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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 941/96

Date of Order : 20.12.98

BETWEEN :

G.S.Nanda

.. Applicant.

AND

1. Union of India, rep. by
General Manager, S.E.Rly.,
Garden Reach, Calcutta.
2. Divisional Railway Manager,
S.E.Rly., Waltair,
Visakhapatnam.
3. Chief Personnel Officer,
S.E.Rly., Garden Reach,
Calcutta.
4. Sr.Divisional Personnel Officer,
S.E.Rly., Waltair,
Visakhapatnam.
5. M.Srinivasa Rao
6. T.Srinivasa Rao
7. G.Umamaheswar Rao

.. Respondents.

Counsel for the Applicant

.. Mr.Y.Raja Rao

Counsel for the Respondents

.. Mr.C.V.Malla Reddy

CORAM :

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

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

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

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Mr.S.Ramakrishna Rao for Y.Raja Rao, learned counsel for the applicant and Mr.C.V.Malla Reddy, learned standing counsel for the respondents. Notice has been served on R-5 & 6. They were called absent.

2. The applicant in this OA was appointed as a Junior Estimator in the scale of Rs.1200-2040 on 4.11.91. A selection was initiated for filling up the post of Senior Estimator in the scale of Rs.1400-2300. The selection was ^{to} form a panel of 2 U.R. and one S.C. The applicant is an U.R. candidate and he was entitled for empanelment ^{under} in U.R. quota. As only 3 U.R. candidates in the grade of Estimator Gr-III were available all 3 were called for written test held on 28.12.92. The ^{who} 3 candidates ^{were} called for the test were

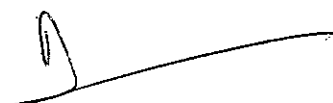
(1) Sri P.Kameswara Rao

(2) Sri S.Venkateswar Rao

(3) Sri G.S.Nanda (applicant herein).

It is stated that all the 3 had passed the written examination held on 28.12.92 and they ^{had} ~~were~~ also appeared for viva-voce held on 4.2.93. Sri P.Kameswara Rao and Sri S.Venkateswar Rao are seniors to the applicant in the zone of consideration. It is stated that the panel was published on 28.2.93, Though the applicant in his OA submits that no panel was published.

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After the publication of the panel Sri P.Kameswara Rao resigned from railway service. The applicant submits that even while conducting selection the resignation letter of Sri P.Kameswara Rao was available and no decision was taken. Sri S.Venkateswara Rao was promoted. Some Estimators filed a joint representation on behalf of the applicant on 7.4.94 after one year. That joint representation was replied on 25.8.94 stating that the applicant's name cannot be added in the panel as there were already 2 UR candidates in the panel as provided for in the notification.

3. The applicant was selected in a subsequent selection held in 1996 and was promoted as Estimator Gr-II w.e.f. 30.5.96. In the meantime respondents 5 and 6 ^{had} ~~were~~ joined as Estimator Gr-II against 20% direct recruitment quota on 1.2.94 and 28.2.94. The ~~lien~~ of the private respondent No.7 was ~~put~~ fixed in the category of Estimator Gr-II vide office order No.14/95 dated 7.7.95. Thus the 3 private respondents are shown as seniors to the applicant who was promoted as Estimator Gr-II on 30.5.96. The impugned letter dated 6.8.96 (A-A) was issued calling for candidates for promotion to the post of Estimator Gr-I in the scale of Rs.1600-2660. The name of the applicant was not found in that list.

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4. Aggrieved by the impugned order dated 6.8.96 the applicant has filed this OA praying for a direction to the respondents to treat the applicant as senior to respondents 5 to 7 in the cadre of Senior Estimator and duly treating the promotion of the applicant to Gr-II from the date the vacancy ^{had} ~~is~~ arisen i.e. 4.11.93 and for a consequential direction to call the applicant for the suitability test for further promotion to the next grade.

5. The first point to be considered in this OA is whether the applicant can be posted against the vacancy that had arisen on 4.11.93 for which a panel was issued on 28.3.93. It is a fact that the applicant though appeared for the written test for inclusion in the panel issued on 28.2.93 he was not empanelled, as only 2 UR candidates had to be kept on the panel on the basis of the selection. Sri P. Kameswara Rao and Sri S.Venkateswar Rao were kept in the panel on the basis of that selection. The applicant contends that Sri P.Kameswara Rao had already submitted his resignation and when the panel was issued on 28.2.93 the resignation letter of Sri P.Kameswara Rao was available and hence his name should not have been included in the panel and instead the name of the applicant ^{and b/c} was included.

