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IN+THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A.NO. 159 of 1987;

DATE OF ORDER: 26/12/89

K.Umakant Sharma and 3 others ..Applicants

Versus

The Divisional Railway Manager,
Hyderabad(MG) Secunderabad ..Respondents
and 2 others

For Applicant: Mr.K.S.R.Anjaneyulu, ADVOCATE.

For Respondents: Mr.P.VENKATARAMA REDDY, SC for Railways

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C O R A M:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI J.N.MURTHY: MEMBER(JUDICIAL)

(JUDGMENT DELIVERED BY SHRI B.N.JAYASIMHA: VICE CHAIRMAN)

1. This is an application from four Assistant Station Masters, questioning the order dated 4-4-1986 of the Divisional Railway Manager, Secunderabad, under which a panel for promotion from ASM (425-640) to SM/ASM (450-700) has been published.

2. The applicants state that during June 1985 an alert notice was issued under Divisional Railway Manager (MG) Hyderabad letter no.DR/P/M/HYB No.7P 605/P11 SML/ SMS/ASMS dated 20-2-1985 indicating to hold selection to fill up the posts of SM/ASMs in the grade of 455-700 consisting of both written and viva-voce tests. The

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said notice was also contained a list of eligible candidates. All the four applicants were eligible and they were figured at Serial Nos. 6,13,32 and 163 respectively. The Written Test was held on 30-6-1985 and the Viva-voce test was held during the period 31st December to 27th January, 1986. After holding of the Written and Viva voce tests, 68 candidates have been promoted. The applicants who are all seniors have been overlooked. All the four applicants who were in the grade 425-640 with effect from 1983 were entrusted the duties and responsibilities of the post of Station Masters carrying scale of pay 455-700 from January, 1984 to April, 1986, but they were not paid the wages ~~for~~ ^{of} that post. They challenge the promotions made to others on the following grounds:

- (i) The vacancies have not been specified in alert notice issued on 20-2-1985.
- (ii) The list of candidates qualified in written test announced on 23-12-1985 and called for viva voce has been amended by adding Kalyana Sundaram who has not passed the Written test.
- (iii) Out of 68 candidates, 3 candidates viz., K.Babu Rao, D.Jagan Mohan Rao and Samuel John were booked for Refresher course at Zonal Training School, Moulaali. As per rules, refresher course is assigned only to those candidates who are far below the standard and not eligible to shoulder the responsibilities of the post.
- (iv) The applicant no.3 who had passed the written test was not empanelled and no reasons have been given for deleting his name.

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(iv) The procedure followed with regard to conducting written test has not been uniform. For some batches, 50 marks were assigned for objective type of questions and 50 for essay type of questions and for some batches 25 marks have been assigned for objective type of questions and 75 marks for essay type of questions.

(v) Moderation marks which were added twice creates distrust in the process of selection and violates principles of equality.

The applicants state that they have submitted representation to the Divisional Railway Manager Hyderabad, on 27-2-1986 and to the Chief Operating Superintendent, SC Railway, Secunderabad on 3-3-1986, bringing out the said irregularities. The Chief Operating Superintendent suggested for abandoning the list, but, this was not accepted. Hence, they have filed this application.

3. The respondents in their counter state that the panel of staff found suitable for promotion to the posts of Station Masters /Assistant Station Masters was published as long back as 4-4-1986. The interviews in connection with the selections to the said posts were conducted during January, 1986 and the applicants were admittedly not called for interview. They did not question the selection then itself. They are questioning the selection after the panel has been published without impleading the selected candidates and the application is liable to be dismissed on this ground alone.

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4. The contention of the applicants that there were irregularities or improprieties in the selections held to the posts of ASMs/SMs is not correct. The selection was done in strict conformity with the Rules and procedure governing the selection. At the time when the Notification was issued, there was no requirement that the vacancies meant for reserved communities should be specified separately. The Railway Administration has assessed the vacancies correctly and called for the candidates within the field of eligibility including the applicants. The number of vacancies and the staff called for selections is indicated below:

<u>Community</u>	<u>Number of Vacancies</u>	<u>No. of candidates called for selection</u>
Other Community	77	231
Scheduled Caste	19	57
Scheduled Tribe	15	45

It will be seen that the number of eligible candidates available in the Division is less than the required number equivalent to three times the number of vacancies. Therefore, all the eligible candidates were called for selection consisting of written and vivz voce tests.

