

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD.

OA.Nos.215/92, 412/92, 612/92 & 998/92.

Date of order: 8-6-95.

O.A.No.215/92.

Between:

1. M.Samuel Prasad.
2. G.Krishna Murty.
3. Y,Laxmana Rao.

Applicants.

And

1. Union of India, rep. by the Chairman, Railway Board, New Delhi.
2. Railway Board, New Delhi, rep. by its Secretary, New Delhi.
3. The General Manager, S.C.Railways, Rail Nilayam, Secunderabad.
4. The Chief Personnel Officer, S.C.Railways, G.M.'s Office, Railnilayam, Secunderabad.

Respondents.

O.A.No.412/92.

K.Venkateswarlu.

...

Applicant.

And

1. Union of India, rep. by its Chairman, Railway Board, Rail Bhavan, New Delhi.
2. The General Manager, South Central Railways, Rail Nilayam, Secunderabad.
3. The Chief Personnel Officers, S.C.Railways, Rail Nilayam, Secunderabad.
4. Sri E.Sukumaran
5. " S.Subba Rao
6. " B.Bhaskar Rao
7. " P.P.Rajasekharan Pillai
8. " T.S.P.Ramakrishna
9. " T.Murahari Rao
10. " S.Natarajan.
11. " V.Vishwanadha Mudaliar.
12. " B.Chalapathi Rao

Respondents.



(a) Selection to the post of APO which is in Group 'B' service is purely by way of promotion from Group 'C' service of certain specified categories of staff. 75% of the vacancies are filled by merit-cum-seniority and 25% by way of Limited Departmental Competitive Examination (LDCE for short). The present selection in question is for 75% quota of promotion.

(b) Notification No. P/GAZ/607/PB/90 dt. 4.1.1991 was issued for formation of panel of APOs in Group 'B' service against 75% quota in the scale of Rs.2000-3500 in South Central Railway. As per this notification the vacancies assessed for formation of panel of APOs is three(3) consisting of one ST and two OCs. The assessment period was from 1.7.1990 to 30.6.1991. The assessment period as stated in the notification has been restricted upto 30.6.1991 only in view of the change in the eligibility criteria from 1.7.1991. The employees holding a post in the grade of Rs.1600-2660 and above on non-fortuitous basis are eligible to appear for this examination and the seniority will be reckoned as on 1-6-1991 for the purpose of making integrated seniority list (Annex. IV). The categories which are eligible for appearing for the test as given in the above notification are as follows:-

- (a) Group 'C' employees of personnel Department.
- (b) Group 'C' Ministerial staff of Stores, Transportation (Traffic) and Commercial Departments, Compilation/Statistical Branch, who have an avenue of promotion to Group 'B' posts in their own department but on the basis of option being given to them, have elected to be considered for promotion to the post of APOs.
- (c) Group 'C' Ministerial staff in cadre posts in any other departments, excluding Hindi Organisations and Accounts Department but including cash and pay and Time office who have no avenue for promotion to Group 'B' post in their own department.

12. Sri T.S.P.Ramakrishna
13. " T.Murahari Rao
14. " S.Natarajan
15. " V.Viswanadha Mudaliar.
16. " B.Chalapathi Rao.

... Respondents.

For the Applicants: Mr.N.Ram Mohan Rao, Advocate(O.A.215/92)
Mr.T.Laxminarayana,Adv.(O.A.412/92)
Mr.V.Rama Rao, Advocate(O.A.612/92)
Mr.S.Suryaprakasa Rao,Adv.(O.A.998/92).

For the Respondents: Mr.N.R.Devaraj, S.C. for Rlys (All the 4 O.As)

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO: VICE CHAIRMAN
THE HON'BLE MR.R.RANGARAJAN : MEMBER (ADMN).

O.A.S. 215/92, 412/92, 612/92 & 998/92,

JUDGEMENT

1. As per Hon'ble Sri R.Rangarajan, Member(Administrative)

Heard S/Shri N.Ram Mohan Rao, T.Laxmi Narayana, V.Rama Rao and S.Suryaprakasa Rao, learned counsels for applicants in OAs.215/92, 412/92, 612/92 & 998/92 respectively and Sri N.R.Devaraj, learned Standing Counsel for official respondents in all the 4 O.As.

2. In all the four OAs the selection to the post of Assistant Personnel Officer (APO for short) for which the final select list was published on 31-3-1992 is assailed. Though the arguments in all the OAs were heard separately, as common points are involved, all the OAs are clubbed together and disposed by this common judgment.

3. The facts of the case which are not in controversy are as follows:

(e) As per notification dt. 7.6.1991 applications for appearing for the selection for the post of APOs should reach the concerned authorities on or before 5.7.1991. But this date was extended to 12.8.1991 to include Stenographers who are promoted to the grade of Rs.1640-2900 in the meanwhile from 1.5.1991. The list of eligible candidates for appearing for the selection to the post of APO was published on 20.8.1991 wherein certain Law Assistants who were initially declared ineligible were included in the eligible list for appearing for the selection to the post of APOs.

