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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No. 975 / 92

Between:

N.J.Bhajantri, ... Applicant.
And

Divisional Commercial
Superintendent,
S.C.Railway,
Hubli
and 3 others ... Respondents

REJOINDER TO THE COUNTER FILED BY RESPONDENTS

I, N.J.Bhajantri, S/o. JettappaBajantri aged 49 yrs, Luggage Porter, Hubli do hereby solemnly ~~swear~~ swear and state as under:-

I am the applicant in O.A.No.975/92 and well acquainted with the facts of the case. I have gone through the Counter filed by the respondents and the averments are far from truth.

I was selected against departmental quota for promotion to Class III as Ticket Collector. Pending Departmental pre-promotion Training I was utilised as a Ticket Collector at Hubli which is the normal procedure ~~is~~ followed on all the Divisions. I was directed to undergo promotional course training from 1-4-1989 to 27-5-89 at the Zonal Training School, Moulali. On completion of training an examination was conducted at the ZTS/Moulali in which 59 Trainees appeared for the same on 27-5-89. The Principal ZTS published the result on 26-8-89 after 3 months in which my result was withheld alongwith 2 others viz. B.Pullaiah, T.Eswar.

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It is submitted that T.Eswar, Courier, Hyderabad did not want desire promotion but B.Pullaiah, Scale Porter, Hubli was promoted as Ticket Collector and posted at Secunderabad. The Ticket Collector training Sri. N.Srinivasan who is alleged to have ~~written~~ ^{written} objective type of questions in the Answer script was removed from service according to the penalty advise dt. 18-7-1991 imposed by the Additional Divisional Railway Manager Hubli where in it is stated that Sri N.Srinivasan T.C./ MAQ who assisted him in this unfair practice and who was a RRB candidate recruited recently was removed from service for the lapse.

It is submitted that the said Srinivasan was re-instated into service and continuing in the Railway as Ticket Collector, where as I have been singled out to under go a heavy penalty notwithstanding the fact that the charge is not established and it is a case of ~~no~~ evidence.

It is respectfully submitted that suspicion and surmises can not ^{form} the basis of proof. It is for the prosecution to establish the guilt of the charged employee and it is not for the charged employee to prove that he ~~is~~ is not guilty of the charge. The charge should be stated in clear and precise ~~s~~ terms and the employee should be in a position to effectively meet the charge. The whole case as being foisted without any evidence and the entire charge is based and unfounded.

It is submitted that I have been selected against the promotion quota of Group 'D' employees for promotion as Ticket Collector. After qualifying in the

(Signature)

Departmental examination I was empanneled for promotion as Ticket Collector which is Grop 'C' post on 31-1-89 and also underwent medical examination for promotion as T.C. I was sent for the pre-promotional course at the Zonal Training School, Moulali alongwith departmental candidates as well as direct recruits. The Departmental candidates are given separate accommodation in the ZTS and the RRB candidates are provided different accommodation and there is no necessity of knowing each other. The examination was conducted finally after training on 27-5-1989 for all the trainees in a ~~big~~ big hall wherein ~~was~~ I was allotted a seat in remote corner where as the other trainee ~~Mr~~ Srinivas was sitting in front separated by the long distance from me. In the examination hall there were Invigilators and also Supervisors during the conduct of the examination. I have answered the questions which are known to me and was confident of securing the qualifying marks and as such there was no need for me to approach the said Srinivas for writing my answer script in the examination hall. There is no report by any of the Invigilators/ Supervisors regarding the alleged malpractice in the examination hall. Even if there was any malpractice, the principle of the ZTS would have reported against the same.

On completion of answering the question paper I handedover to the supervisor who had received the answer script and I left the examination hall.

It is respectfully submitted that during the course of the examination there was no complaint of any malpractice indulged by me in the examination hall.

