be noted that difference in procedure was brought in with the issue of instructions dated 8-5-1991 by Railway Board vis-a-vis the earlier procedure. As per the ~~new~~ procedure, introduced in Board's letter dated 8-5-91, assessment of professional ability is solely based on the performance in the written test. In other words, only those getting 30 marks out of <sup>a minimum of</sup> 50 marks in the written test were eligible to be called for viva-voce. This procedure is in contrast to the earlier procedure as per Board's letter dated 22/23-6-1974 wherein the professional ability was to be decided by taking written test <sup>and Viva-Voce together</sup>. As per this procedure, the viva-voce test was held not only for adjudging professional ability for which 25 marks were allotted but also other characteristics like personality, address, leadership and academic/technical qualifications etc. (25 marks). Thus, in view of the revised procedure to be followed as per Board's letter dated 8-5-1991, candidates appearing for the written examination had to necessarily qualify in the written test by obtaining at least 30 out of 50 marks, *to be eligible to be called for viva-voce*

8. These OAs have been filed with a prayer for directing the respondents to follow the contents of the Railway Board circular dated 22-23/6/74 and for a direction that all the applicants should be called for viva-voce test irrespective of their performance in the written examination.

9. The learned counsel for the applicants advanced a number of grounds in support of the case of the applicants. It was argued that even FA&CAO was not aware of the revised procedure when the selection was initiated. The first notification with regard to the selection was issued on 19-6-1991 and the initiative <sup>on</sup> process had <sup>obviously</sup> commenced even earlier. Board's letter dated 8-~~5~~1991 incorporating the revised procedure was received initially by the Chief Personnel Officer, who had circulated the same only on 24-6-91. This letter was received by FA&CAO on 1-7-1991.

10. We do not feel it necessary to go into the details of whether FA&CAO was aware of the revised instructions at the time when the said selection was initiated. The last paragraph of Railway Board's letter No.E(GP)74/2/44 dated 8-5-91 reads as under :

"These instructions take effect immediately from the date of issue, However, the selections in which Professional Ability has already been assessed before the receipt of these instructions partly on the basis of written test and partly through ~~viva-voce~~ need not be interrupted and may be finalised as per earlier instructions."

11. It is manifest from the above, that the revised procedure had to take effect immediately from the date of issue i.e. 8-5-1991. It is not the case of the applicants that in the said selection, professional ability had already been assessed before receipt of the instructions, ~~Since~~ it is a fact that the written examination was conducted only on 9-8-1991 and by then the instructions had been received by FA&CAO, (on 1-7-91).

12. The other ground advanced by the learned counsel for the applicants that written examination was held for a maximum of 100 marks <sup>was</sup> and not for 50 marks. <sup>EVEN</sup> ~~Even~~ granting that the Railway Board letter dated 8-5-1991 had to be followed, ~~we~~ do not

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think that holding written examination for 100 marks and computing marks obtained pro-rata whether the marks prescribed for the written test is 50 only, is in any way incorrect. It was <sup>conceded</sup> ~~considered~~ by the applicants that even earlier the practice was to hold the written test for a maximum of 100 marks in spite of instructions issued in 1974, where marks for written test was stipulated as 25 marks, and the corresponding pro-rata conversion was being given then -

13. The main ground for the applicants is that the Railway Board's revised instructions dated 8-5-1991 <sup>introducing the</sup> ~~with the~~ revised procedure with regard to assessment was communicated by FA&CAO (Annexure 4) <sup>only by</sup> ~~vide~~ letter dated 12/21-8-91 to the officers in-charge of various Accounts offices in South Central Railway, and <sup>done</sup> ~~this was~~ after conducting the written examination on 9-8-1991. It is <sup>the</sup> ~~is~~ case of the applicants that had they been aware of the change in the procedure they would have put in more efforts in preparing for the written examination. It is common knowledge that traditionally senior candidates perform relatively better in viva-voce and thus any marginal deficiency in the required performance in the written examination could be made up in the viva-voce test. There is force in the above contention for the applicants.

14. The learned counsel for the respondents argued that any written examination held subsequent to the issue of Railway Board letter dated 8-5-1991 had to be governed only by these instructions.

15. But as there should be procedural ~~force~~ <sup>fairness</sup> and as the applicants were not made aware <sup>of</sup> ~~the~~ change in the procedure with regard to assessment of professional ability by the time they appeared in the written examination, we feel it would be just and proper to pass the following order :

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All the candidates including the applicants who secured 55% or above in the written examination should be called for viva-voce test. We make it clear that the candidates have to secure a minimum qualifying marks of 60 in aggregate and also 15 each in <sup>record of service and in the component for</sup> personality, address, leadership and academic/technical qualifications, ~~etc.~~ <sup>as otherwise</sup> envisaged in circular dated 8-5-1991, for empanelment.

16. The OAs are ordered accordingly. No costs.

*P. J. Dm*  
 (P.T. Thiruvengadam)  
 Member (Admn.)

*V. Neeladri Rao*  
 (V. Neeladri Rao)  
 Vice-Chairman

*[Signature]*  
 Dy. Registrar (Judl.)

Dated : August 12, 93  
 Dictated in the Open Court

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- Copy to:-
1. The Secretary, Railway Board, Union of India, New Delhi.
  2. The General Manager, South Central Railway, Rail Nilayam, Secunderabad.
  3. The Financial Adviser & Chief Accounts Officer (FA&CAO), South Central Railway, Rail Nilayam, Secunderabad.
  4. ~~Two~~ copies to Sri. N. Ram Mehan Rao, advocate, CAT, Hyd.
  5. One copy to Sri. N.V. Ramana, SC for Railways, CAT, Hyd.
  6. One copy to Library, CAT, Hyd.
  7. One spare copy.

Rsm/-

*7/2/93*  
*16/8*