(f) A written examination was held on 14.9.1991 and Supplementary Examination was held on 12.10.91. A total of 208 candidates appeared for the selection. The list of candidates qualified in the selection was published on 29.1.1992. This list contains 58 names eligible to appear for viva-voce test. Viva-voce test was held on 3 days from 24 to 26.3.1992. The Selection Committee comprised of four Senior Officers viz. Chief Personnel Officer, FA & CAO, CMM and C.E. The final approved panel was published by Memorandum No.P(GAZ) 607/PB/91 dt.31.3.1992. As per this approved panel, 13 candidates were empanelled out of which one was graded as 'Outstanding' and the other 12 were graded as 'Good'. This panel is termed as provisional as certain OAs were pending in CAT, Hyderabad Bench and also till such time the case of SC/ST reservation is finally disposed of. The panel published is in the order of seniority for promotion to the post of APO.

4. In all the four OAs, the list dt.31.3.1992 of the empanelled candidates is challenged on various grounds. Before going into the various contentions in all the OAs, two contentions which were not seriously contested are required to be disposed off before taking up the other contentions in the OAs listed above.

(c) The above said notification dt.4.1.1991 was further amended by notification No.P.(GAZ) 607/PB/91. dt.7.6.1991 (Annexure-VI). In this amended notification the period of assessment is from 1.6.1991 to 31.5.1993 and vacancies assessed for the period was 13 comprising 11 OCs, 2 SCs, and Nil STs. The eligibility condition remains the same as per the previous notification, but it is stated that the Law Assistants/Chief Law Assistants were permitted to appear for the selection if they so choose. A list showing the names of eligible applicants who had already responded to the earlier notification dated 4.1.1991 was enclosed and it has been further notified that those candidates need not submit the applications again in response to the amended notification. In addition to the list of names of applicants who had responded to the earlier notification dt.4.1.1991 and found eligible, a list of rejected candidates who had also responded to earlier notification was also enclosed to the said amended notification indicating therein the reasons for rejection. S/Sri E.Sukumaran and S.Subba Rao (R-4 & R-5) respectively in OA.412/92) had applied earlier in response to the notification dt.4.1.1991 but their candidature has been rejected as shown in the rejection list enclosed to the amended notification dt.7.6.1991 for the reason that they had already appeared for the examination in Commercial Department (page-19 of OA enclosed as Annexure-VI of material papers in OA.412/92).

(d) In terms of letter No.P(GAZ) 607/PB/1.dt.1.7.1991 the Law Assistants/Chief Law Assistants in the grade of Rs.1600-2660/2000-3200 who had avenue of promotion as ACS/ACO in Commercial Department or as ALO were also permitted to exercise option for appearing in the selection for the post of APOs in pursuance of Railway Boards letter No.E(NG)II/87/PG/Genl/8.dt.23.6.1989 (South Central Railway Serial Circular No.140/89-Annexure-VII). The opening of the avenue of promotion for Law Assistants was permitted on the basis of representations received from LAS/CLAS.

conducting one instead of two separate selections and also ensuring that the panel is formed in time to cater to the needs of the department. This increased assessment, in our opinion, in no way prejudiced the cause of any of the aspirants for promotion to the post of APO. Hence, we see no illegality or irregularity in the issue of the amended notification dt.7.6.1991 increasing the number of posts to be filled.

6. The second point is in regard to the extension of the date of submission of application forms as per the amended notification from 5.7.1991 to 12.8.1991 to include Stenographers in the grade of Rs.1640-2900. It is stated that Railway Board vide their letter dt.9.5.1991 had upgraded certain posts of Senior Stenographers in the scale of Rs.1400-2600 to Rs.1640-2900 to be effective from 1.5.1991. Stenographers who were in the scale of Rs.1640-2900 with effect from 1.5.1991 automatically became eligible for selection of APOs as the eligibility criteria and service for PO has to be reckoned as on 1.6.1991. But the implementation of upgradation of Stenographers took some time due to exigencies of service and if the date is not extended the Stenographers would be put to loss as they will lose chance to appear for the selection on hand. It is for this reason the respondents stated that the notification date was extended to 12.8.1991 for Stenographers who were posted in the grade of Rs.1640-2900 with effect from 1.5.1991 as the upgradation of Stenographers is with retrospective effect from 1.5.1991. As the Stenographers had acquired eligibility condition for appearing for the post of APOs selection on hand as on 1.6.1991 their exclusion for appearing in the examinations for APOs would jeopardise the right of the Stenographers and hence the administration is right in extending the date of second notification for applying for the post of APOs selection for Stenographer's category.

