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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.874/95

DATE OF ORDER : 11-03-1998.

Between :-

K.R.Venkoba Rao

... Applicant

And

1. Union of India rep. by General Manager,
SC Riysk, Rail Nilayam, Sec'bad.
2. Chief Personnel Officer,
SC Riys, Rail Nilayam,
Sec'bad.

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Counsel for the applicant : Shri G.Ramachandra Rao

Counsel for the Respondents : Shri N.R.Devaraj, Sr.CGSC

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CORAM:

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

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

(Order per Hon'ble Shri R.Rangerajan, Member (A))

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(Order per Hon'ble Shri R.Rangarajan, Member (A)).

Heard Sri G.Ramachandra Rao, counsel for the applicant and Sri N.R.Devaraj, standing counsel for the respondents. Sri Esupadam, Senior Personnel Officer of South Central Railway was present.

2. Selection proceedings for formation of Group-B panel for promotion to the post of Asst.Engineer in the Civil Engineering Department against 70% quota i.e. to fill up 56 vacancies was initiated. The applicant was one of the candidate who had passed written test and appeared for viva-voce; but the applicant was not selected.

3. This OA is filed praying for calling of the records relating to selection proceedings No.P(Gaz)/607/Engg/93 dt.30-9-94 by which the selection proceedings for the post of Asst.Engineers in the Civil Engineering Department of S.C.Railway concluded and for a consequential ~~direction~~ declaration that the action of the Respondents in not selecting the applicant as Asst.Engineer is illegal and for a further consequential direction to the respondents to empanel the applicant for promotion as Asst.Engineer in the Civil Engineering Department in the S.C.Railway with all attendant benefits including pay and seniority.

4. As per the reply filed to the O.A., the Respondents submit that the applicant ^{was} has not qualified in the selection and he was not empanelled for the post of Asst.Engineer (Civil) on the basis of that selection.

5. We have called for the selection proceedings. No doubt

the applicant had not secured the minimum of 15 marks in the Record of Service, which is necessary for him to qualify in the viva-voce test. In view of that he was declared as unsuitable. When we questioned the reasons for giving him only 12 marks in the record of service Sri Esupadam submitted that the marks were given on the basis of the confidential reports. We made it clear to the respondents that we are not questioning the assessment of the DPC on the basis of the ACRs as the gradings given by the DPC cannot be questioned as held by the Apex Court in Anil Katiyar Vs. Union of India & others (1997 (1) SLJ 145). However, the applicant submits that his assessment based on the CR for the year ending 31-3-91 is erroneous ^{as} that CR was not prepared properly. Hence the incorrect/improper CR submitted before the DPC resulted in down grading of his assessment while awarding marks for record of service. Hence he requested that his CRs may be perused which are the basic records to see whether the CRs ^{were} ~~are~~ prepared in accordance with the extant rules.

6. It is seen from the selection proceedings that the awarding of marks for records of service was given by the DPC based on the CRs from 1990 to 1994. For the period ending 31-3-91, the reviewing officer has given certain remarks. We do not want to reproduce the remarks. However, we showed these remarks to Sri Esupadam, the Officer-in-Charge of Gazetted Establishment and asked him whether he thinks that the remarks given by the reviewing officer to the applicant is adverse or not. Sri Esupadam because of his long experience in the Department stated that these are to be considered as adverse remarks only. Hence such adverse remarks

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can be finalised only after giving an opportunity to the applicant to represent against such remarks if he desires so. When the CR for that year was submitted to the Accepting Officer with those adverse remarks, the accepting officer probably has accepted the same in good faith thinking that ^{the} rules have been followed.

7. When an adverse remarks were given to an employee before accepting the same, the remarks of the employee has to be obtained by intimating him about the adverse remarks entered in the CR. We have further questioned Sri Esupadam whether the adverse remarks entered in the CR for the period ending 31-3-91 was communicated to the applicant and his remarks were put up to the Accepting Officer before accepting the same, Sri Esupadam submitted that he will check the records and then submit the same. Eventhough sufficient time was given, no record was shown to the effect that the adverse remarks were conveyed to the applicant and his (Applicant's) explanation was obtained and also placed before the Accepting Officer. Even today he (Sri Esupadam) requests time to check for the records. We are convinced that the Railway Administration has not communicated the adverse entries entered in the CR for the period ending 31-3-91 before finalising the CRs for that year and is simply dragging the issue by asking for adjournments. As they had been given enough time to check the records, we do not propose to give any further time. The above view is in order because when an adverse remarks entered in the CR and is conveyed to the employee, that letter will normally be kept in CR folder. The final decision of the Accepting Authority will also be kept in the CR Folder. In the CR Folder of the applicant no such correspondence

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[Signature]

is seen. Hence we are convinced that the applicant has not been communicated of the adverse remarks and without giving an opportunity to the employee, the adverse remarks were incorporated in the CR. This is in violation of principles of natural justice. Hence when such an improper records were placed before the DPC naturally the DPC would have decided the merit of the candidate on the basis of the improper basic records, which resulted in down gradation of his gradation by DPC while awarding marks for the record of service.


8. Similar is the case in regard to the CR of the applicant for the year ending 31-3-92. In view of what is stated above, we are of the opinion that now the adverse remarks entered in the CRs of the applicant for the year ending 31-3-91 and 31-3-92 should be informed to the applicant and his remarks obtained thereon and on the basis of the remarks submitted by him, the accepting authority should decide whether those adverse remarks should remain in the CR or they should be expunged. The clear remarks of the accepting authority should be entered in the CRs of the applicant for the years ending 31-3-91 and 31-3-92. Then the whole records i.e. the CRs of the applicant for the years 1990 to 1994 (both years inclusive) should be put up ^{before} ~~to~~ the review DPC to assess afresh in regard to grant of marks for the records of service. If on that basis the applicant gets the minimum marks required in the record of service and qualifies for the empanelment, he should be included in that empanelment list. If the applicant is empanelled in pursuance of the above direction, the applicant is entitled for all consequential benefits such as seniority and pay on par with his


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junior who were promoted from the empanelment list of Asst. Engineer which was issued on 30-9-94. Time for compliance is four months from the date of receipt of a copy of this order. The applicant should submit his reply within a fortnight from the date of communication of adverse remarks to him.

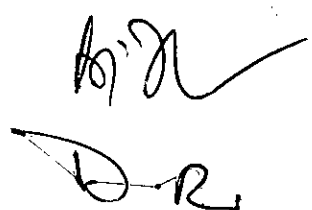
9. With the above direction, the DA is disposed of. No order as to costs.


 (B.S. JAI PARAMESHWAR)
 Member (J)


 (R. RANGARAJAN)
 Member (A)

11.3.98

Dated: 11th March, 1998.
 Dictated in Open Court.



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DA.874/95

Copy to:-

1. The General Manager, South Central Railway, Rail Nilayam, Secunderabad.
2. The Chief Personnel Officer, South Central Railway Nilayam, Secunderabad.
3. One copy to Mr. G. Ramachandra Rao, Advocate, CAT., Hyd.
4. One copy to Mr. N.R. Devaraj, Sr. CGSC., CAT., Hyd.
5. One copy to D.R.(A), CAT., Hyd.
6. One copy duplicat.

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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR. B. RANGARAJAN : M(A)

AND

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

DATED: 11/3/98

~~ORDER/JUDGMENT~~

~~M.A./R.A/C.A. NO.~~

in

O.A. NO. 874/95

~~ADMITTED AND INTERIM DIRECTIONS
ISSUED~~

~~ALLOWED~~

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~DISMISSED FOR DEFAULT~~

~~ORDERED/REJECTED~~

~~NO ORDER AS TO COSTS.~~

II COURT

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