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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 325/93.

Dt. of Decision : 08-01-97.

Venkataiah

.. Applicant.

Vs.

1. The Divl.Railway Manager,
SC Rly, Hyderabad Division,
Hyd Sec'bad.

2. The Sr.Divl.Personnel Officer,
SC Rly, Hyderabad Division,
Sec'bad.

.. Respondents.

Counsel for the applicant : Mr. S.Lakshma Reddy

Counsel for the respondents : Mr.N.R.Devaraj, Sr.CGSC.

CCRAM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

THE HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

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

Heard Mr.S.Lakshma Reddy, learned counsel for the applicant and Mr.N.R.Devaraj, learned counsel for the respondents.

2. A notification No.YP/Engg/416/PWMs/DTMs Selection dated 28-05-1992 (Page-11 of the OA) was issued for filling up 14 vacancies of PWMs/DTMs in the scale of pay of Rs.1400-2300/-.

The communal break up of the vacancies are OC-9, SC-2 and ST-3.

The qualifications required and the category of staff who can apply against this notification ^{have} ~~has been~~ indicated in the notification. The relevant portion is re-produced below:-

"A Gangmate in scale Rs.950-1500(RSRP) who is literate and having a total service of 10 years from the date of his appointment as Gangman/Store Watchman/Gateman/Trolleyman in scale Rs.775-1025(RSRP) with minimum 3 years service in the post of Gangmate is only eligible for promotion to the post of PWM/DTM in scale Rs.1400-2300/-(RSRP)".

"A Keyman who is literate and having a total service of 10 years from the date of his appointment as Gangman/Trolleyman/Gateman/Store Watchman, with a minimum of 4 years service in the post of Keyman is eligible for promotion to the post of PWM/DTM in scale Rs. 1400-2300/-(RSRP)".

Subsequently this notification was modified by the Memo No.YP/Engg./416/PWMs/DTMs Selection dated 22-6-92 (Page-7 of the OA). In this notification also, the number of vacancy assessed is only 14. The communal break up also remains ^{as before} ~~as same~~. The eligibility condition in regard to the employees ^{who} ~~can volunteer~~ against this notification is reproduced below:-

"All P.W.Gang staff in categories i.e., Gangman in scale 10 years regular service, are eligible to volunteer."

"If volunteers with 8th standard qualification and 10 years regular service (both minimum) are not available in sufficient numbers, then others shall be considered on voluntary basis".

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From this revised notification the category of staff below that of Keyman can also volunteer for the selection. It is seen from the reply that the eligibility of the candidates restricting only upto the Keyman did not ~~yield~~ the necessary number of candidates qualified to appear for the selection. Hence, it looks that the ~~scale~~ field of eligibility has been extended to that of PW Gang staff in the scale of pay of Rs. 775-1025/- with some added qualification.

3. The selection consists of both written and viva-voce tests. The applicants appeared for the written test. But it is stated that he ~~was~~ not qualified in the written test. A list of 50 candidates was called for viva-voce ~~by~~ vide Memo No. YP/Engg/416/PWMs/DTMs Selection dated 8-1-93 (Page-4 of the OA). A list of 17 candidates amongst those who appeared for the viva-voce were directed for medical test as can be seen from the letter No. AEN/KRNT/E/11A/93 dated 13-03-93 (see also Page-1 to the OA). From the above it can be reasonably presumed that amongst the 17 candidates who ~~had~~ had qualified in the medical examination ~~they~~ will be posted ~~as~~ PWM. The applicant having failed in the written test was not called for viva-voce ~~test~~ and ~~hence~~ he was not empanelled.

4. This OA is filed to set aside the selection proceedings issued in pursuance ~~of~~ to the notification No. YP/Engg./416/PWMs/DTMs Selection dated 22-06-92 (Page-7 of the OA) by holding it as illegal, violative of Article 14 and 16 of the Constitution and for a further declaration to cancel the proposed action of the respondents in filling up the newly sanctioned 21 posts as a result of gauge conversion without conducting any fresh suitability written test of status-quo as per paragraph-143 of the IREM. An interim order has been given vide order dated 13-04-93. However, that interim order has been vacated by order dt. 19-04-93 as the applicant had failed in the written test.

5. The applicant contends as follows:-

1) The initial assessment of vacancies for the selection of the post of PWM is 14. The eligibility condition for appearing

for the selection has been given ~~para~~ in the notification dated 28-05-1992. The above eligibility condition given is in accordance with para 143 of IREM. However, the respondents had enlarged the eligibility condition and included the candidates below that of Meiyman for appearing for the selection by the revised notification dated 22-6-92. The eligibility condition in regard to the category of employees who can appear for the selection is against the instructions given in para 143 of IREM. Hence, whole selection proceeding has been vitiated.

2) The number of vacancies proposed is only 14. Further vacancies that had accrued to the extent of 21 due to the other activities such as guage conversion cannot be clubbed with the selection already initiated. If those vacancies have to be filled then a fresh selection must be conducted in accordance with the para 143 of IREM and those who are selected in the fresh selection ~~can~~ only be posted against the fresh ~~vacancies~~ vacancies that had arisen after the issue of the notification dated 22-6-92. As the respondents contemplated for filling up the additional 21 vacancies also on the basis of the selection for which notification was issued on 22-6-92 the whole proceedings is against the rules and has to be set aside.