5. The two contentions that arose for consideration in the preliminary stage are in regard to the increase in the number of vacancies from 3 to 13 in the amended notification and inclusion of Stenographers in the grade of Rs.1640-2900 for appearing for selection to the post of APO. It is stated that higher qualifications were prescribed by the Railway Board for eligibility for empanelment for the post of APO with effect from 1.7.1991. But that higher qualifications were dispensed with by the Railway Board subsequently. In the initial notification dt.4.1.1991 vacancies were assessed for the period from 1.7.1990 to 30.6.1991 as the higher qualifications were not prescribed for filling up vacancies upto 30.6.1991 by the Railway Board. Hence in order to ensure that those with lower qualification are also eligible for vacancies upto 30.6.1991, the notification for vacancies was restricted upto 30.6.1991 in the first notification dated 4.1.1991. In view of the above, for the assessment period 1.7.1990 to 30.6.1991 the vacancies were assessed as 3(three). However, the Board, it is stated, had relaxed the higher qualifications even for the period after 1.7.91. In view of this, the assessment was made for two year period i.e. to coincide with the duration of the life of the panel as per normal procedure and the artificial restriction upto 1.7.1991 was dispensed with. In view of the increase of the assessment period from one year to two years, the revised notification dt.7.6.1991 was issued assessing the vacancies for the period from 1.6.1991 to 31.5.1993. The assessment of vacancies for the period as stated by the respondents took into account the vacancies available as on 1.6.1991 and anticipated vacancies upto 31.5.1993. By this revised assessment the number of vacancies increased up to 13 comprising of 11 OCs, 2 SCs and nil STs. The explanation given for increase in the number of vacancies from 3 to 13 by the amended notification dt.7.6.1991 is not contrary to any rule or regulation but reduces the work-load of the administration by way of

in the eligibility list for appearing for the APO selection and extension of the date for submission of the applications by the Stenographers.

7. We will now take up the consideration of various contentions voiced in the OAs one by one.

OA 215/92.

8. This O.A. has been filed by three applicants. The first applicant was working as Office Superintendent in Statistical Branch, DME(Loco) office, Guntakal, the second applicant was working as Office Superintendent Gr.II in CSTE(Construction) office, Secunderabad, and third applicant was working as Superintendent Typing, in CPO's office, Secunderabad. The main prayer is for a declaration that the selections for the post of APOs is unsustainable as the procedure indicated in Railway Board vide its Circular No.E(GP)88/2/111 dt.20.8.1991 was not followed and for initiating selection process afresh following the Railway Board circulars quoted above.

9. All the three applicants filed this O.A. on 10.3.92 before the conduct of Viva Voce Test scheduled to be held on 24th, 25th & 26th March, 1992 but after the publication of results of written test on 29.1.1992. Thus they filed this O.A. in between the period of publication of written test results and commencement of viva-voce test. All the three applicants failed in the Written Examination and their names did not find place in the list of candidates called for viva-voce test. The main contentions in this OA are four-fold.

(a) The first contention is that the examination has to be conducted in terms of Railway Board's letter No.E(GP)/88/2/111, dt.20.8.1991, but it was not conducted as per the above quoted Board's letter and that the respondents followed the earlier procedure enshrined in

upto 12.8.1991. Hence, we see no irregularity in extending the date of submission of the application forms by the Stenographers in the grade of Rs.1640-2900 from 5.7.1991 to 12.8.1991.

Applicants in these OAs were knowing even before they appeared for written test in regard to the increase in the number of vacancies from 3 to 13 in the amended notification and inclusion of Stenographers in the grade of Rs.1640-2900 for appearing for selection to the post of APO and because of their inclusion the last date for volunteering for selection was extended for the said category. In view of the position having known to them before hand the applicants in all the OAs should have submitted their objections before they appeared for the examination. But, they objected to the above two issues only after they appeared in the written examination and failed to get selected in the selection. The Apex Court in (1955(2) SIR 209 - Madan Lal and Ors. Vs. The State of Jammu and Kashmir and Ors. I held as under:-

" 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 acceptable to him, he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of Om. Prakash Shukla Vs. Akhilesh Kumar Shukla and Ors. (AIR 1986 SC 1043), 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".

In view of the above observation of the Apex Court the applicants herein cannot now question the increase in the number of vacancies assessed for the selection and also inclusion of Stenographers in the grade of Rs.1640-2900.

(iii) The number of questions set whether it is for the maximum marks of 100 or 150 will be the same as within the limited period of 2/3 hours number of questions to be answered cannot be more than what were asked to be answered either for the maximum marks of 100 or 150. Hence, the applicant's contention that because the question paper is not set for 150 marks but it is set only for 100 marks, it is a cause for quashing the whole selection, which has vitiated the selection cannot be sustained at all.

(b) The second contention is that the question paper for the examination held on 14.9.1991 and 12.10.1991 was containing more of objective type of questions instead of restricting objective type questions to 50% of the total marks prescribed for the written examination. For this contention, the applicants rely on Railway Board letter No.E(NG)-I83/PMI-65 PNM/NFIR dated 17.4.1984 circulated by South Central Railway in its Serial Circular No.49/84 dt.14.5.1984. In one of the PNM Meetings held between the National Federation of Indian Railwaymen (NFIR for short) and the Board on 16/17.9.83 the staff side suggested that "the qualifying marks prescribed for being eligible to be called for viva-voce test and also the overall pass percentage of marks for being empanelled, might be reduced." The reason given by the Federation for this suggestion was "that in the older age group the capacity of the employees to answer written papers gets reduced though they have adequate knowledge of work gained through their experience etc. Thus junior employees tend to score over their seniors in the written test held for selection posts." The Railway Board considered the above suggestion and a decision in this matter was conveyed by Railway Board in the letter dt.17.4.1984 which is reproduced below:-

" The matter has been considered by the Ministry of Railways. It will not be feasible to relax the rules in regard to written examinations (wherever prescribed) for promotion to selection posts,

para-204.1 of IREM (Vol.I) (Revised Edition of 1989), wherein the maximum marks for professional ability is 50 out of 100. As the selection was held in contravention of the Railway Board's Circular dt.20.8.1991 and following the old procedure as given in the IREM para quoted above, the selection procedure is vitiated and hence the selection conducted needs to be redone.

