

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION-NO.1327-of 1993

DATE-OF-ORDER:-30th-December,-1996

BETWEEN:

V.V.V.S.SUBBA RAO

.. APPLICANT

AND

1. The Divisional Railway Manager,
South Central Railway,
Hyderabad MG Division,
Secunderabad-500371,

2. The Divisional Operating Superintendent,
S.C.Railway, Hyderabad MG Divn,
Secunderabad 500371.

.. Respondents

COUNSEL FOR THE APPLICANT: SHRI G.V.SUBBA RAO

COUNSEL FOR THE RESPONDENTS: SRI V.RAJESWAR RAO, Addl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, ADMINISTRATIVE MEMBER

HON'BLE SHRI B.S.JAI PARAMESHWAR, JUDICIAL MEMBER

JUDGEMENT

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

None for the applicant. Heard Mr.V.Rajeswara Rao,
learned standing counsel for the respondents.

2. As it is a 1993 case, we do not consider it a
fit case for adjournment. Hence the OA is disposed of on
the basis of the records available and also after hearing
the learned standing counsel for the respondents, under Rule
15(1) of the Central Administrative Tribunal (Procedure)
Rules, 1987.

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3. The applicant while working as Pointsman-A, volunteered for the post of Assistant Station Master in the scale of pay of Rs.1200-2040 against the Departmental quota to fill up 14 vacancies of the said grade, by his letter dated 29.1.90. He appeared for the written test and also appeared for the viva-voce held on 9.6.90 and 31.8.90 respectively. The final panel was published on 7.2.91 and his name was not found in the final select panel.

4. Aggrieved by the above, he has filed this OA praying for ^adirection to the respondents to produce the records pertaining to the selection of ASM in the grade of Rs.1200-2040 and consequently direct them to constitute a separate DPC to consider his ~~*****~~ case for inclusion in the panel by holding that non inclusion of his name in the panel after clearance of the Departmental and the criminal proceedings^{instituted against him} as illegal, arbitrary and unconstitutional.

5. The main contention of the applicant in this OA is that he was issued with charge sheet for some lapses and he was kept under suspension and removed from service with effect from 30.7.91 and later reinstated with effect from 1.1.92 ~~****~~ reverting him as Pointsman-B for a period of six months etc. As he was acquitted by the Special Railway Magistrate on 28.10.92, he was restored to his original grade of Pointsman-A duly extending the consequential benefits. The applicant further contends that as a

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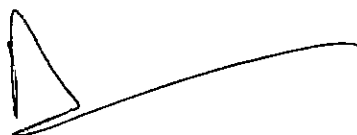
charge sheet was pending at the time of the finalisation of the selection proceedings for the post of ASM, he was by-passed on the premise that he was under cloud due to issue of the charge sheet. Due to that wrong premise, though he was considered for selection, he was not empanelled. Subsequently, when he was exonerated by the Court and ~~he~~ was reinstated as Pointsman-A with all consequential benefits, his case for promotion to the post of ASM should have been reconsidered by the Review DPC and on that basis he should have been promoted.

6. A reply has been filed in this OA. The main contention of the respondents in the reply is that the applicant failed to make grade in the viva-voce and hence he was not empanelled. He was not overlooked because of the pending charge sheet. The learned counsel for the respondents further submitted that the charge sheet was not ^{consideration} at all taken into by the selection committee and hence the statement of the applicant that he was overlooked because of the pending charge sheet is imaginary and it was not borne by records. As he failed to qualify ^{his} in the viva-voce, he was not empanelled and pending charge sheet has nothing to do with the selection proceedings. The above contentions of the respondents have not been controverted by the applicant by filing a rejoinder.

7. The only way to check the veracity of the contentions raised as above by both the sides is to examine the selection records and see whether the applicant had

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qualified in the written as well as in the viva-voce tests and obtained minimum qualified marks in the written and viva-voce tests in total. The learned counsel for the respondents today produced the selection proceedings. We have perused the selection proceedings. Under Columns 9, 10 and 11 of the Selection proceedings, the professional abilities of the candidates who had appeared for the selection have been indicated. As seen from the above columns, the applicant had secured 21.3 marks in the written out of 35, 5 marks in the viva-voce out of 15 and thus a total of 26.3 marks out of 50 in the combined marks of both written and viva-voce. In the seniority he had obtained 10 marks out of 15 and 8.4 marks out of 15 in the record of service. Against a total marks of 100 fixed in the selection, he had obtained 54.7 marks. In the notings at N-6 of the Confidential file No.Y/P/Con-605/Selection/ASM, it is seen that a candidate should get a minimum of 60% in viva-voce for qualifying in the selection as the post of ASM is a safety post. The applicant had obtained only 5 marks out of 15 in the viva-voce which is short of the requisite 60 per cent in the viva-voce. Hence it has to be held that he has failed in the viva-voce test. This being a safety post, no relaxation can be given in the selection. The proceedings does not indicate that the applicant was over-looked because of the pending charge sheet. In the absence of any evidence to that effect, it cannot be said that ^{he was} ~~his name was~~ not included in the selection because of the charge sheet that was pending at that relevant time. The respondents in the reply have denied the allegation of

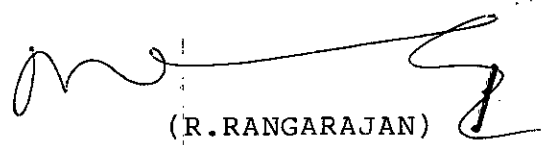


the applicant that the selection committee remarked that that disciplinary proceedings were pending against him and as such he would not be selected. As there is no rebuttal ~~was~~ to that statement in the reply, it has to be held that the applicant has nothing to say on the same. Moreover, mere statement cannot be taken on face value unless such statements are supported by proper evidence on record. No such record has been produced by the applicant to submit as above. In view of the above, we do not find it ^{necessary} ~~a~~ to take note of ~~that~~ allegation.

8. In view of what is stated above, we find that the selection was conducted in accordance with the rules and the applicant was not empanelled because he failed to qualify in the viva-voce. Even if the result of the applicant was kept in a sealed cover, it is not going to help ^{him} in any way as he has failed in the viva-voce. As a matter of fact, the selection proceedings were kept in a confidential file which is as good as keeping in a sealed keeping the result in a sealed cover are not followed cannot also be upheld.


9. In the result, we find no merit in this OA and hence the oA is dismissed as devoid of merits. No order as to costs. (The confidential file referred to above was perused and returned back).


(B.S. JAI PARAMESHWAR)
JUDICIAL MEMBER


(R. RANGARAJAN)
ADMINISTRATIVE MEMBER



DATED:- 30th-December, -1996
Dictated in the open court.


6-1997
Dy. Registrar (S)

21/1/97

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR:
M(J)

DATED:

30/12/96

ORDER/JUDGEMENT

3.A./C.P./M.A. No.

O.A. NO.

1327/93

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

~~DISPOSED OF WITH DIRECTIONS~~

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

~~NO ORDER AS TO COSTS.~~

II COURT

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