

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 1495/96

Date of Order : 1.2.99

BETWEEN :

1. M.Satya Rao
2. P.V.V.Bhaskar Rao
3. K.D.Prasad
4. S.Sudarsan Rao
5. B.Ramana Murthy

.. Applicants.

AND

1. Union of India, rep. by its
General Manager, S.E.Railway,
Garden Reach, Calcutta.
2. Chief Personnel Officer,
S.E.Railway, Garden Reach,
Calcutta.
3. Divisional Railway Manager,
S.E.Railway, Waltair,
Visakhapatnam.
4. Sr.Divisional Personnel Officer,
S.E.Railway, Waltair,
Visakhapatnam.

.. Respondents.

- - -

Counsel for the Applicant

.. Mr.P.Satyanarayana

Counsel for the Respondents

.. Mr.N.R.Devraj

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CORAM :

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

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

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(As per Hon'ble Shri R.Rangarajan, Member (Agn.))

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None for the applicant. Mr.N.R.Devraj, learned standing counsel for the respondents. Mr.Sudhakar, D.R.M. of Visakhapatnam (R-3 herein) was present and explained the case.

2. This OA had come up for consideration on earlier occasions also when the learned counsel for the applicant was not present. Even today the learned counsel for the applicant is absent. Hence we are disposing of the OA under rule 15 (1) of CAT (Procedure) Rules 1985.

3. There are 5 applicants in this OA. At the time of filing of this OA they were Gr-III Fitter Diesel Loco Shed, S.E.Railway, Waltair. They applied for the post of Diesel Assistant in response to the notification dated 17.8.92 (A-5). That notification was not taken to the logical conclusion. In the meantime another notification was issued bearing No.WPV/MR/Selection/EAD/DDA/92, dated 17.6.96 (A-6). It is stated that the applicants though applied to the latter notification for consideration their cases for the post of Diesel Assistant against 20% quota from Diesel Loco Shed their cases were rejected as by then they were over aged. In the same second notification the earlier notification dated 17.8.92 was cancelled. Thus the applicants could not be accommodated as Diesel Assistants, if they are eligible by the previous notification dated 17.8.92 as it was cancelled and by the latter notification dated 17.6.96 ^{and} as by then





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they were over aged.

4. This OA is filed to set aside the impugned ^{notification} order dated 17.6.96 by holding the same as arbitrary, illegal and opposed to the principles of natural justice and for a further direction to the respondents to process the selection firstly initiated in the year 1990 and 1992 and after finalising that earlier selection issue a fresh notification to fill up the vacancies occurred later.

5. The main point for consideration in this OA is whether the issue of the second notification dated 17.6.96 without considering the case of the applicants who had responded to the earlier notification dt. 17.8.92 is in order or not.

6. The main contention of the respondents in this OA is that the applicants are over aged to consider them against the notification dated 17.6.96. The posts of Diesel Assistants being safety posts no age relaxation can be given and hence the cases of the applicants cannot be considered for the post of Diesel Assistants by allowing them to sit for the examination to be held in pursuance of the notification dated 17.6.96.

7. It is a fact that between 1992 and 1996 number of posts of Diesel Assistants had been filled from surplus staff and also by direct recruitment. When we asked R-3 as to why some of the posts of Diesel Assistants filled by surplus staff or by direct recruitment could not be allocated to 1992 notification, thereby the applicants could have obtained some relief if not full,

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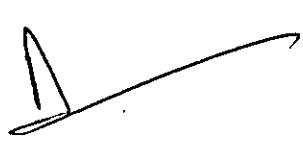
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Mr. Sudhakar submitted that they took up this case with the headquarters for considering the above point. But the headquarters refused to accept their views. Hence the division could not give any relief to the applicants herein.

8. The recruitment rule is very clear. It provides for appointment as Diesel Assistant even from the Fitters category of Diesel/Electric Loco Shed. The headquarters cannot deny the opportunities given to the Fitters of Diesel/Electric Loco Shed provided in the ^{recruitment rules} on arbitrary reasons. The best they can do is to get the recruitment rule amended. But the headquarters did not do that, but it appears that they insisted on the division to carryout their orders of direct recruitment of Diesel Assistants. This in our opinion is not ⁱⁿ ~~fair~~ to the employees who responded to the 1992 notification.

