

IN CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD Bench: HYDERABAD

CP.No.94/99 in MA.No.714/98 and
MA.No.533 of 1999 in
C.A.No. 1077 of 1996

DATE OF DECISION: 23-12-1999

TVG Prasad Rao

PETITIONER(S)

Mr.G.V.Sekhar Babu

ADVOCATE FOR THE
~~XXXXXXXXXXXX~~
PETITIONER(S)

VERSUS

1. Sri DP Tripathi, Secy, Min. of Railways
New Delhi and others.

RESPONDENT(S)

Mr.N.R.Devaraj

ADVOCATE FOR THE
RESPONDENT(S)

RESPONDENT(S)

THE HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

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

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether the Judgment is to be circulated to the other Benches ?

JUDGMENT DELIVERED BY HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

39

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

CP.94/99 in MA.714/98
and MA.533/99 in OA.1077/96

dt. 23-12-1999.

Between

TVG Prasad Rao

Petitioner/
: Applicant

and

1. Sri DP Tripathi
Secretary, Min. of Railways
New Delhi

2. Sri N.P. Srivastava
General Manager, Central Orgn.
Railway Electrification,
Allahabad

3. Sri N.C. Sinha
General Manager, SC Rly.
Rail nilayam, Secunderabad

4. Sri N. Krishna
Chief Project Manager
RE, Visakhapatnam

5. Sri V.V.S. Raju
Sr. Divnl. Electrical Engineer
TRS (Traction & Rolling Stock)
Electrical Loco Shed, BZA
Vijayawada

6. Sri K. Venkata Rao
Asstt. Electrical Engineer
C/o Sr. Divnl. Electrical Engineer
TRS (Traction & Rolling Stock)
Electrical Loco Shed, BZA
Vijayawada

Respondents/
Respondents

Counsel for the applicant

: G.V. Sekhar Babu
Advocate

Counsel for the respondents

: N.R. Devaraj
SC for Railways

Coram

Hon. Mr. Justice D.H. Nasir, Vice Chairman

Hon. Mr. R. Rangarajan, Member (Admn.)

CP.94/99
in MA.714/98 & MA.533/99
in OA.1077/96

Dt.

Order

Order (per Hon. Mr. Justice D.H. Nasir, Vice Chairman)

The main OA.1077/96 was disposed of by an order passed on 5.2.1999 with a direction to the Respondent No.5 to cause departmental inquiry to be conducted from the stage of serving charge sheet on the applicant and to take all necessary steps expeditiously so that the inquiry could be completed within a reasonable time. Eventually, by an order dated 25.9.1998 the Disciplinary authority held that the charges leveled against the applicant could not be sustained as no guilt had been established. This exercise was done in pursuance of the directions given by the Tribunal on 5.2.99 while disposing of the aforesaid OA.1077/96.

2. During the pendency of the of the main OA.1077/96 the applicant filed an MA.714/98 which was disposed of on 11.1.1998 along with MA.715/98 by observing that the respondents had released a proposed panel for promotion to the post of Assistant Electrical Engineer under 70% quota for which purpose a test/interview was to be held on 25.9.98 for filling up 5 unreserved vacancies announced for 1998. It was further observed in the said MA that the applicant apprehended that if all the unreserved posts were filled up, several juniors to the applicant would be promoted earlier than the applicant. This apprehension was considered to be reasonable and it was considered just and proper to direct that one OC (unreserved) post as Assistant Electrical Engineer notified by the Headquarters, Personnel Branch, Lr.P/GAZ.607/EL/Vol.VI dated 5.6.98 be left unfilled till the disposal of the OA.

3. By a subsequent MA.533/99, the respondents were directed by an order dated 12.7.99 to refund the amount which was recovered from the applicant's pay

(17)

with interest at 10% p.a. within one month from the date of receipt of copy of the said order. The respondents were also directed by the said order to consider the applicant's claim for promotion to the post of Assistant Electrical Engineer on the basis of:

- i) his success in the written test/viva-voce which he claims to have cleared in 1992; and
- ii) in terms of order passed by the Tribunal in MAs (supra) to keep unfilled one Assistant Electrical Engineer's post in unreserved category.

4. The above directions were ordered to be complied with within 60 days from the date of receipt of copy of the order in question.

5. By initiating the present contempt proceedings the applicant urges the Tribunal to hold the respondents in committing the contempt of Court by willfully disobeying the directions given by the Tribunal in MA.714/98 and MA.533/99.

