

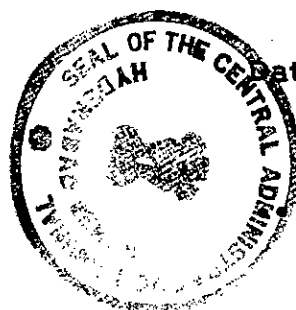
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1059/94

BETWEEN :

P.Lava Kumar

AND



Date of Order: 30.6.97

Applicant.

1. The General Manager, S.C.Rly., Secunderabad.
2. The Chief Personnel Officer, S.C.Rly., Secunderabad.
3. Sr. Divl. Electrical Engineer, Electric Loco Shed, S.C.Rly., Vijayawada.
4. Selection Committee for Promotion Foreman from Electrical Engineering, S.C.Rly., Secunderabad.
5. P.Sivavadhamulu, Asst. Electrical Foreman, Electric Loco Shed, S.C.Rly., Vijayawada.
6. Ch. Sambasiva Rao, Asst. Electrical Foreman, Electric Loco Shed, S.C.Rly., Lalaguda, Secunderabad.
7. Sri T.Kutumba Rao, Asst. Electrical Foreman, Electric Loco Shed, S.C.Rly., Lalaguda, Secunderabad.
8. P.Nageswara Rao, Asst. Electrical Foreman, Electric Locoshed, S.C.Rly., Lalaguda, Secunderabad.
9. G.Ashok, Asst. Electric Foreman, Traction Loco Controller, S.C.Rly., Secunderabad.
10. M.Sambasiva Rao, Asst. Electrical Foreman, Electric Locoshed, S.C.Rly., Vijayawada.
11. R.Sureshkumar, Asst. Electrical Foreman, Electric Loco Tripshed, S.C.Rly., Vijayawada.
12. R.Sureshkumar, Asst. Electrical Foreman, Electric Loco Tripshed, S.C.Rly., Secunderabad.

.. Respondents

Counsel for the Applicant

.. Mr.K.L.N.Rao

Counsel for the Respondents

.. Mr.C.V.Malla Rao

CORAM:

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

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

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it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner*.

7. In view of the above observation of the Supreme Court the applicant cannot now challenge the conduct of the viva-voce when he had appeared for the selection. On that score itself the OA is liable to be dismissed.

8. The applicant contends that in terms of letter dt. 6.1.71 the eligibility of the applicant for promotion to the post of Assistant Electrical Foreman should be considered only by holding a written test and after scrutinising the past records. As viva-voce ^{was} ~~is~~ conducted ^{which is against rules} ~~the selection is~~ vitiated.

9. In this connection Para-214(a) of I.R.E.M. is relevant. The relevant portion of this para reads as below:-

Non-selection posts will be filled by promotion of the senior most suitable Railway servant suitability ~~whether~~ an individual or a group of Railway servants being determined by the authority competent to fill the posts on the basis of the record of service and/or departmental tests if necessary.

10. From the above para of the IREM it is clear that a departmental test can be conducted to assess the ⁺ suitability of the applicant for promotion against the non-selection post. The rule does not contemplate that the departmental test should comprise only of written test and not of viva-voce. The submission of the applicant is that it was further amplified in the letter dt. 6.1.71 that the departmental

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in violation of the rules as contemplated in the letter dt. 6.1.71 and hence the selection has to be set aside and the applicant should be promoted as he possessed the necessary qualification for promotion as Assistant Electrical Foreman.

6. It is an admitted fact that the applicant without any murmur appeared for the viva-voce test. He did not appear for the ^{even} viva-voce/under protest as no ^{to prove} ~~such~~ document^{that} he had appeared for the selection ^{under} / protest has been produced before us. In this connection we would like to recall the observation of the Apex Court reported in 1995 (2) SIR 209 Madanlal and others vs. State of Jammu and Kashmir and others. The relevant portion is reproduced as below:-

"Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of (sic) marks obtained in the written test, to be eligible to be called for oral interview. Upto this state there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, ^{that} they have filed ^{work} ~~that~~ petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors. (AIR 1986 SC 1043) : (1986 (1) SIR 699 (SC)) .

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test should only comprise of written test and not by written test and viva-voce. In this connection it has to be observed that an executive order is not enforceable in a Tribunal/Court of law. If any authority is required for the above proposition the same may be found in Union of India and Ors. v. S.L. Abbas 1994 SCC (L&S) 230. The Supreme Court has held "the guidelines however does not confer upon a government employee a legally enforceable right". Hence the applicant relying on the executive order cannot submit that due to non-adhering or the executive order the selection is to be treated as void. Further the para in IREM does not specifically prohibits conduct of the viva-voce. Hence we are of the opinion that the conduct of viva-voce is in no way violates the rights of the applicant for selection to the non-selection post of Assistant Electrical Foreman.

11. As per the proceedings of the DPC held on 25.1.94 which is enclosed, as Annexure-11 to the reply it is seen that the applicant had obtained three average reports for the period 1990-91, 1991-92 and 1992-93. Under the column technical ability it has been observed by the DPC that the ability of the applicant is "not satisfactory". In the recommendation column the DPC had held that the applicant is "unfit for promotion". When the applicant had not obtained the minimum bench mark and also did not possess the satisfactory technical ability, he cannot insist for his promotion to the higher grade. Hence it cannot be said that the applicant was superseded due to any malafides. No malafide also has been attributed either to the members of the DPC or to any of the respondents.

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12. In view of what is stated above we find that this
OA lacks merit and hence liable only to be dismissed.
Accordingly the OA is dismissed. No costs.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

[Signature]
न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH

फिल सजा	
CASE NUMBER	MA-1059/194
निर्णय का तारीख	
Date of Judgment	30/6/
प्रति प्रत्यक्ष का तारीख	
Copy made by	12/7/97
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सदस्य न्यायाधीश (नर विप)	
Section Officer (J)	