

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.112/90.

Date of Judgment 25-6-1991

1. E.Ranga Rao
2. P.V.D.Uma Maheswara Rao
3. A.Bangaru Raju
4. Y.Prasada Rao
5. L.Venkata Das
6. Cresswell Helat
7. S.Kumar
8. Y.V.Ramana
9. Ch.N.Prasada Rao
10. Sk. Khader Bhasha .. Applicants

Vs.

1. The Divisional Railway Manager,
South Central Railway,
Vijaywada.
2. The Senior Divisional Personnel Officer,
South Central Railway,
Vijaywada. .. Respondents

Counsel for the Applicants : Shri P.Krishna Reddy

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

CORAM:

Hon'ble Shri J.Narasimha Murthy : Member (Judl)

Hon'ble Shri R.Balasubramanian : Member (Admn)

X Judgment as per Hon'ble Shri R.Balasubramanian,
Member (Admn) X

This application has been filed by Shri E.Ranga Rao and 9 others under section 19 of the Administrative Tribunals Act, 1985 against the Divisional Railway Manager, South Central Railway, Vijaywada and another.

2. At the relevant time, the applicants No.1 and 2 were working as ^{Gatemen} ~~Tradesmen~~ and the other applicants were working as Yard Pointsman 'C' in the Vijaywada Division. In response to a notice dated 8.1.88, the applicants applied for the posts of Switchmen. The applicants were successful in the written test and were called for viva-voce test held on 15.11.88 and 16.11.88. In the notification dated 8.1.88 the total number of vacancies indicated ^{were} ~~were~~ 51 and there was also an indication that this assessment was only provisional and subject to modification depending on the shortfall, if any, from the 50 vacancies earmarked for rankers with minimum qualification 6th standard. Finally, the select list was published on 10.3.89 which contained only 28 names. In this letter it had been stated by the respondents that the panel was provisional and also subject to the condition that the panel position of the candidates was liable to be altered depending on the results of some more employees which were yet to be announced. The applicants were waiting for a further list and that did not come forth. They have represented against it and so far they have not got any reply. In the meantime, another notification dated 4.1.90 also inviting applications for posts of Switchmen had come but this time the eligibility conditions are different.

Persons like the applicants are not eligible according to this notification and moreover this time the method is non-selection against the more rigorous selection held on the previous occasion. Aggrieved, the applicants have prayed that they be treated as selected for the posts of Switchmen in the written and viva-voce tests which they had passed.

3. The respondents have opposed the prayer. It is their case that normally persons like the applicants are not eligible for the posts of Switchmen but that when sufficient number of employees were not coming forth for the posts the Railway Board as a one-time dispensation relaxed the conditions and according to the relaxation 50% of the vacancies were to be filled up by staff having only 6th standard qualification and the remaining 50% of the vacancies or such higher number as could not be filled up by the candidates with 6th standard qualification the mode of selection would be by a written examination and viva-voce from amongst Group C and D staff of the Operating Department with minimum 5 years regular service and with Matriculation qualification. It was in pursuance of this decision that a test was conducted and the applicants were considered because they had Matriculation qualification. It is stated that against this segment 104 candidates belonging to both Group C and D and with Matriculation qualification were called for the written test. Only 53 candidates were declared to have passed and out of them ^{only} 28 candidates were

found fit in the viva-voce test and empanelled on 10.3.89 and the applicants are presuming that they have been selected. The respondents further stated that they took up the case for relaxing the minimum regular service in the Operating Department from 5 years to 2 years. There were many persons like the applicants who did not have the requisite 5 years service in the Operating Department. It was in view of the possibility of securing this relaxation that in the order of 10.3.89 giving a select panel of 28 candidates they added further that the panel position of the candidates is liable to be altered depending upon the results of some more employees which are yet to be announced. But their proposal was turned down and hence they could not increase the list beyond 28.

4. We have examined the case and heard the learned counsel for the applicants and the respondents.

5. According to the Railway Board instructions and the avenue chart, employees working as Pointsman Gr.A/ Cabinman Gr.I/Leverman Gr.I in the scale of Rs.950-1500 who possess the minimum educational qualification of Matriculation or its equivalent would be considered for promotion to the category of Switchman in the scale of Rs.1200-2040 which is a safety category. In case sufficient volunteers are not available to fill up the vacancies of Switchmen, volunteers will be called for from eligible Class IV (Group-D) staff i.e., the above

postholders in Gr.II in the scale of Rs.800-1150 who possess the prescribed minimum educational qualification of Matriculation or its equivalent.

5. When the Railways found that there were not enough volunteers, they resorted to a one-time dispensation. In-so-far as the applicants are concerned, more than 50% of vacancies in the cadre of Switchman were to be filled by selection after the written examination and viva-voce from amongst all Group C and D staff of the Operating Department with minimum 5 years service and with Matriculation qualification. It was this one-time dispensation that led to the notification dated 8.1.88. In this, when they could get only 28 persons against more than 50 vacancies the respondents attempted to relax the service condition from 5 years to 2 years but failed and hence they restricted the list only to 28 names announced vide their letter dated 10.3.89.

