

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/0053/2015

Date of CAV : 16.03.2021

Date of Pronouncement : 26.03.2021



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

R. Chandrasekharan,
S/o. R. Raju, Aged 55 years,
Occ: Senior Section Engineer (Works),
O/o. The Senior Section Engineer/Works,
O/o. The Senior Section Engineer/ Works,
Madanapalle, South Central Railway,
Guntakal Division,
R/o. No. MPL/6, Railway Quarters,
Railway Colony, CTM,
Madanapalle, Chittoor District.

...Applicant

(By Advocate : Mr. K.R.K.V. Prasad)

Vs.

1. Union of India, Represented by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Chief Signal & Telecommunication Engineer,
South Central Railway,
Rail Nilayam, Secunderabad.
3. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
4. S. Sivaramana Prasad,
Occ: Assistant Divisional Engineer (Building)
South Central Railway, Hyderabad Division,
Hyderabad Bhavan, Secunderabad.

....Respondents

(By Advocate : Mr. N. Srinatha Rao, SC for Railways)

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



2. The applicant filed the OA for a direction to the respondents to select the applicant as Assistant Executive Engineer/ Assistant Divisional Engineer (AXEN/ ADEN) duly revising the panel issued vide letter dt. 03.12.2010 and promote him to the said post w.e.f. 03.12.2010 with all consequential benefits such as seniority, fixation of pay, arrears of pay and other allowances.

3. Brief facts of the case are that the applicant, while working as Senior Section Engineer (Works) in the respondents organization, applied for seniority based selection to the post of AEE/ADE (Asst. Executive Engineer/Asst. Divisional Engineer) under 70% quota against notification dated 9.3.2010. Applicant cleared the written test and appeared in the viva voce, but he was not selected. In the written test, applicant got the required percentage. In viva voce plus record of service, the marks secured by the applicant were 10 & 16.70 respectively, totaling to 26.70 marks against minimum of 30 marks required. Aggrieved over non selection, the OA is filed.

4. The contentions of the applicant are that, but for the less marks in viva voce, the applicant would have got selected. Applicant cited the judgment of the Hon'ble Supreme court in K. Prabhakar v U.O.I (AIR 2002 SC 205) in regard to the aspect of less marks awarded in viva- voce and its influence on selection to support his contention. This Tribunal followed the

Supreme Court judgment cited, in OA 271/2008 vide order dated 2.7.2009 and in OA 700/2012 vide order dt. 26.4.2013. The marks in the record of service were awarded by considering below benchmark grading in the ACRs, which were not communicated to the applicant and the law makes it explicit that such below bench mark grading should not be reckoned. The impugned decision of the respondents is violative of Articles 14, 16 & 21 of the Constitution.



5. The preliminary objection raised by the respondents is about delay in filing the OA. However, this Tribunal condoned the delay after hearing both sides, vide order dt.08.01.2015 in MA No. 02 of 2014. Hence, the contention of the respondents in this regard does not have much substance. The respondents further state in the reply statement that, in the written exam conducted for the selection to the post of AEE/ADE against notification dated 9.3.2010, the minimum percentage to be secured in written exam, to qualify for the next stage is 60% and the applicant scored 90/150. Therefore, applicant was allowed to appear for viva voce where he secured 10 marks and in the record of service he got 16.70, totalling to 26.70 against the minimum of 30 marks for both the components put together. Juniors to the applicant were selected as they qualified in the selection. Earlier applicant filed OA 1329/2010 wherein it was directed to dispose of the representation and accordingly, the same was examined and rejected. The selection took place in 2010, whereas the applicant filed in 2013 and the reasons given as daughter's marriage and poor health, are not tenable to condone the delay in filing the OA. Many seniors to the applicant

have not qualified and the juniors, who qualified too could not be empanelled for lack of vacancies.

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

7. I. The dispute is about non selection of the applicant to the post of AEE/ADE against the notification dated 9.3.2010. Applicant cleared the written exam, but in viva voce and the record of service, applicant got $(10 + 16.70) = 26.70$ against the minimum of 30 marks required to be selected. The applicant after participating in the selection process is now questioning the same, which is impermissible as per the legal principle laid down by the superior judicial fora as under:

Punjab-Haryana High Court in Kavita Kumari vs State Of Haryana And Others on 27 August, 2019 in CWP-22720-2019 (O&M) on 27.08.2019:

2. The petitioner after having participated in the selection process under the Rules cannot be permitted to challenge the same in view of the law laid down by the Hon'ble Apex Court in the case of Madras Institute of Development Studies and another Vs K. Sivasubramaniyan and others (2016) 1 SCC 454 holding that once participated in the selection process, an applicant cannot be permitted to take a u-turn only because he could not qualify and was unsuccessful.

Therefore, based on the law laid down by the Hon'ble Supreme Court as late as in 2016, the applicant cannot challenge the selection after failing to secure the minimum in viva-voce and record of service. The Hon'ble Supreme Court judgment cited by the applicant in K.Prabhakar v U.O.I of 2002 would, thus, not be applicable in view of its own recent judgment cited supra in the context of failing in an exam.

II. It is not just the applicant, who was not selected, but even his seniors were not selected for not qualifying in the exam. Further, some juniors to the applicant were selected and some others, who were qualified were not empanelled since there were no vacancies and hence, it is not the case of the applicant that he has been discriminated. It is a fact that the applicant after failing in the segment of viva voce and record of service, is finding fault with the selection process. The applicant claims that he would have got less marks because of certain APARs being graded with below bench mark grading. This is an assumption of the applicant since he did not obtain the ACRs, which is permitted to seek under rules, and cross verify as to why he was given the lesser marks in record of service. Without doing such an exercise, the presumption of the applicant that he would have got less marks due to below bench mark grading lacks validity. The judgments cited by the applicant would not, thus, be of much help to him in view of the Hon'ble Supreme Court judgment in *Madras Institute of Development Studies* in regard to an examination cited supra.

III. Thus, viewed from any angle, the OA lacks merit and hence, is dismissed, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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