5. After the Written test was held, all those who got 60% marks and above in the written test were called for interview. As many of the candidates failed to secure the minimum marks in the written test, the Railway Administration has decided, with a view to give opportunity to maximum number of candidates to get selected, to award moderation marks at a prescribed percentage uniformly to all the candidates. Inspite of the moderation marks

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given, the applicants did not get qualification marks to be called for the interview. The supplemental written test was held for the benefit of the absentees who could not attend for the reasons beyond their control. Naturally the question papers have to be set differently within the framework of the syllabus and there is nothing improper in doing so.

6. The allegation that one Shri Kalyanasundaram who had not passed the written test was called for viva-voce test is not correct. His name was omitted by mistake and the said mistake was rectified by calling him for viva-voce test. Refresher course is periodically held for the ASMs/SMs of all grades. Deputing candidates for refresher course has nothing to do with the selections. The contention that the applicant no.3 Shri Rahmat Ali passed the Written test is equally wrong. He did not obtain the qualifying marks of 60%. In regard to the allegation that the Chief Operating Superintendent abandoned the selection, it is stated that the Chief Operating Superintendent considered the representations submitted in regard to the ^{and} selections held/upheld the selections by his communications dated 17-7-1986. The allegations of bias and discrimination are wholly baseless. For these reasons, the respondents oppose this application.

7. We have heard Shri K.S.R.Anjaneyulu, learned counsel for the applicants and Shri P.Venkatarama Reddy, Standing Counsel for Railways.

8. The first two points urged viz., vacancies were not specified in the alert notice and one Kalyanasundaram was called for oral test even though his name was not included in the list of qualified candidates, do not merit any consideration in view of what is stated in the counter. Having regard to the number of vacancies, all eligible candidates

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were called for the test. Secondly, Kalyanasundaram was called after detecting that his name ^{was} not included due to some error. The point no.3 also is without merit as deputing of the persons mentioned therein for refresher course has no connection with the holding of the test. Like-wise, the contention that applicant no.3 was not called even though he had passed the test is untenable in view of what is stated viz., that he failed to get 60% of the marks. The only points that would remain for consideration are whether different methods were adopted in the two tests which were held and whether there was any arbitrariness in the award of moderation marks.

9. We will first consider the award of moderation marks. Shri Anjaneyulu relied on U.C.Shukla Vs.Union of India (1985 (2)SLJ 412) where the Supreme Court was considering a case where the High Court added two marks as moderate marks so as to bring those in zone of consideration for viva-voce test who had obtained high marks in individual papers but were lacking in the aggregate. In that case The Full Court of the High Court approved the initial list of 27 candidates who qualified at the said written test. However, the Hon'ble Judges of the High Court having appreciated that a few candidates who had otherwise scored very high marks would have to be kept out of the zone of consideration for final selection by reason of their having secured one or two marks below the aggregate or the qualifying marks prescribed for the particular paper, decided that "moderation of two marks in each paper to every candidate of the 1984 Delhi Judicial Service be done. Moderation has been done on several occasions in the past also." The question that was considered by the Supreme Court was whether the High Court has power to add 2 marks to the marks obtained by way of

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moderation. The Supreme Court observed that:

"...In our opinion this alone would not be sufficient to add any marks by way of moderation. It is relevant to note the mandatory character of Cl.(6) in the Appendix to the Rules which says only such candidates will be called for viva voce who have obtained 50% marks in each written paper and 60% in the aggregate except in the case of candidates belonging to the Scheduled Castes/Tribes in whose case the qualifying marks will be 40% in each written paper and 50% in the aggregate. Addition of any marks by way of moderation to the marks obtained in any written paper or to the aggregate of the marks in order to make a candidate eligible to appear in the viva voce test would indirectly amount to an amendment of clause (6) of the Appendix. Such amendment to the Rules can be made under Article 234 only by the Lt. Governor (Administrator) after consulting the High Court in that regard. In the instant case by resolving to add two marks obtained in each answer book by a candidate has virtually amended the Rules by substituting 48% in the place of 50% which is required to be secured in each written paper and 58% in the place of 60% which is required to be secured in the aggregate in the case of candidates not belonging to Scheduled Castes/Tribes and 38% in the place of 40% in each written paper and 48% in the place of 50% in the aggregate in the case of candidates belonging to Scheduled Castes/Tribes. The adverse effect of the moderation on the candidates who had secured the required qualifying marks at the examination in question is quite obvious, since four candidates whose names were not in the list of 27 candidates published on the first occasion have been included in the first list of candidates chosen for appointment from out of final list of successful candidates in preference to some of the candidates who had obtained the qualifying marks in the written papers and they would have been appointed as Sub-Judges but for the interim order made by this Court. These

