CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/20/1443/2014

HYDERABAD, this the 17th day of December, 2020

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Pavan Prasad Bejawada,
S/o.Venkata Subba Rao B.,
Aged about 34 years,
Occ: Loco Pilot (Goods),
O/o. The Chief Crew Controller,
South Central Railway, Bidar R.S.

...Applicant

(By Advocate : Sri KRKV. Prasad)

Vs.

1. Union of India rep. by
The Chairman, Railway Board,
Ministry of Railways, New Delhi.

2. The Railway Recruitment Board rep. by its
Chairman, Lallaguda,
Secunderabad.

3. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.

....Respondents

(By Advocate : Sri D. Madhava Reddy, SC for Rlys.)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Admn. Member)

Through Video Conferencing:

2. The OA is filed challenging the notification 01/2012 to the extent of Category 36 with reference to para 7.03 of the notification and the consequences thereof.

3. Brief facts of the case are that the applicant, belonging to the OBC community, while working as Asst. Loco pilot appeared in the exam held for the post of Junior Engineer (Cat-36) against the notification 1/2012 issued by the RRB. Applicant did not succeed in the exam and on the basis of the information obtained under RTI and respondent policy, the OA is filed, seeking resolution to his grievance.

4. The contentions of the applicant are that there is no minimum qualifying mark prescribed for the OBC and para 7.03 pertaining to negative marking is not backed by any policy. Besides, the negative marking was not indicated in the admit card. The Railway Board circular dated 29.10.2003 does not speak of negative marking. The final result was announced on 23.3.2013 without mentioning anything about category 36 and only through RTI it was known that none was selected against category 36. Applicant got 39.22% against 40% required and but for the negative marking, applicant would have got 42% and made it. Applicant fell short just by 0.78% which could have been rounded off to 40% or by adding grace marks. Further the enhancement of minimum pass mark by 5% was based on community and not on merit and as a result an ST candidate is

getting qualified by getting 25%, whereas others have to secure 40%. The gap between the two minimum qualifying percentages is too high. In case of notification of 3/2012 issued by RRB the minimum qualifying mark was specified for the preliminary exam.

5. Respondents per contra, state that as per para 7.02 of the notification, selection would be based on merit and the candidate should secure the minimum qualifying marks. Applicant has been earlier selected by the RRB and is fully aware of the terms and conditions of RRB exams. The aspect of negative marking was not indicated in the admit card due to reasons of compatibility. Applicant was informed of the result of category though Right to Information. Applicant attempted 110 questions out of 150 and left 40 blank. Of the attempted questions 63 were correct and the percentage scored by him, after taking the negative marking condition specified in notification at para 7.03 into consideration, the score was 39.22% against the required minimum pass percentage of 40. From 2003 onwards, the minimum qualifying marks have been followed in pursuance of the Railway Board letter 29.10.2003. Awarding grace marks is not allowed. The number of vacancies are 2 and identified for UR, for which the qualifying percentage is 40.

6. Heard both the counsel and perused the pleadings on record.

7. I. Applicant appeared in the exam held for the post of Junior Engineer against notification 1/2012 and secured 39.22% against the required minimum 40%. The contention of the applicant is that the aspect of negative marking as indicated in the notification at para 7.03 is not

backed by any policy. If he had a grievance to this effect, the applicant could have challenged before appearing in the exam or before the results were announced. Applicant, instead, appeared in the exam and after failing to qualify, is now challenging the examination process, which is not permitted under law, as observed by the superior judicial fora as under:

a. Hon'ble High Court of Punjab and Haryana at Chandigarh in Ramesh Kumar Vs. Union of India in CWP No.13069 of 2018, dated 24.07.2019 and others .

