

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 85 OF 2020

Vijay Pandurang Gawali,
Age; 42 years, Occ; At present nil,
R/o; Harinagar, Near Railway Colony,
Purna, Tal. Purna, Dist; Parbhani.

...PETITIONER

V E R S U S

1. The Union of India,
Through General Manager,
South Central Railway,
Having its Office at 5th Floor,
Rail Nilayam, Secunderabad,
Hyderabad - 500003.
2. Senior Divisional Personal,
Officer, Nanded Division,
Airport Road, Rail Vikas Sadan,
South Central Railway, Nanded,
Tq. and Dist. Nanded.

...RESPONDENTS

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Advocate for the Petitioner : Mr. Anand V. Indrale Patil
Mr. A. S.G. for Respondent Nos. 1 & 2-U.O.I. : Mr. Sanjeev B.
Deshpande a/w Mr. R.R. Bangar
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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 27.09.2022

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

1. Rule.

2. Rule made returnable forthwith. With the consent of the learned Advocates for the respective parties, heard finally at the stage of admission.

3. By the present petition, the petitioner assails the judgment and order dated 26.02.2019 passed by the Central Administrative Tribunal, Mumbai, in Original Application No. 692 of 2015. In Original Application the petitioner had challenged the decision of the respondents to cancel the recruitment process for Group-D Category against Scouts and Guides Quota for the year 2013-2014 at Nanded Division. The petitioner had also sought a direction to appoint him against Scouts and Guides Quota in Group-D Category at Nanded Division. By the judgment impugned in the petition, the tribunal has proceeded to dismiss the Original Application.

4. Mr. Indrale Patil has invited our attention to the advertisement to buttress his contention that no passing marks were prescribed for viva-voce, which was to be conducted for 15 marks. He would submit that since there was no bench mark or minimum passing marks of viva-voce, declaring the petitioner as failed in viva-voce is clearly arbitrary. We would not agree with the contention of Mr. Indrale Patil. If his contention is accepted then candidate securing one mark out of 15 in the viva-voce, will have to be declared as selected. Therefore, merely because advertisement did not prescribe any

minimum passing marks in viva-voce, it cannot be said that the petitioner is deemed to have cleared the same.

5. Mr. Indrale Patil, learned Advocate for the petitioner has relied on the decision of the Apex Court in **Hemani Malhotra Vs. High Court of Delhi 2008 (7) SCC 11** particularly, paragraph No. 9 thereof which reads as under :

“9. From the proposition of law laid down by this Court in the above mentioned case it is evident that previous procedure was not to have any minimum marks for viva-voce. Therefore, prescribing minimum marks for viva-voce was not permissible at all after written test was conducted. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva-voce, but if minimum marks are not prescribed for viva-voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at viva-voce test was illegal.”

6. Thus, the issue involved before the Apex Court was about the prescribing minimum marks for viva-voce after conducting the written test. Such an action was held to be impermissible by the Apex Court. In the present case it is not the case of the petitioner that any minimum marks were prescribed for viva-voce after conducting the written test. The aforesaid judgment is, therefore, clearly distinguishable.

7. Mr. Indrale Patil, has also attempted to contend that the recruitment process has been cancelled on account of administrative reason. This contention referable to affidavit-in-reply filed by the respondents before the Tribunal. However, after perusal of the same, we find that the exact administrative reason is non selection of selected candidates in the recruitment process.

8. The narrow controversy that was involved before the Tribunal and which again arises for our consideration in the present petition is whether the respondents were justified in cancelling the recruitment process in the facts and circumstances of the case. The admitted position is that the petitioner had participated in the written test and had cleared the same. Along with him, one more candidate had cleared the written test. Both of them were called for the interview. It was the case of the respondents before the Tribunal that after conducting interview, both candidates have failed to qualify the selection. Since the respondents could not find any selected candidate in the process, the entire recruitment process has been cancelled.

9. We find that the Tribunal has not committed any jurisdictional error in dismissing the Original Application of the petitioner, when the cancellation of recruitment process was on account of non selection of even a single candidate. The petitioner did not raise any allegation of malafides against any particular officer. It is not case that only candidature of the petitioner was cancelled and that

some other candidates were appointed. Respondents have unanimously applied their decision to both the candidates by cancelling the entire selection process. In such circumstances, it cannot be said that there was any arbitrariness in the decision taken by the respondents.

10. Consequently, we did not find any merit in the present petition, the same is dismissed without any order as to the costs.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE