

(35)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH  
AT HYDERABAD

OA.781/96

dated : 12-7-96

Between

D. Sambasiva Rao : Applicant

and

1. Chief Permanent Way Inspector  
(Junior Engineer P.Way)  
South Central Railway, Guntur

2. Divnl. Railway Manager(Personnel)  
SC Rly., Vijayawada

3. The General Manager  
SC Rly., Rail Nilayam, Secunderabad : Respondents.

Counsel for the applicant : G.V. Subba Rao  
Advocate

Counsel for the respondents : N. R. Devaraj  
SC for Railways

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HON. ~~SRI~~ JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON. ~~SRI~~ R. RANGARAJAN, MEMBER (ADMN.)

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OA.781/96

dated : 12-7-96

Judgement

Oral order (per Hon. Mr. Justice M.G. Chaudhari, VC)

Heard Sri G.V. Subba Rao for the applicant. Heard Sri N.R. Devaraj for the respondents.

✓ 2. The respondents have filed reply to the OA. Although they have answered point No.1 and 3 on which explanation was called by minutes dated 2-7-96, they have not offered any explanation on point No.2 and have not explained the reasons for the delay in reaching of the application to the concerned office before the cut off date. The case of the applicant is that in pursuance of the notification dated 23-2-1996 issued by the Senior Divisional Personnel Officer, Vijayawada, he had applied for the post of Driver Gr.III in the pay scale of Rs.950-1500 in open line general pool but although he was qualified to be called for Trade test, the respondents have not called him for the trade test and thus he is deprived of the legitimate chance of appointment to that post.

✓ 3. The notification stipulated that the applications in the proforma should reach the senior Divisional Personnel Officer through proper channel on or before 29-3-1996 and that applications received after that date would not be entertained. According to the applicant he had submitted his application on 20-3-1996 through proper channel that is <sup>through</sup> to the Junior Engineer/P.way-1, South Central Railway, Guntur, and therefore, his application was submitted within time and ordinarily <sup>it</sup> should have reached the office of the Senior Divisional Personnel Officer, Vijayawada, on or before 29-3-1996.

✓ 4. The contention of the respondents is that since the application was received by the office of the Senior

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Divisional Officer, Vijayawada on 3-4-1996, which was after the stipulated date his application was rejected and he was not called for trade test.

5. In paragraph-3(iv) of the counter it has been stated as follows :

"The application of the applicant dated 20-3-96 for the above post, forwarded by Junior Engineer/ Permanent Way/Guntur, dated 21-3-1996 was received in Sr.DPOs office on 3-4-96 in Receipt Section of the office of SDPO, Vijayawada."

That is ~~too~~ sufficient to establish that the applicant had applied through proper channel well within the time and he cannot be held responsible nor penalised for late receipt of the application in the office of SDPO, Vijayawada, when it was forwarded by the Junior Engineer, Guntur, on 21-3-96 itself.

6. Sri Devaraj, learned standing counsel for the respondents heavily relies upon the statement made in sub para-b of para-2 of the counter to contend that there was no guarantee that the application was received within time and the fact that it was received on 3-4-96 cannot therefore be disputed. ~~What~~ is stated is as follows :

"It had been decided by the competent authority not to entertain the applicant's application said to have been submitted on 20-3-96 but was received in SDPOs office on 3-4-96".

7. The learned counsel submits that the statement made in para-3(iv) must be understood in the context of the statement and it would mean that the application was not submitted within time. We <sup>find it</sup> had difficulty to agree with this submission.

The submission in para-2(b) that 'the application said to have been submitted' loses its weight when it is categorically stated in para-3(iv) that 'the application was dated 20-3-96 and it had been forwarded by Junior Engineer, Guntur, on 21-3-96'. The fact, therefore, that the applicant had submitted the application through proper channel and it had

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indeed been forwarded by his superior officer stands clearly established. Having regard to the distance between Guntur and Vijayawada as to ~~why~~ the application forwarded by the Junior Engineer, Guntur, on 21-3-96 should not have reached the office of SDPO, is <sup>a</sup> ~~the~~ matter on which the respondents were expected to throw light. Although specifically they were directed to explain the same, they have chosen to remain silent on that point in the counter. In the circumstances, the applicant cannot be held responsible for the delay, <sup>in receiving</sup> ~~for indeed~~ the application <sup>by</sup> ~~had reached~~ the office of Sr. DPO, ~~Vijayawada~~, only on 3-4-96. We are therefore satisfied that the applicant has made out a case to grant him the relief.