(i) From the above contention, it is to be inferred that written examination had to be conducted for maximum marks of 150 and not for 100 as was done in the present case. It is submitted by the respondents that there is no irregularity in evaluating the answer papers for 100 marks and computing the marks obtained for 100 proportionately to 150. They further submit that the above computation will help in the valuation of papers easily and quickly and by proportionate increase of marks the examinees were not put to any disadvantage. They also submit that similar proportional increase/decrease was done in number of selections either reducing or increasing the marks proportionately.

(ii) The written examination was held on 14.9.91 and the Board's letter was issued prescribing the method of selection procedure by letter dt.20.8.91. Even presuming that the contents of letter had percolated downwards it will take some time to adjust for the new method of selection by the administration. As per new method of selection in terms of circular dt.20.8.91 there is not much variation in regard to the setting up of question papers for the selection to the post of APO. The professional paper should consist of questions for a maximum marks of 150, ~~but the questions set for the APO selection are for a total marks of 100.~~ but the questions set for the APO selection are for a total marks of 100. The marks obtained for 100 were upgraded and computed for maximum marks of 150 subsequently to be in accordance with the Circular dt.20.8.91 as can be seen from the selection proceedings.

cannot be set aside on this score.

(ii) As per the notification for selection to the APO the syllabus for the examination is as follows:-

- (a) Establishment matters, and
- (b) Labour Enactments such as payment of Wages Act, Factories Act, Hours of Employment Regulations, Industrial Disputes Act, Workmen's Compensation Act etc.

From the above syllabus, it can be construed that the syllabus consists of professional subjects and Establishment and Financial rules. ~~There is no separate subject of Establishment and Financial rules.~~ There is no separate professional subject prescribed for selection to the APOs other than Establishment and Financial rules. Hence, the prescribed papers can only be one paper as against two distinct papers to be given in other branches of Railway working viz. Engineering, operating and Commercial Branches where professional subjects are different from Establishment and financial subjects. In view of the above, question paper set for Establishment for 100 marks and increasing it to 150 marks by duly computing the maximum marks for 150 and inclusion of objective questions to the extent required though it is not restricted to 50% of the total questions cannot be questioned, much less a reason for setting aside the selection.

However, it may be possible to combine questions requiring narrative answers with those of an objective type. The advisability of introducing objective type questions has accordingly been considered, taking into account the views expressed by some of the Railway Administration. It has now been decided that wherever a written test is held in a category, objective type questions may be set for about 50% of the total marks for the written test. The remaining questions could continue to be of the (conventional) narrative type. It may be made clear here that the figure of 50% for objective type of questions is intended to be for guidance only, it should not be taken as continuing an inflexible percentage."

(i) From the above letter it can be clearly understood that the guideline given for having 50% of objective type of questions is intended to be as a guidance only and should not be taken as constituting inflexible percentage. Hence if the examiner who sets question paper even if he sets more number of objective type of questions than the figure of 50% the same cannot be called as an error. Depending upon the nature of the examination and the capacity of the examinees to answer questions, the percentage of objective type questions in the question paper can be varied. Though, it is stated by the applicants that the objective type of questions were about 70% to 80% it cannot be held as irregular for the reasons stated above. Further, the reasoning given by the Employees Federation for setting objective type of questions is to help the senior employees as they do not have the capacity to write long essay type of questions. The applicants in this QA are senior employees in the Railway and are also middle aged or above. Hence, the reasoning given by the staff side to have objective type of questions is in their favour and hence the applicants cannot say that objective type questions are to be restricted only to 50%. Even if it is more than 50% it cannot be called as a violation of Railway Board's letter and hence question paper set for this selection

The selection for APO is not in the safety category and hence, it cannot be said that the candidates appeared for selection for the post of APO should also be given pre-selection coaching. In view of what is explained, we see no need for giving pre-selection coaching for the written examination for the APO held on 14.9.1991 and 12.10.1991.

Supply of model question paper arises only where in-service coaching/pre-selection training is arranged. As there is no need for pre-selection coaching for APOs selection there is no need to supply model question paper. However, the respondents are at liberty to supply model question paper on their own. But, it is not mandatory and cannot be demanded as a matter of right.

(d) The last contention in this O.A. is that some of the ineligible candidates in the categories of Law Assistants who were declared ineligible were included in the eligibility list dt. 20.8.1991 for writing the written examination for selection to the posts of APO.