This single fact is sufficient to establish that I did not seek the assistance of the said Srinivasan to help me in the examination hall. The charge is ~~xxxxxx~~ that that I indulged in un fair practice and got the answer script & written by another employee Sri N.Srinivasan during the pre-promotional course examination at ZTS, Moulali as detailed in the statement of imputations. This charge has no existence in view of what is stated above viz., that there is no complaint from the invigilators/not by any of the examinees in the examination hall. This is further strengthened by the statement of N.Srinivasan at the enquiry as he had stated that there was no witness to this as everybody was busy and ~~wr~~ writing and invigilators did not notice. This statement is sufficient to establish that the charge is false, and in the given situation where judging by in a stretch of imagination it is beyond one's comprehension that a trainee who was sitting in the front could come to me and answer the examination script of mine un-noticed by the Invigilators. This charge is sought to be proved by the imputation contained therein which states that "during a check of answer scripts pertaining to pre-promotional examination conducted at ZTS.Moulali on 27-5-1989 for pro Ticket Collectors it was observed that the handwriting in the objective type paper Part-III answer kbits No.17, 18, 22, 27, 28, 29 and 30 were not in the same handwriting appearing in the other portions of the answer script both objective and essay type.

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There is no connection between the charge and the imputation of the charge. The main charge is that I indulged in mal practice in the pre-promotional course examination conducted on 27-5-89 at the ZTS/Moulali. This charge has to be proved by direct evidence or oral testimony of the invigilators/supervisors/any of the candidates sitting for the examination. When there is no such direct or other proof confined to the examination hall this charge is baseless. I can not be held responsible if some thing happened out side the examination hall in order to connect me with the alleged offence.

It is submitted that the minimum marks required for a pass in the written examination is 50% in the case of O.C. candidates and 40% in the case of reserved candidates, as mentioned in the Principal, ZTS, Moulali letter No. ZTS 673/Exams/PROTC/C-61 and repeaters dt. 26-8-89 in the said letter my name was withheld and also the number of marks obtained by me have not been published.

It is respectfully submitted that I acquired more than the minimum number of marks for a pass. The imputations of the charge are that I.N.Srinivasan wrote the answers in objective type questions and according to the opinion of the finger print expert some bits were not in my handwriting. It is evident that the blanks were got filled in by some one else out side the examination hall for which I am not responsible. This would have been done with a malafide intention on some compliants.

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In the difference brief submitted by me at the end of the enquiry I mentioned that there was a racket going on in ZTS/Moulali during various courses of examinations and that I was one of the victims of such. It was also mentioned therein that one person approached me and ~~informed~~ ^{he} found that is working at Secunderabad and closely connected to ZTS working specially to help the trainees to pass the examination. He added that he has arranged for filling the un answered portions of the answer papers of the trainees and wanted me to pay him Rs.4,000/- for having done in my case as I too had left some portions of the answer papers blanks. I replied to him that I have no money and wanted him to tell his name/designation where upon he grew angry and went way.

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This is a sequel to my refusal to oblige him.

The General Manager to whom the review petition was submitted stated that "His contention that he scored 65 marks is not correct. He scored only 60 marks including seven marks gained by unfair means. Even according to his version excluding the 7 marks I scored is more than 53 marks which the qualifying marks prescribed for a pass in the examination. Judging by the fact that the alleged malpractice is not established, Justice requires that I should have been passed in the examination. In my review petition I submitted that I has scored 65 marks in all including 6 marks alleged to have been obtained by ~~writing~~ writing of Sri Srinivasan. This is a matter which could only be verified with the records.

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Eventhough Sri N.Srinivasan was charged with the same offence, a joint enquiry was not conducted to find out the truth. But on the other hand the statement of Sri N.Srinivasan who is an accomplice can not be used against a co-accused in the enquiry conducted seperately against me. Moreover this statement of N.Srinivasan has no evidencial ~~value~~ value as it is established beyond a shadow of doubt that the allged incident did not take place in the examination hall. The imputation of charge is that during the course of a check of the answer scripts it was noticed that the bit questions are not in my hand writing. For what had taken place out side the examination hall I can not be held responsible and a mere statement that I sought the assistance of N.Srinivasan in the examination hall to answer the bit questions is absurd and has no value as evidence.

In view of the facts mentioned above it is established that this is a case of no evidence and the entire proceedings are illegal and deserve to be set a side.

Solemnly affirm and signed on this day the 22nd Dec. '94

(DEPONENT)

Before Me.

Advocate.