6. The learned counsel Mr.G.V. Sekhar Babu, for the applicant submits that Respondent No.3 by his order dated 27.7.1999 refused to promote the applicant to the post of Assistant Electrical Engineer on the ground that the applicant did not qualify in the written test held on 25.7.1998 and that in spite of the fact that the applicant had qualified in the written test held in 1992 he was not empanelled as he was allegedly found not suitable. The applicant therefore caused a legal notice dated 3.8.199 to be served upon the respondents 1,2,3 and 4 calling upon them to consider the applicant's case for promotion to the post of Assistant Electrical Engineer, and to pass necessary orders in this regard in compliance with the directions given by the Tribunal in MA.714/98 on 11.9.1998 and further order passed in MA.533/99 dated 12.7.99. However, the respondents failed and neglected to report compliance of the said directions.

7. According to the applicant's own saying, Respondent No.3 in his order dated 27.6.1999 raised two new allegations as follows:

- a) In the present written test held on 25.7.1998 the applicant did not qualify; and that

ⓧ

b) The applicant though qualified in the written test held in 1992 and attended viva-voce he could not be empanelled, as he was not found suitable by the Selection Committee.

8. However, according to the learned counsel for the applicant, the above two allegations were irrelevant in as much as the third respondent overlooked the background, and the facts and circumstances of the case under which the Tribunal gave the directions for promoting the applicant to the Assistant Electrical Engineer's post. Further according to the learned counsel for the applicant when the applicant appeared for the written test for Assistant Electrical Engineer (Group B) post on 15.3.1992 a false Stock sheet was revived with the charge sheet dated 20.3.1992. Further according to the applicant when he passed the written test and was going to appear for viva-voce on 11.5.1992, one week before the said date the respondents "manipulated" a penalty order dated 6.5.92 for recovering Rs.12,000 from the applicant's salary with oblique motives and malafide intention to deprive the applicant of his chance of promotion. The learned counsel further submits that the post of Assistant Electrical Engineer was denied to the applicant on account of the penalty of Rs.12,000/-.

9. Mainly on the above grounds the applicant is now seeking an order from the Tribunal to the effect that the respondent No.1,2,3, and 4 committed contempt of Court by willfully disobeying the directions given by the Tribunal and that they should be punished for such willful disobedience.

10. In our opinion, the facts and circumstances of the case do not warrant any punishment to be imposed on the respondents at this juncture by jumping at the conclusion that a willful disobedience was committed by any one of them. The question whether the order of imposing penalty of Rs.12, 000/- was motivated by any malafide intention on the part of the respondents to deprive the applicant of his right to be promoted is not conclusively decided by the Bench. It will also be not in order for us to agree with the submissions made by the counsel for the applicant that the order of penalty would be a stigma in the performance of the

applicant service record and it would be fatal to the career and promotion of an employee. We are afraid, we do not find any reason for accepting these submissions made on behalf of the applicant. Not that we reject these submissions; what we are trying to find out is whether these submissions advanced by the learned counsel for the applicant could be treated as having been established conclusively and whether any order for committing contempt of Court could be passed on the claims advanced by the applicant which were not pressed into service when the orders which are alleged to have been violated, were passed. If the action alleged by the counsel for the applicant against the respondents resulted from a deliberate malafide intention of preventing the applicant from being promoted, it is necessary for the applicant to file a separate case for a declaration whether the denial of promotion to the applicant was induced by any malafide action on the part of the respondents and whether such denial of promotion was a vindictive action on the part of the respondents. It is pertinent to note that by a letter dated 27.7.1999 the applicant was informed by the respondents that his case was to be considered for the post of Assistant Electrical Engineer under 70% quota for which written test was held on 25.7.1998 and also for empanelling the selection held in 1992. But in the written test held on 25.7.1998 the applicant was not qualified for promotion. It is further observed in the letter regarding the selection held for 25% LDCE quota that though the applicant qualified in the written test and attended viva-voce, the applicant could not be empanelled as he was not found suitable by the Selection Committee.

11. The main controversy in the present proceedings is whether the selection held in 1992 (25% LDCE Quota) in which though the applicant had qualified in the written test, whether the promotion could be denied to the applicant on the ground that he did not qualify in the written test held on 25.7.1998.

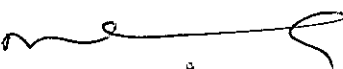
12. This is indeed a controversial question which is required to be straightened out by initiating fresh proceeding, either by way of a representation to the respondents, if the applicant is so advised, or to take proceedings before this

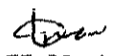
②

Tribunal by filing fresh OA. In any case, we are not inclined to accept the submissions made on behalf of the applicant that a willful disobedience of the Tribunal's order could be attributed to the respondents keeping in view the fact that the controversy is not yet set at rest.

13. In the above view of the matter therefore, we are of the opinion that no case is made out by the applicant against the respondents that any willful disobedience of the directions given by the Tribunal in the above proceedings has been committed.

14. The CP is therefore closed.


(R. Rangarajan)
Member(Admn.)


(D.H. Nasir)
Vice Chairman

Dated: 23-12-1999.



sk