8. The question, however, is what relief can be granted to the applicant at this stage. The relief sought by him is for a direction to the respondents to conduct separate trade test ~~for~~ the applicant or to permit him to appear for the trade test which was at that time yet to be conducted for the absentees. Although the applicant has purported to seek a direction that the very notification itself should be quashed on the ground of being illegal, arbitrary and unconstitutional we are not able to appreciate as to how such a relief could be claimed by the applicant when he himself wants the benefit under the very notification. We do not, therefore think it is necessary to deal with that part of the relief. As far as the relief sought for direction to the respondents to conduct separate ~~trade~~ test or to allow the applicant for supplementary test for absentees, the respondents <sup>have</sup> ~~stated~~ in their counter that the trade test and viva-voce ~~were~~ conducted on 25-6-96 and 26-6-96 and a provisional panel of <sup>eligible</sup> ~~original~~ volunteers drawn <sup>was</sup> ~~were~~ published on 1-7-1996 which was prior to filing of the OA. It is not

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therefore possible to go <sup>behind</sup> ~~beyond~~ the steps taken by the respondents or ~~to~~ go behind the panel as the panel itself is not subject matter ~~of~~ this OA.

9. Having regard to the overall circumstances and as there is a <sup>room</sup> ~~rule~~ to take the view that the applicant has suffered injustice owing to <sup>no</sup> ~~a~~ mistake on his part, the only way we could conceive to ~~remove~~ that injustice would be to direct that a trade test be specially held for the applicant and if he ranks at Serial No.1 to 4 on merit amongst the unreserved <sup>empanelled</sup> candidates and ~~is~~ otherwise found eligible then to appoint him to the post in the immediately next available vacancy of Driver Grade III.

10. Both the learned counsel submitted that the OA may be disposed of on the lines proposed above. Hence the following order :

- i) The respondents are directed to hold a separate trade test and viva-voce for the applicant;
- ii) In the event of the applicant being found qualified at the trade test and viva-voce and if he earns a ranking at any place at serial no.1 to 4 amongst the unreserved candidates from amongst the candidates who were empanelled then the applicant shall be offered appointment if otherwise eligible to the post of Driver Grade III in the immediately next available vacancy and the appointment shall be treated as one made in pursuance of the notification dated 23-2-96.

(iv) It is made clear that if the applicant fails to earn the ranking upto Sl.No.4, he will not be eligible to be appointed as a matter of course in the next immediate vacancy.

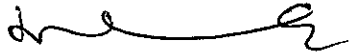
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14. The respondents shall hold the trade test and viva-voce as early as practicable and carry out the above directions expeditiously.

15. The OA is disposed of in terms of above orders. No order as to costs.

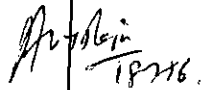


(R. Rangarajan)  
Member (Admn.)



(M.G. Chaudhari)  
Vice Chairman

Dated : July 12, 96  
Dictated in Open Court

  
18/7/96

Deputy Registrar

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O.A.781/96.

To

1. The Chief Permanent Way Inspector  
(Junior Engineer P.Way)  
S.C.Rly, Guntur.
2. The Divisional Railway Manager(Personnel)  
SC Rly, Vijayawada.
3. The General Manager, SC Rly, Railnilayam,  
Secunderabad.
4. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI  
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD M(A)

Dated: 12-7-1996

ORDER/JUDGMENT

M.A./R.A/C.A.No.

in

O.A.No. 585/96

781/96.

T.A.No.

(W.P.)

Admitted and Interim Directions

issued.

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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