

130

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

D.A. No. 518/87

~~T.A. No.~~

DATE OF DECISION

4/1/90

Petitioner

Advocate for the
Petitioner(s)

Versus

Respondent

Advocate for the
Respondent(s)

CORAM

The Hon'ble Mr. D. Surya Rao - Member (J)

The Hon'ble Mr. R. Balakrishnan - Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice-Chairman on columns 1,2,4 (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

NO

(D.S.R.)

(R.S.S.)

(31)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

O.A.No. 518 of 1987.

Date of Order: 4-1-1990

A.B.Veerabhadra Rao.

...Applicant.

Versus

1. The Sr. Divisional Personnel Officer
S.C. Railway, Vijayawada
2. The Divisional Railway Manger,
South Central Railway, Vijayawada Division,
Vijayawada.
3. Sri M.N.V. Prasad
S.C. Railway High School,
Rayanapadu, Vijayawada.
4. M.V. Satyavathi,
S.C. Railway High School,
Bitragunta.

... Respondents

Counsel for the Applicant: Mr. M.S.K. Sastry

Counsel for the Respondents: Mr. N.R. Devaraj, SC for Railways.

C O R A M:

THE HON'BLE SHRI D. SURYA RAO: MEMBER (J).

THE HON'BLE SHRI R. BALASUBRAMANIAN: MEMBER (A).

(Judgment of the bench delivered by Hon'ble

Shri D. Surya Rao: HMJ)

This Application is filed questioning the
appointment of R-3 and R-4 as Drawing Teachers in the
South Central Railways, High School, Vijayawada Division
pursuant to a selection held after the posts were advertised.

Contd...2

32

It is contended that the S.C.Railways, Vijayawada Division, advertised for two posts of English Drawing Teachers (one by OC and one for S.C.) and one post of Telugu medium Drawing Teacher (for being filled from among O.Cs.).

The eligibility prescribed was Graduation with two years training Certificate from a recognized Institution.

The rules and regulations also^{so} provided for preferance being given for previous experience. The applicant who had applied for both the posts available for OC candidates viz., English and Telugu Drawing Teacher recieved call letters for both the posts. He states that he was highly qualified in drawing, besides having experience and that he did very well at the interview.

However R-3 and R-4 who were less qualified and without previous experience were selected, for the posts of Telugu medium and English medium Drawing Teachers. The applicant states he was better qualified compered to them. He has alleged that R-3 and R-4 do not possess previous experience. He therefore contends that the selection is illegal and arbitrary and should be set aside. He seeks a futher direction that he should be declared selected.

2. On behalf of respondents 1&2 a counter is filed denying the claims of the applicant. Regarding qualifications

(33)

..3..

and experience of the R-3, R-4 and the applicant the following particulars are furnished.

Respondent No.3: Sri M.N.V. Prasad

1. B.Com.(Costing) - IInd Class.
2. Drawing Higher Grade. II
3. Technical Teacher Certificate.

Respondent No.4: Smt. M.V. Satyavani.

1. B.A.(Economics Sanskrit)- IInd Class
(Drawing and Painting.)
2. B.Ed. (Hindi, Economic)
3. Drawing Intermediate Grade 'A'.

As against the Applicant Sri A.B. Veerabhadra Rao who had the following qualifications:

1. B.Sc., (Botany Zoology - Ist Class)
2. Drawing Higher Grade. II
3. D.R.R.M. Art Gallery and School, Rajahmundry.
4. Technical teachers Certificate.
(5½ years teaching experience)

The counter further recites that the candidates were interviewed and subjected to a Drawing test, that they were asked to draw a figure on a Black Board and also asked to explain and teach in the language tested. The selection Board allotted 50% for Professional ability, 25% for personality and 25% for Addl. Qualifications and experience and awarded marks under each head.

The average of the marks awarded by the 4 members constituting the selection Board were computed and thereafter, the selections were made on merit. It is therefore contended that the selection was validly made and not arbitrary.