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Four candidates were able to get into the list of persons to be appointed as Sub-Judges because of the high marks they were able to secure at the viva-voce test for which they were not eligible but for the moderation marks. The area of competition which the 27 candidates who had been declared as candidates eligible to appear at the viva-voce examination before such moderation had to face became enlarged as they had to compete also against those who had not been so qualified according to the Rules".

What was held in the above case is that having regard to the number of posts available, the list was enlarged by giving the moderation marks. In the case before us there was no sufficient number of candidates who have qualified and instead of rejecting all of them and resorting to a fresh test, the administration gave a percentage of marks to all the candidates. Inspite of the moderation marks, the applicants did not get the minimum marks required. In these circumstances, we do not find that the facts of this case are similar to one dealt with by the Supreme Court in the above-cited case. It is well settled that 'thera ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it' (Ambica Quarry Works Vs. State of Gujrat (AIR 1987 SC 1073).

10. The next point is that the procedure followed for conducting the test was not uniform. Shri Venkatarama Reddy, SC for Railways, has pointed out that two tests

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were held according to the normal practice and the supplementary written test was held for the benefit of the absentees who could not attend for the reasons beyond their control. There is a normal practice to conduct a supplementary test for the absentees for who could not attend for reasons beyond their control. The question papers had to be set differently within the frame work of the syllabus and any variations could not invalidate the procedure. No objections were raised by any one when these examinations were held. Shri Anjaneyulu, however, states that by adopting different standards, the persons who appeared for the supplementary test got some advantage. We do not think that there is any merit in this contention, inasmuch as that the procedure normally followed have been observed by the Department. Any small variations in the matter of setting up of question papers or for fixing of marks would not, in our view, invalidate the selections made.

11. Replying to the objections raised by the respondents that the candidates who have already been selected and appointed have not been made parties to the ~~seles~~ application, Shri Anjaneyulu contended^{ed} that it is not necessary to make the selected candidates as parties for the reason that he is questioning the selection procedure itself. In support of his contention, he relies upon Jawahar Lal Nagi Vs. Union India (1987 (1) SLJ (CAT) 205; The General Manager, SCR, Sec'bed Vs. AVR Siddhanti (1974 (1) SLR 597); and Dr. Dhrubashkaran Vs. Osmania University, Hyderabad (1980 SLR 153). Shri Venkatarama Reddy, Standing Counsel for the Railways, on the other hand, also relies on the same case i.e. AVR Siddhanti's case and states that in a

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case where the selection is challenged long after the selected candidates have already joined duties, it is necessary to make them as parties. In view of the fact that on merits, we do not find that the applicants have made out any case, it is not necessary for us to express any opinion on this objection.

12. In the result, the application fails and it is accordingly dismissed. No costs.

B.N.Jayasimha
(B.N.JAYASIMHA)
Vice Chairman

J.N.Murthy
(J.N.MURTHY)
Member (J)

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Dt. 26th December, 1989.

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DEPUTY REGISTRAR (J)
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TO:

1. The Divisional Railway Manager, (Hyderabad MG) Secunderabad.
2. The Chief operating superintendent, south central railway, Secunderabad.
3. The General Manager, south central railway, sec'bad.
4. One copy to Mr.K.S.R.Anjaneyulu, Advocate, 1-1-365/A Jawaharnagar, Bakaram, Hyderabad.
5. One copy to Mr.P.VenkataramaReddy, SC for Rlys.,CAT, Hyderabad.
6. One spare copy.

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