

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHIO.A. No.
T.A. No.

454

1989

DATE OF DECISION 11-8-1989

P. Kalyan Rao

Petitioner

Mr. G. Bishappaiah

Advocate for the Petitioner(s)

Versus

The General Manager Sec. P. U.

Respondent

Mr. N. R. Dhanraj

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D. Swamy Rao, member (1)

The Hon'ble Mr. D. K. Chakravarty, member (2)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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ORIGINAL APPLICATION NO.454 of 1989

ORDER OF THE BENCH DELIVERED BY HON'BLE SHRI D.SURYA RAO, MEMBER(J).

The applicants herein are Pointsmen-II in the South Central Railway. They state that they are eligible for appointment to the next category viz., Assistant Guard in the pay scale of Rs.800-1150. It is alleged that the 2nd respondent issued a circular dated 6.1.1989 calling for the applications for filling up 36 vacancies of Assistant Guards. 29 of the vacancies were earmarked for the operative staff and 7 for commercial staff. It is mentioned that the selection process will consist of a written test and those qualifying the written will be called for viva-voce. The applicants state that they are already working as Adhoc Assistant Guards. It is alleged that when selection was made for appointment on adhoc basis, respondents 16 and 24 failed in the test. It is further alleged that the applicants were compelled to appear for the test and under the threat of deletion of their names from the zone of their consideration they had appeared for the test. They referred to a letter issued in 1979^{issued} after negotiations between the workers and the Management, whereby it was agreed that the promotion to the post of Breaksman (now designated as Assistant Guard) would be by way of a simple written test. Departing from these instructions, the respondents are now seeking to make the selection on the basis of written test and viva-voce. Pursuant thereto, 108

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employees including the applicants and the respondents were alerted for the written test on 8.4.1989. In this list there were only two persons belonging to the commercial department and 106 to the operating department. It is alleged that only 87 persons from the operating department should have been called for the written test as the zone of consideration would be three times to the number of vacancies. Since 29 vacancies were available to the operating department, only 87 from this branch should have been called for the written test and not 106. It is alleged that one of the respondents viz., respondent No.3 was caught red-handed while copying in the examination hall and that the respondent No.24 was passed despite his not possessing any knowledge of Telugu language. Subsequently, the 2nd respondent, on 24.5.1979 issued the list of 29 persons as having qualified in the written test. Of them, the respondents 3 to 23 are juniors to the applicants. 10 of those called for the interview figured beyond Sl.No.87 in the operating department and should ~~have~~ not have been considered. In these circumstances, the applicants seek to impugn the selection for the posts of Assistant Guards as notified in the circular dated 6.1.1989.

2. On behalf of the respondents 1 and 2, Railways, a counter has been filed denying various allegations. It is stated that in the notification dated 6.1.1989 it is clearly mentioned that a written test would be held and ~~and~~ those who secure qualifying marks would be subjected to the viva-voce. Insofar as ^{the} 1979 selection is concerned, it is stated that there was a stagnation of Group 'D' employees (Pointsmen) to get promotion

as Breaksmen for 20 years and this caused a wide spread unrest. The General Manager, as a one time measure, relaxed the stringent selection process directing adoption of a simple test for selection. It is further stated that the Railway Board by a letter dated 31.5.1982 have identified certain categories of staff as Safety categories. The Assistant Guards category comes under the Safety category. For ^{filling up} ~~appointing~~ the posts under the Safety categories, there is a prohibition of any relaxation in ^{viewed as} ~~the~~ prescribed qualification, ^{viz} period of service and other criteria for filling up of the posts. Accordingly, a selection was proposed to be held in the same manner with the same syllabus as in the previous occasions prior to 1989. It is stated that after 1979, on 2 occasions i.e., in September 1985 and May 1988, ~~the~~ regular selection process viz., written test and viva-voce was followed. Some of the applicants had appeared in these tests. It is, therefore, contended that the contention that the selection should be made without a written test and a viva-voce is wholly untenable. Insofar as the persons called for interview, it is stated that though 7 posts are allotted ~~to~~ to commercial department, only 2 have volunteered. ~~These posts, under the rules, do not prohibit~~ in entertaining the volunteers from the other eligible categories order to fill the vacancies when volunteers from one category the other are not forthcoming. Consequently, as many as 106 in ^{employees of the one eligible category} Operating Branch were subjected to the written test. The total those subjected to the written test viz., 108 is three the number of vacancies viz., 36.

3. viz., respondents 3, 6, 11 to 16, 18, 19, 21 and 23
On behalf of the contesting respondents, a counter

has been filed. While supporting the stand of the Railways, it is specifically denied that ~~the~~ respondent 3 was caught red-handed while copying and the said allegation was described as an utter false. It is also denied that the respondent 24 does not possess any knowledge of Telugu. The allegation that the respondents 16 and 24 failed in the test is also denied.