6. The resignation letter of Sri P.Kameswara Rao was not accepted on 28.2.93 when the panel was issued. When an

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eligible candidate who is in service is available for empanelment the question of deleting his name from the panel does not arise. As can be seen from the office order dated 19.3.93 (A-D) the resignation of Sri P.Kameswara Rao was accepted by the competent authority only on 19.3.93 about a month after the issue of the panel. Hence on the date when the panel was issued i.e. on 28.2.93 the applicant cannot demand the deletion of the name of Sri P.Kameswara Rao. ~~If~~ The applicant submits that with a view to show favour to Sri P.Kameswara Rao his resignation letter was kept pending and it was accepted only on 19.3.93 after issue of the panel. If the applicant is of the opinion some favouritism is being shown to some employee and because of that the resignation of Sri P.Kameswara Rao was not accepted when the panel was issued on 28.2.93 then he should have approached the judicial forum for staying the issue of the panel much earlier to 28.2.93. But unfortunately the applicant did not take any action and is only agitating after the panel was issued. He filed this OA on 9.8.96 only three years after the panel was issued. Hence we cannot at this juncture give any direction to include the name of the applicant in the panel issued on 28.2.93 for promotion to Estimator Gr-II. Hence the question of showing his seniority as per the panel dated 28.2.93 in the cadre of Estimator Gr-II does not arise.

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6. The next grievance of the applicant is that the private respondents 5 and 6 who ^{were} ~~were~~ appointed against 20% direct recruitment quota should not have been appointed as the cadre was full of direct recruitees. To examine this seniority issue it is necessary whether there was vacancy against 20% quota and whether the appointment of R-5 and R-6 against that quota is in order or not. But there is no details available to come to the conclusion that there was no vacancy available at that time for appointing R-5 and R-6. Mere assertion that the cadre ^{was} ~~is~~ full ^{of} ~~for~~ direct recruitees and hence the direct recruitment quota should not be resorted is not a proper contention or submission of the applicant without any details. Hence consideration of that point also in this OA does not arise. However, the applicant is at liberty to take such action as deemed fit if he is aggrieved by the appointment of R-5 and R-6 against the direct recruitment quota with full details in this connection if so advised in accordance with law.

7. The next contention of the applicant is that giving lien to R-7 in the cadre of Estimator Gr-II who was on deputation with the construction organisation is not in order. It is seen from the reply that vide office order No.14/95 dated 7.7.95, R-7 was given lien as Estimator Gr-II in the open line organisation. It is not understood why the applicant had not challenged that office order when the

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lien was given to R-7 in the open line. So long that the order of giving lien to R-7 in open line organisation is on the file the applicant cannot pray for any direction to give him seniority above R-7. It is left to the applicant to challenge that order in accordance with the law if so advised.

8. In our opinion the inclusion of R-5, 6 and 7 as private respondents itself is not warranted as there are no details in this connection. This OA is mainly meant for inclusion of his name in the panel of Estimator Gr-II issued on 28.2.93. As stated earlier the applicant has not made out any case for inclusion of his name vide Sri P. Kameswara Rao in the panel issued on 28.2.93 for promotion to the post of Estimator Gr-II.

9. In view of what is stated above, we find no merit in this OA. Hence the OA is dismissed. But he is at liberty to challenge the seniority on R-5, 6 and 7 separately by filing ^{an} ~~the~~ OA with details if so advised in accordance with law.


10. No costs.


(B.S. JAI PARAMESHWAR)
Member (Judl.)
10.12.98


(R. RANGARAJAN)
Member (Admn.)

Dated : 10th December, 1998

(Dictated in Open Court)


31-12-98

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II COURT

TYPED BY
COMPARED BY

CHECKED 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 PARAMESWAR :
M(J)

DATED: 10-12-98

~~ORDER/JUDGMENT~~

~~MA/R.A./C.P.No.~~

in
OA. NO. 941/96

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

~~DISMISSED~~

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

