

54

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A. NO. 135 of 1990.

Date of the order: 16-8-1990.

Between

V.G.Deshpande

... APPLICANT

A N D

1. Union of India, rep. by the
Secretary (Est.), Railway Board,
New Delhi.
2. The General Manager,
South Central Railway,
Secunderabad.
3. The Chief Personnel Officer,
South Central Railway,
Secunderabad.
4. The Chief Engineer (Open Line)
South Central Railway,
Secunderabad.

... RESPONDENTS

Appearance:

For the Applicant : Mr.G.V.Subba Rao, Advocate

For the Respondents : Mr.N.R.Devaraj, SC for Rlys.

CORAM:

The Hon'ble Mr.B.N.Jayasimha, Vice-Chairman.

The Hon'ble Mr. D.Surya Rao, Member (Judicial)

✓

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

This Application has come up for orders as to admission of the case. The applicant is working as a Chief Clerk in the South Central Railway. He is aspiring for promotion to the post of Office Superintendent. It is stated that for this purpose, 39 persons were alerted for a written test held on 10-6-1989. Twenty six persons including the applicant appeared. Even prior to holding the test, a request was made to modify the syllabus. Further, it was contended that the question paper for the examination held on 10-6-1989 was leaked out to some candidates. The holding of this examination on the basis of a wrong syllabus and the fact that the question paper was leaked out, was the subject matter of the grievance of the applicant in O.A.No.849/89. This Tribunal, however, dismissed the said Application as premature holding that it was open to the applicant to first have his representation disposed of. It is contended that subsequently the South Central Railway Employees' Sangh also made representations that senior adhoc employees were dropped as a result of the written test and justice must be done to the senior employees. It is now contended that the Respondents are going ahead with viva-voce pursuant to the written test held on 10-6-89 and that the applicant is being treated as not qualified to be called for viva-voce. The applicant, therefore, seeks for ~~a relief of~~ ^{for} direction _{in} ^{to} quashing proceedings.

contained in letter No.P(E)/608/CC/Vol.IV dated 19-4-89 and letter No.P(E)/608/CC/Vol.5 dated 21-11-89 issued by the third Respondent alerting eleven persons for ¹⁴ ~~15~~ viva-voce test as illegal.

2. We have heard Sri G.V.Subba Rao, the learned counsel for the applicant and Sri N.R.Devaraj, the learned Standing Counsel for the Railways, on behalf of the Respondents.

3. Sri Subba Rao contended that the selection process viz. written test and viva voce, is to be set aside for the following reasons: (i) There was leakage of question paper. (ii) The earlier order of the Tribunal in O.A.No.849/89 is contravened. (iii) The question paper set for the written test is not in accordance with the syllabus. (iv) The Respondents have, in letter dated 14-12-89 informed the Branch Secretary question of the Sangh that three marks/relating to Hospital Leave was not within the frame ^{of the syllabus}. If the marks obtained ^{by} ~~the applicant in~~ ¹⁴ ~~15~~ written test and the notional marks for seniority are added and if further three marks for the question outside the syllabus are added, he will get the qualifying marks of 60% in the written examination and the notional marks for seniority, i.e. 30 marks in all. He would, thus, be eligible for viva-voce.

4. In so far as the first contention relating to leakage of question paper is concerned, the applicant's counsel has drawn our attention to the representation dated 12-6-89 wherein a complaint was made that the question paper has been leaked out.

The Respondents have replied on 18-12-89 (Annexure-9) that the allegation was gone into and it is found by the competent authority that the allegation is not proved. Sri Subba Rao now seeks to contend that he can substantiate his allegation on various other grounds which are mentioned in the Application and that the Tribunal should on this ground interfere and interdict the selection process. This contention is wholly untenable. It was for the applicant to have given all the details as to how the question paper was leaked out, by whom it was leaked out and to whom. If thereafter, the Respondents have not made a proper enquiry he could have approached this Tribunal. In their application dated 12-6-89 no such details were given except making a bald assertion about the leakage of the question paper. He cannot now ask the Tribunal to step in as an investigating agency and investigate into his complaint raising allegations other than ^{which} ~~were~~ raised before the competent authority.

5. In regard to the allegation that the order of the Tribunal in O.A. 849/89 has been contravened, we are unable to see how the order has been contravened. Sri Subba Rao despite being asked to show how the said order has been contravened, has been unable to substantiate this plea.