4. We have heard the learned counsel for the applicants, Shri G. Bikshapathy, the learned counsel for the contesting respondents viz., Respondents 3, 6, 11, 12, 13, 14, ^{15,} 16, 18, 19, ~~20~~ 21 and 23, Shri P. Krishna Reddy and the learned Standing Counsel for the Railways Shri N. R. Devaraj. The first point is whether it was open to the respondents to hold ^{the} written test followed by viva-voce for selection to the posts of Assistant Guards in the manner notified in the notification dated 6.1.1989. The contention of Shri Bikshapathy is that in 1979 there was an agreement between the Union and the Railways, as a result of which it was decided that the selection for the posts of Breaksmen, now redesignated as Assistant Guard, should be on the basis of a simple written test. He contends that in the absence of the statutory rules, this cannot be modified. Shri Devaraj on the other hand draws our attention to the Rule 216 of the Indian Railway Establishment Manual, Chapter-II, 2nd Edition. This clause specifically provides, "when it was desirable to



hold a written test as a part of selection in respect of all ~~in~~ initial selection grade posts and that in every case, ~~a~~ a viva-voce test shall be held". Thus, it is clear that the Rule clearly provides for a written test followed by viva-voce. The contention that in 1979, there was an agreement to contra, is not substantiated and in any event, ^{the} rule would prevail over the said agreement even if it exists. The second contention raised by Shri Bikshapathy is that, 106 persons should have been called from the operating branch since only 29 posts were earmarked for this branch. He contends that only 87 viz., 3 times of the number of vacancies should have been called for the written test. The counter on behalf of the Department states that only 2 persons ~~were~~ volunteered from the Commercial Branch and that the rules ~~donot~~ prohibit ~~in~~ entertaining the volunteers from the other eligible categories when volunteers from one category or the other are not forthcoming. In view of this averment, we see no irregularity in calling 106 persons from the operating branch. In any event, the applicants would have ^a the grievance, if they qualify in the written test and become eligible for the viva-voce. It is only then that they can complain^t that the competition has got enlarged. We, therefore, see no merit in this contention. The 3rd contention raised by Shri Bikshapathy is that as at present, there are only 11 vacancies, and, therefore, only 36 persons should have been called for the written test. This contention is based upon the last paragraph of the counter filed on behalf of the Railways

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which reads as follows:-

"It is stated that there were 20 existing vacancies and 16 future vacancies for which selections ~~are~~ are conducted. In the meanwhile 9 posts are surrendered as a result of the review conducted by the Controlling Officer, which was not anticipated at the time of assessing the vacancies. With the result, out of 20 existing vacancies which are to be filled, only 11 vacancies are to be operated and there is no existing vacancy of Assistant Guards in the division. In these circumstances, while filling up these 11 posts, the applicants who are working as Assistant Guards on adhoc basis are reverted as Pointsman II vide this office order dated 30-6-1989."

5. It would be clear from the counter that at the time of notifying the vacancies and calling for the applications, 36 vacancies were anticipated. This was the basis for calling 106 persons for the written test. ~~On the~~ fact that as a result of subsequent review, there was^a reduction in the strength or ^{which} cadre ~~would~~ not vitiate the notification dated 6.1.1989 calling for 108 persons for the written test, ~~we~~ see no substance in this contention.

6. In any event, we see no equities in favour of the applicants herein. The notification calling for the applications was issued on 6.1.1989. This notification specifically says that the written test would be held and the syllabus was also enclosed thereto. The applicants never objected at that time that no written test should be held on 15.3.1989 when their names were included in the list of candidates eligible for appearing for ~~the~~ ^{the} test.


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TO

- ✓ 1) The General Manager (B.G.)
S.C. Railway, Secunderabad.
- ✓ 2) The Divisional Manager, (B.G.)
S.C. Railway, Secunderabad.
- ✓ 3) one copy to Mr. G. Bishapathi, Advocate.
Race Course Road, old Malakpet,
Hyderabad.
- ✓ 4) one copy to Mr. N.R. Devraj, SC for Railways,
CAT, Hyderabad.
- ✓ 5) one copy to Mr. P. Krishna Reddy, Advocate,
3-5-399, Himayatnagar, Hyderabad.
- ✓ 6) one copy to Hon'ble Mr. D.K. Chakravorty,
(M) (A) CAT, Hyderabad.
- 7) one spare copy.

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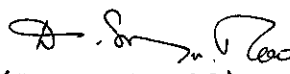
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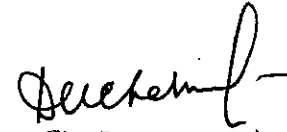

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Received on 23/8/49
At 2.25

the written test. They acquiesced with the said letter fixing the the written test on 8.4.1989 and on 25.4.1989. When the list of employees who passed the written test was announced, they turned ^{around} ~~down~~ and filed the present applicant just before the viva-voce was to be held stating that no written test should be held. It is clear that the applicants are seeking to ^{claim} ~~deny~~ the benefit of ^{appearing for} the written test ~~xxxxxxxxxxxx~~ while at the same time questioning the procedures. We are of the view that they cannot be permitted to do so. On this ground also the applicants' case ~~XX~~ is liable to be dismissed.

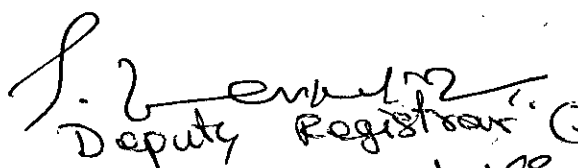
7. In the circumstances, we find no merits in the applications and it is accordingly dismissed. There will be no order as to costs.

(Dictated in the open Court).


(D. SURYA RAO)
Member (Judl.)


(D.K. Chakravorty)
Member (Admn.)

Dated: 11th August, 1989.


Deputy Registrar (J)
13/9/89.