9. Be that as it may, it is also to be brought on record that the division had erred in asking for advise in this connection from the headquarters. The recruitment rule is very clear. It gives full right to the divisional authorities to appoint the diesel assistants in accordance with the recruitment rule. For unknown reasons probably to upset the recruitment rules the divisional authorities had approached the headquarters. This action of the divisional authorities is not in order.

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10. The division as stated earlier had made no effort to allot few of the vacancies to the applicants who had responded to the notification of 1992 when they resorted to direct recruitment. This in our opinion appears to be an incorrect decision on the part of the divisional authorities. It appears that such action was forced upon them by the headquarters.

11. 1992 notification was cancelled by the same impugned notification issued in the year 1996. We strongly disapprove such action of the respondents in cancellation of the earlier notification when a fresh notification was issued. Normally procedure would be to cancel the earlier notification first and wait for some time so as to give adequate opportunities to the employees to represent the cancellation if so desired. But unfortunately that course of action was not resorted to.

12. An interim order was passed in this OA on 13.12.96, whereby the announcement of the results in the examination conducted on 15.12.96 in pursuance of the latter notification dated 17.6.96 was kept in abeyance until further orders. If the respondents feel that the Diesel Assistants posts are safety posts it is not understood ^{how} the administration ^{how} carried on their work running the trains without any difficulty when 60 vacancies of Diesel Assistants were unfilled for a considerable time. In that event the submission that the posts of Diesel Assistants are safety posts may not be factual as they must have resorted to some other shortcut method for running the

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trains which is ^{unsafe} ~~in safe~~ possible. The only way of running of the trains without any problem under that circumstances appears to be that excess sanctions for more number of posts than required as per power plan should have been obtained. In that case the boosting of cadre strength is unwarranted, especially in the circumstances the railways are placed now where it is said that the railways are under ^{stranger} financial circumstances. Hence the respondents should now take a look of the sanctioned strength of the running staff and if required the sanctioned strength has to be brought down so as to avoid unnecessary expenditure.

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13. The applicants are Fitters Gr-III. It is not that they are without job. They are Railway employees. They also have further promotional chances as Fitter Gr-II and Fitter Gr-I etc. Though posting them as Diesel Assistants may give them some ^{more} financial benefits, that would not mean that the applicants should be considered for all posts, especially safety posts if they apply. Some times it may be necessary to cancel a notification issued already. The applicant, having ^{become} over aged for the consideration of 1996 notification for posting as diesel assistant they may not be considered against that notification as by ~~then~~ they are over aged. Though they may loose financially a little bit that may not be a reason to give them the relief nullifying ^{or ignoring} the safety requirement for that post.

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14. Having considered the various issues involved we are of the opinion that the applicants needs some minor relief for the carelessness displayed by the respondent authorities as mentioned above. The respondents authorities cannot act arbitrarily. They are responsible for the well being of their employees. They have to look after the career prospects of the employees. Hence some relief has to be given to the applicants for forcing them to approach this Tribunal due to failure and careless attitude on the part of the respondent authorities in not taking appropriate action in time. Hence we feel the application even if it is dismissed costs have to be awarded to the employees for forcing them to come to the Tribunal.

15. We suggested to the R-3 that even if we condone the action of the respondents, the respondents cannot escape the liability of paying them cost in this connection for reasons stated above. R-3 had fairly accepted that an amount of Rs.3000/- will be given to each of the applicant as cost.

16. In view of the above the following direction is given :-
The respondents are directed to pay an amount of Rs.3000/- to each of the applicant within a period of 15 days from the date of receipt of a copy of this order.

Copy to:

1. HDHND
2. HHRP M(A)
3. HGSOP M(J)

4. D.R. (A)

5. SPARE

12/99
1st and 11nd Court.

Typed By
Compared by

Checked by
Approved by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH:HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR:
VICE - CHAIRMAN

THE HON'BLE H. RAJENDRA PRASAD :
MEMBER (A)

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

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

DATED: 1. 2. 99.

ORDER/JUDGMENT

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

IN

O.A.NO : 07 1495/96

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

(8 copies)

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| केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal ब्रेषण / DESPATCH 110 FEB 1999 हैदराबाद ब्याचपीठ HYDERABAD BENCH |
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