(i) The plea of the applicants in this O.A. can be seen in para-6(d) of the O.A. The contention is in the context of Applicant No. 1 who was working as Office Superintendent, Statistical Branch having been denied permission to appear for the Group 'B' selection of Assistant Statistical Analysis Officer in Statistical Branch as he had appeared for APOs test simultaneously. The rule as stated by the respondents is that when there is a channel of promotion in their own cadre for the categories of staff mentioned in the notification, such of those staff can appear for the selection of APO only if they forego their chances for selection to the Gazetted cadre of Group 'B' service in their parent department. The plea of the applicants in this connection is not specific. However, this issue is dealt elaborately when analysing this contention in O.A. 412/92. For the reasons stated in that O.A. in the following paragraphs, this contention also cannot be upheld.

(c) The third contention of the applicants is that the administration ought to have given preselection coaching for all the candidates as per Railway Board's letter E(GP)91/2/10, dt.5.3.1991. The Board by letter dt.5.3.1991 has decided that "as in the case of SC and ST candidates, pre-selection coaching classes should also be arranged for the candidates belonging to general category". This coaching should be treated as mandatory and refusal if any should be taken in writing. A reading of the above instructions will reveal that the preselection coaching was intended even for OCs where earlier such coaching was necessary for SC/STs in the selections involving safety posts. Pre-selection coaching was ordered for SC/ST categories in terms of Circular dt.28.8.1971 bearing No.E(SCT)71-CMIS/40 only in regard to safety categories to enable that the reservation quota in that category is filled without fail. It is not the case of even for the applicant whereby pre-selection coaching is made mandatory even in non-safety posts. The circular quoted above is made to assist the SC/ST candidates to prepare for the examination well by attending the pre-selection coaching classes and to improve their performance in the examination/selections so that they are able to find a place in the panel for safety categories as no relaxation by way of less marks in written examination is given for SC/ST candidates in the safety categories for empanelling them. The circular dt.5.3.91 has to be viewed in that context of selection in the safety categories. It was felt by the Railway Board that even general candidates are not performing well in the selection for safety categories and hence they also need preselection coaching in case of empanelment for posts in safety categories. Hence, the pre-selection coaching which was earlier available only for SC/ST candidates for safety categories in terms of Railway Board letter dt.28.8.1971 was extended even to general candidates who want to appear for selection in safety categories in terms of Board's letter dt.5.3.1991.

(a) The first contention is that fixing up of minimum marks of 30 out of 50 in viva-voce test in terms of Railway Board proceedings No.E(GP)/88/2/111, dt.20.8.1991 is arbitrary. This contention need not be gone into further as the fairness of fixing 30 marks out of 50 for viva-voce test has already been upheld by the Full Bench of this Tribunal reported in 1993(3) SLJ(CAT)568- M.R.Gopalakrishna and Ors. Vs. General Manager, Southern Railway and Ors.

(i) The letter dt.20.8.1991 stipulates maximum marks of 25 each for viva-voce test and record of service. Out of 50 marks for the above two headings a candidate should get 30 marks in total out of 50. There is no minimum marks prescribed for the viva-voce test against the maximum marks of 25. After going through the various pronouncements of the Apex Court and other judicial forums, the Full Bench held as follows:-

"(1) 30 marks having been prescribed as qualifying marks covering both the record of service and viva voce test and as a minimum of 15 marks have to be secured for service record, by necessary implication it was enjoined on every candidate to secure a bare minimum of 5 marks in the viva-voce examination.

(2) In the light of decisions of the Supreme Court, it could be held that prescription of five marks out of a target of maximum of 25 marks for viva-voce examination, was either arbitrary or invalid. Therefore, it is held to be valid.

(3) In view of authoritative pronouncement of the Apex court in Indian Airlines Corporation Vs. Capt.K.C.Shukla and Others (1993) 1 SCC 17, the argument that prescription of viva-voce examination for promotion is not valid cannot be accepted.

10. In view of the above, we do not see any merit in this O.A. and it is liable to be dismissed.

OA 412/92.

11. There is only one applicant in this O.A. who was working as Chief Law Assistant in the grade of Rs. 2000-3200 and was posted to the Law Section. He also appeared for the selection of APO in Group 'B' service after opting for advancement as APO in terms of his option letter dt. 3.7.1991. He had passed the written examination and was alerted for appearing for the viva-voce test held on 24th, 25th and 26th March, 1992. In the integrated seniority list of the employees who qualified in the written examination for the post of APO he stands at Serial No. 8. He states that he is a meritorious candidate having got number of commendation certificates during his 29/30 years of service. He submits that respondents 5 to 12 who were empanelled for the post of APO were juniors to him and he should have been preferred for empanelment of APO in preference to R-5 to R-12. He further submits that R-4 and R-5 are ineligible candidates to appear for selection to the post of APO as they have already appeared for ACS Examination in the Commercial Branch. Hence permitting them to appear for selection to the post of APO and empanelling them for that post is in violation of rules in that regard.

