

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
 AT HYDERABAD

O.A. 1415 OF 1996

Dated, the 3rd September, '98.

BETWEEN

1. G. Yadagiri
2. D. Gandaiah

... Applicants

A N D

1. The General Manager,
 South Central Railway,
 Secunderabad Rail Nilayam,
 Secunderabad.
2. The Divisional Railway
 Manager(Per)
 S.C. Railway,
 Secunderabad

... Respondents

COUNSELS:

For the Applicants : Mr. A. Srinivasa Rao.

For the Respondents : Mr. V. Bhimanna

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER (A)

THE HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (J)

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O.A. 1415 of 1996

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O R D E R

(PER: HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)

1. None for the applicant. Heard Mr. V. Bhimanna, Learned Standing Counsel for the respondents.
2. There are two applicants in this O.A. The respondents vide Notification No.C/P/535/Engg/PWM/3 dt. 30.1.89 (Annexure-I) called for applications for filling up the vacancies of PWM. The applicants were working as Mates in Railway Administration. A combined seniority list of Mates, etc. was issued calling for candidates for the above posts vide Memorandum dated 1.3.96 (Annexure-II). The applicants were in the first eligible list for consideration as they were working in the grade of Mate at that time. The suitability test was conducted on 31.3.96. The applicants appeared for the written test and qualified in the said written test. The applicants were called for ~~viva voce~~ keeping their names at Srl. No.2 and 3 of the candidates who were called for the ~~viva voce~~ ^{as} Written Test. It was stated that though the applicants were ~~very senior~~ ^{they} were kept at Srl. No.2 and 3. However, the respondents submit that the names of the applicants, who were kept at Srl. No.2 and 3, was based on the seniority position and their position at Srl. No.2 and 3 was not in accordance with the merit in the written examination.
3. The Written Test was for 50 marks, 25 marks for ~~viva voce~~ and 25 marks were allotted for service record. The final list of selected candidates (issued vide Memorandum No.CP/535/PWM/Engg/Pt.III dt. 28.10.96 at pages 16 to 19 of the O.A. The names of the applicants did not find a place in the select list. Hence, aggrieved by the above, they filed this O.A. praying to set aside the select list dated

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28.10.96 thus issued by the respondents and for consequential directions to promote them against 50% promotional quota.

The respondents deny all the allegations made in this O.A.

4. The main contention of the applicants in this O.A. is that they are seniors and had performed very well in the written test and hence not including their names in the select list is irregular. In ~~xi~~ the viva voce they were not asked any questions except some minor details. Hence they were failed in the viva voce intentionally, as they were involved in the Union activities of a recognised Union. They also allege that the Divisional Railway Manager is prejudicial against them and hence they were not selected.

5. Before analysing ~~about~~ the contentions of the applicants, it has to be noted that the applicants filed a O.A. 1300 of 1996 on the file of this Bench for a similar relief. However, they withdrew that O.A. stating that they will approach the departmental authority submitting a representation in connection with the relief sought. Hence the O.A. was disposed of as not pressed by order dt. 4.11.96.

6. The learned counsel for the respondents submit that the applicants stated earlier that they will file a representation to the General Manager on 8.11.96. No such representation was received by them. Further this O.A. was filed on 20.11.96 i.e. within 12 days after filing of the representation to the General Manager. The applicants should have waited for some more time before filing this O.A. Filing this O.A. ^{not} without fulfilling the requirement and/acting on the basis of their submission in their O.A. 1300 of 96 is to be viewed seriously, for, the applicants have infringed the directions given by this Tribunal.

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O.A. 1415 of 1996

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7. No doubt, the applicants should have waited for ~~some~~ more time. But that cannot be a reason for dismissing the O.A. The previous O.A. for the same relief was withdrawn by the applicants. But that has nothing to do in this O.A. as this O.A. can be disposed of on merits.

8. The applicants have passed the written examination but have not qualified in the viva voce. Merely saying that they were asked minor questions and on that basis they cannot be shown as failed in the viva voce is not a valid ~~point of argument~~. Selection Committee consists of senior Officers. Unless some malafides are attributed to the Members of the Committee who ~~were~~ ^{of the applicants may} in the selection committee, the question of consideration of their contention ~~cannot~~ arise. No malafides intentions had been attributed to the Members of the selection committee. The applicants also submit that the ~~By~~ ^{point of} Railway Manager was prejudiced against them as they were actively participating in the Union activities of a recognised Union and because of that they were not selected. They also submit that even in an earlier selection in 1982 also they were not selected for the same reason. Merely stating that the D.R.M. is prejudicial against them cannot be considered on the face value. The applicants should have quoted specific instances ~~in support of~~ their contention. No such instances have been quoted.

9. However, to prove a malafide allegation is very difficult. Even if the applicants say so, they should have impleaded the D.R.M. by name so that, that official would have got an opportunity to depose before us. Unfortunately, as stated earlier no specific instances have been

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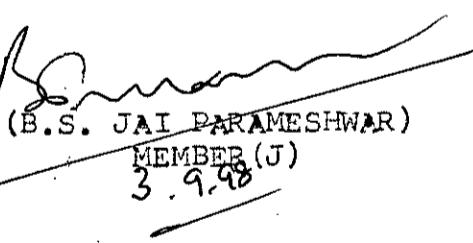
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quoted to come to the conclusion that the D.R.M. is prejudicial against them and also that the official was not impleaded in this O.A. Hence the allegation of malafide in this O.A. cannot hold water.

10. The applicants though senior in the integrated seniority list, they had not qualified in the viva voce. Hence, the applicants cannot demand as a matter of right that they should have been included in the select panel inspite of they having failed in the viva voce. The applicants have also not filed any rejoinder to show that they have passed in the written test and also in the viva voce and inspite of that they have not been enlisted in the select panel. In the absence of any such submission, we have to conclude on the basis of the submissions made by the respondents that the applicants have failed in the viva voce and hence they have not been included in the select panel.

11. In view of what has been stated above, we find no merits in this O.A.

12. Hence the O.A. is dismissed. No order as to costs.

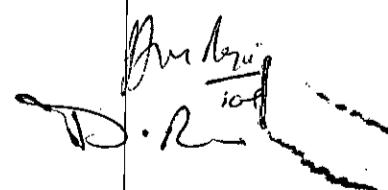

(B.S. JAI PARAMESHWAR)
MEMBER (J)
3.9.98


(R. RANGARAJAN)
MEMBER (A)

Dated, the 3rd September, 1998

Dictated in open Court.

CS


D.R.

DA.1415/86

Copy to:-

1. The General Manager, South Central Railway, Secunderabad.
2. The Divisional Railway Manager (Par), S.C.Railway, Secunderabad.
3. One copy to Mr. A.Srinivasa Rao, Advocate, CAT., Hyd.
4. One copy to Mr. V.Bhimanna, Addl.CGSC., CAT., Hyd.
5. One copy to D.R.(A)2, CAT., Hyd.
6. One duplicate copy.

SRR

29/9/98 (6)

II COURT

TYED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN 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:

3/9/98

ORDER/JUDGMENT

M.A/R.A/C.P.N.B.

in

C.A.NO. 1415/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
मेष्ट / DESPATCH

21 SEP 1998

हैदराबाद भाष्यकारी
HYDERABAD BENCH