6. The next contention is that the question paper set is not in accordance with the syllabus. This complaint is the subject matter of a representation made by the South Central Railway Employees' Sangh dated 22-2-1989. This appears to have been followed by letters dated 5-6-89 and 3-7-89. A reply has been

given on 14-12-89 by the General Manager that no modification of the syllabus notified is necessary. It is further stated therein that no promise was given to anybody by the Deputy C.E.(G) that the syllabus would be modified. Sri Subba Rao, the learned counsel for the applicant, has not been able to point out in which letter or representation it has been clearly made out as to how the syllabus is not in accordance with the rules or how the question paper set was not in accordance with the syllabus. However, he states that he has now raised various contentions in his application to show that the syllabus has become obsolete and has no relevance to the examination. This contention ought to have been made before the competent authority and only thereafter if the said authority has not dealt with his objection or contention that it would be open to the applicant to approach this Tribunal. Without making or assailing the syllabus before the competent authority, it would not be valid or tenable to raise the plea for the first time before the Tribunal and ask the Tribunal to adjudicate whether the syllabus has become obsolete or whether the question paper is not set in terms of the syllabus. Hence, there is no merit in this contention also.

7. Sri Subba Rao finally contended that in the letter dated 14-12-89 it was admitted by the Respondents as below:

"Excepting one bit question carrying three marks about 'hospital leave' all questions given for written examination held on 10-6-89 were within frame of the syllabus."

In view of this reply, Sri Subba Rao contends that his client would have secured the requisite 60% marks required for being called for viva-voce. He states that the marks prescribed for written examination are 30 and for notional seniority are 20. Hence, under both these heads if his client got 27 marks then adding three marks for the bit question which was outside the syllabus, his client would get in all 30 marks out of 50 marks, i.e. 60% and become eligible for viva-voce. For this purpose, we have asked the learned counsel for the Railways, Sri N.R. Devaraj to produce the record to verify whether the applicant has got 27 marks out of 50 in all for the written examination and the notional marks for seniority.

8. The records produced disclose that 50 marks each are allotted to written test and viva-voce. Out of 50 marks allotted for written test, 35 marks are earmarked for written examination and 15 marks are for notional seniority. So far as written examination is concerned, the written examination is conducted and marks allotted are 100. This is proportionately reduced to 35. The Applicant, who got 36 marks out of 100 in the written examination had thus got 12.60 out of 35 marks. For the notional seniority, he secured 13.98 out of 15 marks. Thus, the total marks secured both in the written examination and notional seniority comes to 26.58. 3% marks which related to the question of hospital leave was out of syllabus. Hence, if these 3% marks which are ^{constitute 3} 1.05 out of 35 are added to the 26.58 marks secured by the Applicant, the total marks he would have got comes to

27.63 out of 50 marks. This is well below the minimum requirement of 30 out of 50 marks to render him eligible to take viva-voce. Hence, the Applicant cannot have any grievance on the score that 3% marks ² were relating to hospital leave were out of syllabus.

9. For the reasons given above, we find no merit in the claims putforth by the Applicant. The Application is accordingly dismissed. No costs.

B.N.Jayashimha

(B.N.JAYASIMHA)
VICE-CHAIRMAN

D.Surya Rao

(D.SURYA RAO)
MEMBER (JUDICIAL).

Dated: 16 th August 1990

D.S.Rao
Deputy Registrar (Judl)

nsr

To

1. The Secretary(Estt.) Union of India,
Railway Board, New Delhi.
2. The General Manager, S.C.Railway, Secunderabad.
3. The Chief Personnel Officer, S.C.Railway, Secunderabad
4. The Chief Engineer(Open Line)S.C.Railway, Secunderabad.
5. One copy to Mr. G.v.Subba Rao, Advocate
1-1-230/33, Jyoti Bhavan, Chikkadapally, Hyderabad.
6. One copy to Mr.N.R.Devraj, SC for Rlys, CAT. Hyd.Bench.
7. One spare copy.

pvm.

8/5
2/5
7
8/5
CHECKED BY

APPROVED BY

TEMPED BY

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIEUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

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

AND

THE HON'BLE MR.J.NARASIMHA MURTY:M(J)

AND

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

DATE: 16/8/90

ORDER/JUDGMENT:

M.A./ R.A/C2A/No.

in

T.A. No.

W.P. No.

O.A. No. 135 | 90

Admitted and Interim directions issued
Allowed.

Dismissed for Default.

Dismissed as withdrawn.

Dismissed.

Disposed of with direction.

M.A. Ordered/Rejected.

No order as to costs.

