

Reserved
(On 29.08.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **10th** day of **September** 2018

Original Application No. 330/001231 of 2011

Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Ashok Kumar Srivastava, S/o Late M.P. Srivastava, working as Chief Yard Master Juhi Yard (GMC) Kanpur under the office of Divisional Railway Manager, North Central Railway, Allahabad Division, R/o 448A, Railway Colony, Fazal Ganj, Kanpur.

... Applicant

By Adv: Shri A.K. Srivastava and Shri M.K. Srivastava

V E R S U S

1. Union of India through General Manager, North Central Railway, Subedarganj, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad Division, Allahabad.
3. Chief Personnel Officer, North Central Railway, Subedarganj, Allahabad.

... Respondents

By Adv: Shri Dinesh Mishra

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

The applicant has filed this OA seeking the following reliefs:-

- 8.1. *to issue a writ, order or direction in nature of mandamus commanding the respondents to given effect the Seniority above to the juniors by adding the name of the applicant amongst the selected juniors for the Post of A.O.M. (Group 'B') against 70% quota vacancies, such as the applicant was qualified with above standard marks.*
- 8.2. *to issue any other suitable writ, order or direction as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.*
- 8.3. *to award the costs of the application in favour of the applicant."*

2. The grievance of the applicant, who is working as Station Superintendent (in short SS), is that he was an applicant for selection for

promotion against 70% quota for the Group B post of Assistant Operating Manager (in short AOM) for the period 2007-2009 and in spite of his place in the seniority list being no. 1, he was not selected. The applicant relies on a judgment of Hon'ble Apex Court in a similar case where it was held that fixation of a minimum mark for viva voce test under para 205 of the Indian Railway Establishment Manual (in short IREM) to be illegal. Copy of the judgment in the case of K. Prabhakara Rao vs. Union of India and others in Civil Appeal No. 9877/1995 has been enclosed at Annexure A-7 to the OA. It was further stated that the applicant was not given any punishment by the respondents, although one case of recovery is pending against him and he has challenged the said order in OA No. 767/2011. The applicant also claims to have secured the highest marks in the written test.

3. The respondents have filed the counter reply stating that the OA is barred by limitation due to delay in filing it. The contention of the applicant that he was at serial no. 1 of the seniority list has been denied by stating that it was the position as per the provisional seniority list. After considering the representations of the employees on the seniority list, it was modified and the final seniority list was circulated on 10.7.2006 (Annexure C.R.-1) before issuing the notification for selection to AOM against 70% quota on 18.7.2006 (Annexure C.R.-2). In the final seniority list, the applicant's place was at serial no. 21. It was further stated in the counter reply that although the applicant qualified the written test, but he could not be selected to be placed in the final panel because he did not secure minimum 30 marks required out of 50 in record of service as per the instructions of the Railway Board vide letter dated 20.8.1991 (Annexure C.R.-4). Further, the applicant was undergoing a major penalty charge-sheet.

4. We have heard learned counsel for the applicant, who stressed on the point that the applicant was the senior most candidate and as per the cited judgment of Hon'ble Supreme Court, the applicant was entitled to be considered for empanelment waiving the requirement of a minimum mark for viva voce.

5. Learned counsel for the respondents submitted that the details of the case have been explained in the counter reply and he specifically drew our attention to para 4 and 8 of the counter reply. He was also allowed to file written submissions within a week.

6. We have considered the submissions and the pleadings on record carefully. Regarding delay in filing the OA, a delay condonation application was filed by the applicant alongwith the OA. This application was considered by the Tribunal and vide order dated 30.9.2011, the delay in filing the OA has been condoned.

7. The claim of the applicant that he was at serial no. 1 of the seniority list, was countered by the respondents by stating that was the position as per the provisional seniority list. In the final seniority list, the applicant was placed at serial no. 21. There is no pleading before us to deny this averment of the respondents and whether the applicant has objected to his being placed at serial no. 21 of the list.