12. He also challenges the proceedings No. E(GP) 88/2/111, dt. 20.8.1991 in so far as it fixed 30 out of 50 marks in viva-voce test, once after it fixed minimum qualifying marks 15 out of 25 for record of service within the framework of viva-voce test. With the above submissions he prays for including his name in the panel of APO by deleting the ineligible candidates viz. R-4 and R-5.

13. The main contentions in this O.A. are two fold.

(ii) In view of increasing number of litigations in Courts/Tribunals the Board vide their letter No.P(R)/648/CAT, dt: 21.7.1989 opened the avenue of promotion as APO for Law Assistants and Chief Law Assistants. However, it is stipulated in that letter, once the choice of CLA/LA for going over to APO was exercised, the choice will be treated as final and they will have no chances to appear for the post of ACS/ALO. The relevant portion of the letter dt. 23.6.1989 is reproduced below:-

" At present, Law Assistant and Chief Law Assistant have an avenue of promotion either in the Commercial Departments as ACS or Assistant Law Officer, Law Officer. Ministry desires that they should also be provided avenue of promotion as APO and they should be eligible to appear for selections from Group 'C' to Group 'B' in the Personnel Cadre. Once the choice in this regard is made by a CLA/LA, it will be treated as final. Necessary changes in recruitment rules for APO and ACS will be made and advised to Railways in due course. (emphasis added).

(iii) The respondents in their counter have given the reason for including R-4 & R-5 in the eligibility list for appearing for the APO selection though their names were excluded earlier. The relevant portion of the counter affidavit in this connection is reproduced below:-

" It is submitted that list of eligible and ineligible candidates who applied in response to the notification dt. 4.1.1991. ~~xx~~ was annexed to the second notification dt. 7.6.1991. It is true that the respondents 4 & 5 herein were placed in the list of ineligible candidates for the reason that they have already appeared for the selection conducted for the post of

(4) Composition of selection committee consisting of heads of three departments is itself sufficient safeguard against arbitrariness. The enjoining instructions in the matter of evaluation of service records and performance in the viva-voce test make the entire scheme totally free from the vice of arbitrariness. Thus evaluation of service records and conducting of viva-voce test by the same Committee is quite in order and does not suffer from any illegality."

In view of the above finding in the above reported case, the impugned scheme of promotion dt. 20.8.1991 being fully rational and well within the bounds of constitutional barriers the same are upheld.

The decisions of the Railway Administration in not promoting the applicants to Group 'B' posts (in that reported case) for not having secured the minimum marks for service record evaluation and viva-voce test was therefore affirmed.

(b) The second contention of the applicant herein is that R-4 and R-5 had appeared for the post of ACS earlier and hence they have lost the eligibility to appear for the post of APO selection.

(i) There is no controversy in regard to the fact that R-4 and R-5 appeared for Group 'B' service in Commercial Cadre (IDCE, 1990). It is reported that they failed in the selection. They also appeared in the present selection of APO. It is also not in controversy that in the list circulated along with notification dt. 7.6.1991 the candidature of R-4 & R-5 was rejected for the reason that they had appeared for the ACS examination in Commercial Department. However, their names were included in the list of eligible candidates dt. 20.8.1991 for appearing for the selection of APO to be held on 14.9.1991.

asked to exercise their option at that time to continue in the ACS cadre. In the counter affidavit filed by R-1 to R-3, nowhere it is stated that they took an undertaking from the R-4 and R-5 that they will continue in the cadre of ACS and will not appear for the selections for the APO when they were permitted to appear for the selection of ACS (IDCE) in the year, 1990.

(v) Both R-4 and R-5 argued their case. R-4 had submitted a reply statement also. In that reply statement he has categorically stated that "his right to opt personnel cadre cannot be taken away for the reason of appearing for selection to the post of ACO without exercising any option."

14. The applicant herein has filed a rejoinder, wherein no specific averment has been made with recorded proof that R-4 & R-5 gave an undertaking to the effect that they would not appear for the APO selection when they appeared for the selection of ACO (IDCE) in 1990. In view of the above, it has to be held that R-4 & R-5 though appeared for ACS (IDCE) in 1990, have not given any undertaking not to appear for the selection for the APO subsequently. On the basis of the representation of R-4 & R-5 they were allowed to appear for selection to the post of APO for the reasons stated in the above para. The respondents issued a notification No. P(GAZ)/607/PB/91, dt. 1.7.1991

(Annexure-VII) asking them to exercise their options for advancement in Group 'B' service either as APO or ACS/ALO. R-4 & R-5 exercised their option for the first time only after 1.7.1991. As R-4 & R-5 had appeared for ACS selection in 1990 without giving option to continue in the cadre of ACS their appearance for ACS Examination in 1990 cannot be held against them to appear for selection to the post of APO. In view of the above, the right of the respondents 4 & 5 to appear for the examination for APO cadre after opting for the same cannot be denied even though they had appeared for the ACS examination earlier without giving any option.