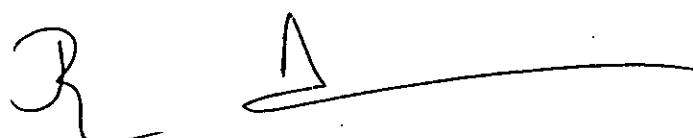
6. We have perused the reply given in this connection. There is no material supported by ~~exhibit~~ record to show that the number of vacancies have been increased from 14 and the selection is ordered for the increased number of vacancies. Hence, it has to be held that the notification dated 22-6-92 is to fill only the 14 vacancies that has been indicated in the notification. The point for consideration is whether the eligibility condition can be enlarged by the respondents ~~despite~~ the rule. The learned counsel for the applicant submits that para 143 of IREM has to be strictly abheared to in regard to the calling for volunteers for the selection. ~~Noxxutxxexxx~~ Any other employee, who is not covered

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under the said para cannot be called for the selection. As the notification dated 22-6-92 includes the categories of staff below that of Keyman with certain condition the notification itself is irregular and hence cannot be valid in the eye of law.

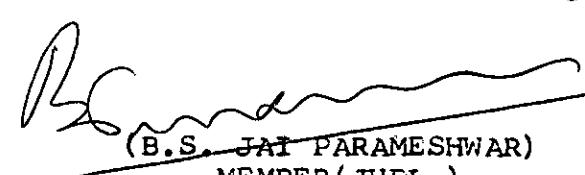
7. In the reply it is stated that when the volunteers were called for as per the notification dated 28-5-92 (Page-6 of the OA) response was very poor as there were not enough sufficient candidates who fulfilled the qualification as prescribed in the notification. When there were 14 vacancies and the number of candidates volunteered does not even touch the number to be filled, the Railway authorities thought those who are below the category of Keyman Gangman who fulfil the certain other conditions should also be called to fill up the post. If the revised notification is not issued relaxing the eligibility condition then the vacancies as advertised in the initial notification cannot be filled up. Further it is stated in the reply that the PWM belong to the Safety cadre. If those posts are kept vacant the safety of running of trains will be seriously jeopardised. In view of that we hold that relaxation of the eligibility condition to volunteer below that of Keyman Gangman cannot be objected to in view of the circumstances as above. The Mistris are to maintain the track. Track maintenance is one of the essential ingredients for ensuring the safety in train operation. Hence, when the respondents submit that without filling the vacancies the operations cannot be kept going, it has to be held that such an argument is very valid for the safety of operation. Hence, we do not find any irregularity in the revised notification issued relaxing the eligibility condition, as in response for the first notification sufficient number of candidates had not volunteered. Hence, we do not find any irregularity in issuing the 2nd notification dated 22-6-92 and in that view that notification cannot be set aside.

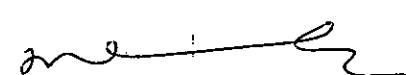


8. The second contention is that the vacancies to be filled should only be restricted to 14 as indicated in the notification and fresh vacancies has to be filled by issuing a fresh notification. There is enough justification in contending so by the applicant. If by that notification the number of vacancies to be filled is more than 14, there is every possibility that some of the eligible candidates who were junior in the field of eligibility might not have volunteered presuming that they may not be fitted within that restricted number of vacancies of 14. Further, the applicant who failed in this selection could have passed in the next examination. By increasing the number of vacancies without ordering a fresh selection published, eligible candidates who would have volunteered otherwise and also ~~did not give~~ ^{by not giving} the applicant a fresh opportunity to sit for the selection. In that view we feel that increasing the number more than what is indicated in the select list is unwarranted and is not tenable. In that view, we are of the view that the number of vacancies indicated in the notification and cannot be increased arbitrarily, even if the number of candidates more than that indicated number of vacancies have qualified in the selection. In view of that the select list should be restricted to only equal to the number of candidates who had sent for medical examination as per the notification.

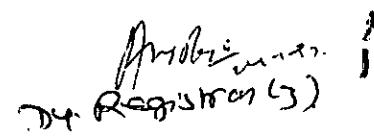
9. In the result, the prayer for setting aside the selection which has been concluded in pursuance of the notification dated 22-6-92 is dismissed. However, the select list in pursuance of the notification should not be extended beyond the number of 17 as indicated in Memo No. AEN/KRNT/E/11A/93 dt. 13-03-93.

10. The OA is ordered accordingly. No costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)


(R. RANGARAJAN)
MEMBER (ADMN.)

Dated : The 8th January 1997.
(Dictated in the Open Court)


Amritanandam
74. Registration

9/3/1997

TYPED BY
COMPIRED 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: 31/1/97

Order/Judgement
R.P/C.P/M.A.NO.

O.A.NO.

325/93

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPENSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II. COURT

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