6. Finding that vacancies still continued the respondents issued another notice on 4.1.90. This time, this was restricted only to Pointsman Gr.A/Cabinman Gr.A/ Leverman Gr.A with Matriculation qualification and this time only 2 years service in the scale of Rs.950-1500 was stipulated. Another notable aspect is that this time it was not on selection basis but it was on non-selection basis subject only to a suitability test. The applicants not belonging to these eligible categories could not apply ^{for} to the posts this time.

7. There was another notification No.B/P.608/VI/4/SWM/
Vol.IV dated 11.10.90. This time, all Grade C and D
employees of Operating Department like Pointsman/
Cabinman/Leverman etc., were eligible with minimum
educational qualification relaxed to 8th standard and
service ~~was required to be~~ 4 years. They went one step
further and invited applications from Gatemen and
Station Porters who possessed Matriculation qualifica-
tion and with a regular service of 3 years.

8. From the above we find that not finding enough
volunteers in accordance with the rules the Administra-
tion has been changing the various parameters differently
from time to time although in the reply filed they have
claimed that the 8.1.88 notification was only a one-time
dispensation. Frequent changes like this lead to an
enormous confusion and will shatter the morale of the
staff since they are not certain when they would be
eligible and when they would not be.

9. Coming to the application, the applicants have filed
an additional affidavit. In that they have averred that
though they were eligible according to the notification
dated 11.10.90 they did not apply for the same as the
O.A. was pending and they wanted the prayer to be
amended that without prejudice to the main O.A.
the applicants be permitted to apply for the
selections notified in the memorandum dated 11.10.90.

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Another question that they had raised in the reply affidavit was that in the first instance they were not included in the list not because they failed in the viva-voce test but on the wrong insistence of the respondents that they should put in 5 years service in the Operating Department. They have pointed out that according to Railway Board letters it is clear that the total service of an employee from the date he has attained temporary status as a casual labour has to be taken into consideration for calculating the length of service.

10. The applicants claim that the 5 years service should include their temporary service also. The Railway Board vide letter No.E(NG)58CFP dated 23.4.62 had decided that all continuous temporary service preceding permanent absorption in the regular cadre may be counted in reckoning the 5 years qualifying service. ^{But} that was for eligibility for promotion from Class IV to Class III posts in the normal course and is not applicable to instances where volunteers are called for with specific requirements to suit operational conditions. In the course of the hearing the learned counsel for the applicants also referred to a decision dated 30.3.90 of this bench in O.A.No.293/88. That again is a case where eligibility condition for promotion from Gr.IV to Gr.III in the normal course was involved and not like the present case where volunteers were called for with specific qualifications.

11. The respondents in the reply had stated that only 28 persons were found fit in the viva-voce test and could therefore be empanelled. We have seen the Railway records and find that ~~the~~ all the applicants have secured more marks in the viva-voce than those included in the panel. Evidently the applicants ^{could} not be included in the ~~list~~ ~~of the decision~~ dated 10.3.89 because they did not have the 5 years service required therein. It is seen from the details furnished by the respondents in their reply that the applicants did not have the requisite 5 years service in Operating Department ~~as at the time of the notification~~, but ^{but} the notification of 8.1.88 only states "employees from among Gr.C and D staff of Operating Department with minimum 5 years of regular service". It does not specify that 5 years of regular service in Operating Department was required. Anybody in Operating Department at that time with more than 5 years of regular service even if most of it might be in other departments would have been eligible. Even if this is accepted, quite a few of the applicants did not have the 5 years service at the time of the notification dated 8.1.88. We are therefore unable to accede to the request of the applicants that they should be promoted against this notification. The next notification dated 4.1.90 did not cover them. The notification dated 11.10.90 however covers the applicants both in terms of educational qualification and in terms of length of service. The applicants have

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committed a mistake in not applying for the posts on the plea that the O.A. was pending. But, for this mistake on their part, they should not be denied an opportunity for promotion, particularly when in response to an earlier notification they ^{had applied and} had been successful in the written as well as viva-voce tests. We therefore feel that the applicants should be treated as having applied for the posts of Switchmen against the notification dated 11.10.90.

12. We, therefore, direct the respondents to consider the applicants against the vacancies notified through their memorandum No. B/P.608/VI/4/SWM/Vol.IV dated 11.10.90. They should not also be subjected to the suitability test ^{had} this time since they ^{had} have already passed the written and viva-voce tests conducted in 1988.

13. The application is partly allowed with the directions given above with no order as to costs.

M.S

(J.Narasimha Murthy)
Member(Judl).

R.Balasubramanian
(R.Balasubramanian)
Member(Admn).

92
Dated 25th June 91

8/10/781
Deputy Registrar (A)

RVS
10/7/91

PCWP

(10)

TYPED BY

COMPARED BY

CHECKED BY

(25)

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDRAABAD BENCH: HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA: V.C.
AND

THE HON'BLE MR. D. SURYA RAO: M(J)

AND

THE HON'BL MR. J. NARASIMHA MURTHY: M(J)

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATED: 25²6 - 1991.

ORDER / JUDGMENT.

M.A./R.A./C.A. No.

in

T.A. No.

W.P. No.

O.A. No.

112/90

Admitted and Interim directions
issued.

Allowed.

Disposed of with direction.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