Assistant Commercial Superintendents in Commercial Department. Subsequently, the said two respondents along with some other Chief Law Assistants similarly placed have represented to the Administration against declaring them ineligible to appear for the said examination. In this connection it is submitted that the Law Assistants of the Railways who were belonging to the Commercial cadre had option either to seek for promotion in their parent department as Assistant Commercial Superintendents, or as Assistant Law Officers in the Law Cadre prior to 23.6.1989 and there were no other option than to seek the promotion to Group 'B' service to any other cadre. Railway Board vide their letter dt.23.6.89 revised the channel of promotion for Law Assistants and new option was given to them for further progress in the personnel Department also. With the opening of channel of promotion for the Law Assistants, in the Personnel Department for the first time and since the selection for the post of Assistant Personnel Officer was held for the first time after introduction of additional avenue, it was felt expedient to allow all the Law Assistants to seek their options as APOs if they desired. This aspect was inadvertently lost sight when the applications in response to the notification dt.4.1.91 were scrutinised. Hence, the representations of the Law Assistants were considered and they were declared to be eligible since selection for the post of APO was held for the first time after the new avenue is open to them."

(iv) From the above explanation given by the respondents, it would appear that the Law Assistants (R-4 & R-5) have been included for the APO selection for the written examination held in 1991 as this selection was for the first time after the issue of Railway Board's letter dt.23.6.1989. Though, it is admitted that R-4 & R-5 had appeared earlier for IDCE of ACS, their appearance for that examination was not taken into account as they were not

challenging the order if thereby prejudice is caused to him in regard to his service matter as defined under sec.3(q). The applicants in these OAs themselves are CLAs/LAs. If in fact the CLAs/LAs are not eligible for consideration for promotion to the post of APO then they themselves are not eligible for consideration for promotion to the post of APO and hence they cannot have any prejudice in regard to the appointment of any as APO by way of promotion. There is force in the above contention of the respondents that these applicants have no locus standi to file an application U/s. 19 of the A.T. Act challenging the selection of R-4 and R-5 as APOs on promotion per-se on the ground that they are not eligible for consideration for promotion as APOs as they being CLAs/LAs do not come within the categories referred to as ~~it~~ eligible for promotion as per recruitment rules, for the applicants also belong to the category of CLA/LA. Hence for consideration of these OAs there is no need to advert to the question whether in fact the recruitment rule for the post of APO which is formulated under Article 309 of the Constitution was amended in pursuance of the decision dt. 23.6.1989 of the Railway Board which states that the CLAs/LAs are also eligible for consideration for promotion to the post of APO on the basis of seniority. As such the R-1, the Railway Board, is not required to file reply statement as to whether in fact the relevant recruitment rule was amended.

16. The applicant also states that because of his ~~disputed~~ career he could not have got less than 30 marks in the viva-voce test out of 50 earmarked for Viva-voce test and Record of service. We have seen the selection proceedings. From the selection proceedings we are satisfied that there is nothing irregular. His contention that ~~that~~ he must have

In our opinion, the respondents are right in admitting R-4 & 5 for the selection of APO for the reasons mentioned by them. Hence this contention of the applicant also fails.

15. The contention raised for these applicants is that Chief Law Assistants/Law Assistants are not included in the categories who are eligible for consideration for promotion to the post of APO as per the recruitment rule as it stands, and hence the selection of R-4 & 5 who are Chief Law Assistant/Law Assistants, as APOs by way of promotion is not valid. But it is urged for the respondents that the applicants being themselves are CLAs/LAs have no right to challenge the selection of R-4 and R-5 on that ground in an application filed under section 19 of the A.T. Act. Section 19(1) of the A.T. Act reads that "... a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance." Section 14 lays down, inter alia, that a member of any All India Service or a person appointed to any civil service of the Union or any Civil service or a post connected with defence may move the Central Administrative Tribunal in regard to all service matters pertaining to the service of such member, person or civilian in connection with the affairs of the Union. Service matters in relation to a person are defined under sec.3(q) of the A.T. Act as all matters relating to conditions of his service in connection with the affairs of the Union in regard to remuneration (including allowances), pension and other retirement benefits, tenure including confirmation, seniority, promotion, reversion, premature retirement, and superannuation, leave of any kind, disciplinary matters or any other matter whatsoever.

Thus the contention for the respondents is that a Central Government employee can move this Tribunal

20. OA.998/92 is also filed by a CLA who has been placed at Sl.No.5 in the Integrated Seniority list of employees called for viva-voce test after passing the written test. The applicant states that he had meritorious service and he has received number of accolades from his superiors during his long service. He also prays for placing him in the select panel on the basis of norms and law laid down duly assigning him appropriate place in the panel.