3. We have heard the arguments of the learned counsel for the applicant and Sri N.R. Devaraj, Addl.

Contd...4

Standing Counsel for the Railways. The learned Standing counsel also produced the records relating to the selection. The first contention of the applicants counsel is that the greater experience which the applicant had should have weighed in his favour. We have perused the record of the selection and find that in the categories of professional ~~proof~~ ability and personality the 4th Respondent scored much higher than the applicant. Even under the head additional qualifications and experience she scored higher than the applicant though applicant had higher teaching experience. This was offset as the 4th Respondent is a Graduate in drawing. Assuming that the applicant could have been given higher marks taking into account his higher experience we find that in professional ability the 4th respondent secured far higher marks than the applicant. Even if the applicant was to be given equal marks compared to R-4 in additional qualifications and experience he could not have been selected. Similarly R-3 scored much higher marks than the applicant in professional ability. Thus both the selected candidates had been selected mainly because of higher marks secured in professional ability which was based on a practical test and observation by the examiners. We therefore, do not accept the applicant's contention that merely because of his slightly greater experience (1½ years) he should have been selected.

35

4. It was also sought to be contended that not more than 12½% should have been given to personality and that since 25% was awarded to personality the selections are vitiated. This contention is based on the dicta of the Supreme Court reported in AIR 1981 SC 487 (Ajay Hasia Vs. Khalid Mujib). We are of the opinion that the decision cited would not directly apply. The appointees are not raw graduates straight out from college who are yet to develop their personality. They have already had sufficient specialised training in their subject. viz., drawing in regard to which only they were tested. The decision more apt in a case like the present one is that of the Supreme Court reported in AIR 1981 SC 1777 (Lila Dhar Vs. State of Rajasthan), wherein allotment of 25 marks to the viva voce under the Rules was held not arbitrary and violative of Article 14 of the Constitution of India, since the selection was not to be from raw graduates. In this case also the candidates expected to offer themselves for selection are not raw graduates freshly out of colleges but persons who have already received a certain amount of professional training. It is on this basis that the Supreme Court distinguished the Ajay Hasia's case. In doing so the Supreme Court further held that the use of words "and even in matters of public employment" in Ajay Hasia's case were not intended to lay down any wide general rules that the same principle (limiting the viva voce marks to 12½%) that applies in the matter of admission into colleges would also apply in the matter of recruitment to

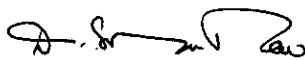
✓

✓

(36)

public services. In any event, even if the marks allotted for personality are halved, the applicant would yet not have been selected as he scored far less in professional ability. We, therefore, do not see any cause to strike down the selection process as arbitrary and illegal.

4. We, however, find from the counter that the authorities have proposed de-reservation of the post reserved for S/C and that in the event of de-reservation, the applicant would be appointed. We would make it clear that in the event of de-reservation, the applicant would yet be eligible for appointment and the present order should not be a bar to such appointment. The application is dismissed subject to this observation. No costs.



(D.Surya Rao)
Member(J)



(R.Balasubramanian)
Member(A)

Dated: 4 th January, 1990.

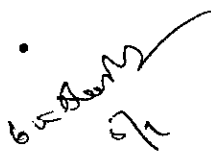

DEPUTY REGISTRAR(J) - 41/20

TO:

1. The Sr.Divisional personnel officer, S.C.Railway, Vijayawada-520 002.
2. The Divisional Railway Manager, south central railway, Vijayawada division, Vijayawada.
3. Sri M.N.V.Prasad, now appointed as Drawing Teacher in S.C.Railway High School, Rayanapadu, Vijayawada.
4. M.V.Satyavathi, now working as Drawing Teacher, S.C. Railway High School, Bitragunta.
5. One copy to Mr.M.S.K.Shastry, Advocate, 16-11-741/3, Dilsukhnagar, Hyderabad-500 036, A.P.
6. One copy to Mr.N.R.Devaraj, SC for Rlys., CAT, Hyderabad.
7. One spare copy.

....

kj.


6/1