8. The averment made by the applicant in para 4.4 of the OA regarding the minimum mark in viva voce test as per the judgment of Hon'ble Apex Court in the case of K. Prabhakara Rao (supra), no reply has been furnished in the counter reply as to whether the case of the applicant is covered by the judgment cited by the applicant. In the case of K. Prabhakara Rao (supra), the petitioner before the Hon'ble Apex Court was one of the candidate for the recruitment for the post of Assistant Personnel Officer, where he was not selected based on a minimum percentage of marks for viva voce test fixed by the Railways. Two other candidates approached the Ernakulam Bench of Tribunal challenging the minimum marks in the viva voce marks specified by the Railways and the Tribunal held it to be illegal and gave direction to the Railways to consider the case of two candidates. The Railways went to Hon'ble Apex Court in appeal, which was dismissed. Two other candidates approached the Ernakulam Bench of the Tribunal, which allowed the OAs. Again the appeal of the Railways was dismissed. But when Mr. K. Prabhakara Rao approached Madras Bench of the Tribunal on the ground that his case was similar as he was also a candidate for the said recruitment for

Assistant Personnel Officer. But Madras Bench of the Tribunal dismissed his OA, against which he had filed the appeal before Hon'ble Supreme Court in the case cited by the applicant in this OA. It is clear that the judgment was applied to a specific recruitment specifying the minimum marks for viva voce.

9. In this OA, the criteria followed as per the Railway Board letter dated 20.8.1991 (Annexure C.R.-4 to the counter reply), the written examination had a qualifying requirement. Other part of the test is the service record and viva voce for which out of total 50 marks, 30 mark is specified as the qualifying mark including minimum 15 out of 25 specified for the service record. The selection procedure followed was the same as specified under the Indian Railway Establishment Manual (in short IREM) for selection for Group B posts in para 204.1, which states as under:-

“204.1. Selection Procedure.

The selection is based on a written test to adjudge the professional ability, viva-voce and assessment of record of service by the Selection Committee. The marks allotted and the qualifying marks under the different heads are as follows:-

<i>Prescribed papers</i>	<i>Max. Marks</i>	<i>Qualifying Marks</i>	<i>Remarks</i>
<i>One paper on Professional subject and Estt. And Financial Rules.</i>	<i>150</i>	<i>90</i>	<i>Out of 150 marks, the professional subject will carry atleast 100 marks.</i>
<i>RECORD OF SERVICE AND VIVA-VOCE</i>			
	<i>Max. Marks</i>	<i>Qualifying Marks</i>	
<i>i) Viva-voce</i>	<i>25</i>	<i>30</i>	<i>(including atleast 15 marks in the record of service).</i>
<i>ii) Record of service</i>	<i>25</i>		

[Railway Board's letter No. E(GP)/2005/2/69 dated 5.1.06]

10. From above, it is seen that there is no minimum marks specified for qualifying requirement as in the case of K. Prabhakara Rao (supra). In this case, the qualifying requirement is a composite marks secured both in the interview and the service record, which is 30 out of total 50, with minimum 15 marks to be secured in the record of service. Hence, facts in this OA are distinguishable from the facts in the case of K. Prabhakara Rao (supra) and the ratio of the judgment of Hon'ble Apex Court in the case of K. Prabhakara Rao (supra) will not apply in the present OA.

11. Shri Dinesh Mishra, learned counsel for the respondents has submitted his written arguments as per order dated 29.08.2018, mainly reiterating the contention in the counter reply that the applicant failed to secure minimum prescribed marks of 30 out of 50 for record of service. Further, the applicant's seniority position was changed in the final seniority list and there was a charge sheet pending against the applicant.

12. There is nothing on record to establish if the criteria followed as per selection as per the criteria in Railway Board letter dated 20.08.1991 (Annexure CR-4) as well as the para 204.1 of the IREM is unreasonable or illegal. On the other hand, there is justifications for specifying a qualifying a minimum score for record of service, so that the candidates with poor service record will be excluded from the final panel irrespective of marks in written test. It is also noticed that the final panel vide order dated 30.6.2010 (Annexure A-1 to the OA) for the promotion to Group B posts for the period 2007-2009, has not been challenged in para 8 of the OA, although the para 1 implies that the panel is under challenge in the OA. In case the averments of the applicant in the OA are accepted, then there will be changes in the final panel for which, no relief has been sought for by the applicant in para 8 of the OA. The selected candidates have also not been impleaded as party to this OA.

13. In view of the above discussions, we do not find adequate justifications furnished by the applicant to interfere in the matter. The OA is devoid of merit and hence, is liable to be dismissed.

14. Accordingly, the OA is dismissed. No costs.

(Rakesh Sagar Jain)
Member – J

/pc/

(Gokul Chandra Pati)
Member – A