21. The main contentions in these two OAs are that deletion of their name from the select panel is arbitrary, and as they have meritorious service they should have been empanelled. They also presume that they must have secured certain marks above 30 in Viva-voce test so as to make them eligible to be placed in the panel in view of their high seniority position in the integrated seniority list of the candidates called for viva-voce test published on 10.3.1992. We have seen the selection proceedings. Both Sri J.Triwikrama Shastry, applicant in OA.998/92 and Sri T.V.R.K.Sarma, applicant in OA.612/82 have not got the minimum of 30 marks out of 50 in viva voce test and record of service put together though they have got more than 15 marks in the record of service. We also find that some of their seniors have also been found unfit for promotion as they have failed to get the requisite marks in the viva-voce test/record of service. In view of the fact that they failed to come to the expectations in the viva-voce test they were not found eligible for empanelling them in APO category. We do not see any arbitrariness or illegality in not giving them minimum marks in viva-voce test/Record of service. On the basis of the records before us we are satisfied that two applicants and also the applicant in OA.412/92 are not eligible to be placed in the panel as they did not come upto the standard in viva-voce test.

secured certain marks is only on the basis of his assumption and without any basis. Hence, we do not countenance his contention. However, the assessment of the committee will be further examined in detail when the other two OAs are analysed.

17. In view of what is stated above, this OA fails and liable to be dismissed.

OA.612/92 & 998/92.

18. The various contentions in both the OAs are similar in regard to their disqualification in the viva-voce test though they are senior enough to be empanelled. They have repeated similar contentions which were taken in OAs 215/92 & 412/92. It is not necessary to traverse the same in this OA as they were already dealt with elaborately except their contention regarding their disqualification in viva-voce test.

19. In OA.612/92 the applicant is a CLA. His main contention is that he passed the examination and he is at Sl.No.9 in the Integrated Seniority List of candidates qualified in the written examinations for the post of APO and those who were called for Viva-Voce test. He states that he had a meritorious service during his long service and also obtained laurels from higher officials. Inspite of this his name has been deleted from the final list of selected candidates for the post of APO. Hence, he prays for inclusion of his name in the panel. The learned counsel for the applicant has fairly submitted that the prayer in this O.A. may be allowed after checking the proceedings of selection committee for the fairness.

23. From the above, it will be seen that the selection committee need not give reasons if they reject a candidate in the viva-voce test. But, they have to observe fairness in their action. The selection committee must take a decision reasonable without being guided by extraneous and irrelevant considerations. Unless specific ground is taken with sufficient evidence/material the action of the selection committee cannot be challenged as unfair or fair procedure is not adopted. In these OAs, we find that no such averment has been made. The only averment that is made is in regard to the preponderance of personnel Branch candidates having been kept on the panel. A feeble allegation is made in OAs-612/92 and 998/92 that R-3 (CEO) is from Personnel Branch and he has favoured the personnel branch officials. In our opinion this is a wild allegation which cannot be sustained. No material has been produced before us to show how R-3 is influenced by these people. It is possible that an official working in the Personnel Branch doing establishment work day in and day out might have been well conversed in regard to rules and regulations connected with personnel management. Because of their experience in Personnel Branch they would have done well in the written as well as viva-voce examination. Further, a perusal of the select list shows that there is fair representation of office staff, Welfare Inspectors, Personnel Inspectors and Personal Assistants. The outstanding candidate is a Personnel Inspector in Hubli Divisions. They are not under the direct control of R-3. Further, one of the candidates is a Personal Assistant in COPS, OSC, Secunderabad, who is also not controlled by R-3. In view of this we feel that this allegation that they belong to Personnel Branch and hence they have been empanelled in preference to others may not hold water. Further, the selection committee consists of FA & CAO.

Similarly three of the empanelled candidates are office superintendents in Hyderabad, Vijayawada, and Hubli Divisions.

(X)

22. In this connection, we would like to quote the relevant observations of apex court made in regard to the selection I reported in 1992(2) ATR 563- National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and Ors. :-

- (i) " The function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. ~~nor~~ There is no rule or regulation which requiresthe Selection Committee to record reasons. In the absence of any suchlegal requirement the selection made without recording the reasons cannot be found fault with.
- (ii) Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absenceof statutory requirement.
- (iii) The procedural fairness is the main requirement in the administrative action. The 'fairness' or 'fair procedure' in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonable without being guided by extraneous or irrelevant consideration.
- (iv) Selection Committee consisted of experts in the subject for selection and they were men of high status and also of unquestionable impartiality. The court should be slow to interfere with their opinion."

Chief Engineer, CMM (Representative for reserved candidates) apart from Chief Personnel Officer. It cannot be stated that all the very senior officers who are efficient in their fields have colluded to fail the applicants herein. The selection committee consists of officers of high status. This Tribunal cannot interfere with their opinion unless malafides against the committee are fully established. Mere allegation that R-3 favoured personnel Branch officials cannot stand to scrutiny as there are no materials to scrutinise the allegations.

24. In view of the above, these two OAs are also liable to be dismissed.

25. In the result, the OAs 215/92, 412/92, 612/92 and 998/92 are dismissed as having no merits. There will be no order as to costs.

Sd/-xxxx
H R R N

Sd/- xxxx
HVNRJ

CERTIFIED TO BE TRUE COPY

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Date.....

COURT OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

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1. The Chairman, Railway Board, Union of India, New Delhi.
2. The Secretary, Railway Board, New Delhi.
3. The General Manager, S.C.Rlys, Railnilayam, Secunderabad.
4. The Chief Personnel Officer, S.C.Rlys, GM's Office, Rail Nilayam, Secunderabad.
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