The law with regard to estoppel challenging the advertisement of selection process having participated is no longer res integra. The grievance of the petitioner of not adhering to guidelines at Annexure P-8 is neither here nor there as guidelines at Annexure R-4 deals with National HIV Counselling and Testing Services (HCTC). Once petitioner has not secured the marks and rightly so has been kept in waiting list at serial no.2 whereas other selected candidate secured higher marks vis-a-vis petitioner. The selection process cannot be challenged until and unless there is malafide or glaring fallacy. The Court cannot assume the role of an expert and form the different opinion in determining the eligibility, in other words, there is no barometer to assess the certain illegality or irregularities as attempted. In the absence of same, I am of the view that grievance expressed is wholly far-fetched. No ground for interference is made out. Dismissed.

b. Hon'ble Apex Court in **Madan Lal vs. State of Jammu& Kashmir 1995(3) SCC 486** wherein it has been observed as under:-

> *"when the petitioners appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted."*

II. The other contention that the minimum qualifying marks for OBC have not been specified in regard to OBC candidates, does not hold

good, as the Rly. Board Circular dt. 29.10.2003 clearly speaks of the minimum marks as under:

"2. Board have now reviewed the provision of minimum pass marks in the examinations conducted by RRBs and have decided that in partial modification of instructions contained in their letter quoted above, the minimum pass marks should be enhanced by 5%, except for the category of ST. The minimum pass marks percentage will now be applicable as under:

UR	*–*	*40%*
SC & OBC	*-*	*30%*
ST	*-*	*25%*

3. The revised minimum pass percentage of marks shall be applicable prospectively with the employment notices issued from 1.11.2003 onwards. All existing selections where employment notices have already been issued, would be finalized as per the pre-revised percentage of qualifying marks. "

Further the selection is based on merit as per condition 7.02 of the notification and read with Railway Board circular cited supra the securing of the minimum qualifying marks is mandatory.

III. In fact, applicant took an objection, claiming that fixing of minimum qualifying marks for ST as 25% and for others as 40% & 30% is an indication that merit has not been given due consideration and that candidates have been differentiated based on community. Therefore, the applicant was aware of the minimum qualifying percentage and more so, he being a RRB appointee in the past. Regarding reduced qualifying percentage for the ST community, it is based on the relevant Constitutional provisions on the subject. Coming to negative marking, it was indicated in the notification and has to be abided by, as observed by the Hon'ble Supreme Court in **State of Tamil Nadu & Ors v G. Hemalathaa & anr** in Civil Appeal No.6669 of 2019 decided on 28.8.2019

10. In her persuasive appeal, Ms. Mohana sought to persuade us to dismiss the appeal which would enable the Respondent to compete in the selection to the

post of Civil Judge. It is a well-known adage that, hard cases make bad law. In Umesh Chandra Shukla v. Union of India4, Venkataramiah, J., held that:

> *"13…. exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules.*

11. Roberts, CJ. in Caperton v. A.T. Massey5 held that: (1985) 3 SCC 721 556 U.S. 868 (2009) "Extreme cases often test the bounds of established legal principles. There is a cost to yielding to the desire to correct the extreme case, rather than adhering to the legal principle. That cost has been demonstrated so often that it is captured in a legal aphorism: "Hard cases make bad law."

12. After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us.

IV. To award or not to award grace marks is a policy matter. Respondents chose not to and therefore, it cannot be a ground to seek the relief sought. Any relaxation as sought by the applicant in respect of negative marking or award of grace marks would vitiate the entire exam process and defacto would be rendering injustice to those who had been disqualified on similar basis and accepted the same without approaching any Court. Indeed a decision to grant relief to the applicant would be against Articles 14 and 16 of the Constitution. The admit card not indicating the aspect of negative marking is for reasons of compatibility. Applicant has pointed out the qualifying mark was indicated in notification 3/2012. Each notification has its own terms and conditions, which are to be followed. If the respondents were to deviate from the same, then the applicant has a right to challenge such deviations, which is not the case in the instant OA.

V. Before parting, we must observe that it was not correct on part of RRB not to indicate the results of category 36. They cannot expect candidates to file RTI applications to know about the results. They are bound to declare the results and need to have a proper mechanism to do so. We expect RRB to take note and take effective measures in this direction to avoid similar grievances in the future.

VI. To sum up, keeping in view the rules and law on the subject, as discussed in paras supra, applicant is ineligible for the relief sought. The OA thus being devoid of merit is dismissed with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/