

(57)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

OA No.206/97

Date of Decision:

8th May 97

BETWEEN:

B. Arun Kumar (2) J. Narayana Rao,.. Applicant
(3) J. Srinivas (4) S. Vijayakumar
(5) K. Kamalaiah (6) G. Raju
AND

1. Union of India represented by
General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad-500 371.
2. Chief Personnel Officer,
South Central Railway,
Rail Nilayam,
Secunderabad-500 371.

Counsel for the applicant: Mr. G. Ramachandra Rao

Counsel for the respondents: Mr. K. Siva Reddy

CORAM:

THE HON'BLE SRI R. RANGARAJAN: MEMBER (ADMN.)

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

R

..2

S1

JUDGEMENT

(PER HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (J)

Heard Sri Ramachandra Rao, learned counsel for the applicant and Sri K. Siva Reddy learned standing counsel for the respondents.

This is an application under Section 14(i) of the
Administrative Tribunals Act. The application was filed
on 4.2.1997.

There are 6 applicants in this OA. Applicants 1 & 6 are working as Junior Clerks, Applicants No.2,4 & 5 are working as Senior Clerks and the applicant 3 is working as Traffic Inspector. These applicants are Group 'C' employees for the post of the South Central Railway. They are aspirants of Welfare Inspector Grade-III in the scale of pay of Rs.1400-2300 (RSRP).

The respondent-2 herein by his notification No.P/EST/608/W.I./Gr.III/Volume III dated 21.8.95 invited applications proposing to form a panel of 10 posts of welfare inspectors (1ST ~~1~~SC & 8 OC) from the Group 'C' employees of the South Central Railway. The applicants and others submitted their applications for the said posts. The respondent-2 by the notification of even number Dt.22.12.95 invited the eligible 273 candidates for the written test. ^{The} Applicants were ~~273~~ among them. The written test was conducted on 28.1.96. The respondent No.2 by his notification of even number Dt.16.2.96 published a list of eligible candidates for the viva-voce test. The names of the applicants figured in the list. Thus the applicants were successful and were eligible for ^{the} viva-voce test. The viva-voce test was conducted on 29.2.96. The applicants ^{had} appeared for the viva-voce test.

RE

It is submitted that the applicants had fared well in the viva-voce test and were expecting publication of the Panel. In the meanwhile, the respondent No.2 by notification of even number Dt.22.1.97 notified treating the written test conducted on 28.1.96 as cancelled and fixing the re-written test on 2.3.1997.

The applicants being aggrieved of the action of the respondent-2 in cancelling the written test have filed this OA for the following reliefs:-

" To call for the records relating to the impugned proceedings No.P.EST/608/WI/Vol.III dated 22.01.1997 on the file of the respondents herein and set aside the same with a consequential directions to the respondents herein to publish the panel for promotion to the posts of Welfare Inspectors Grade-III in the scale of Rs.1400-2300(RSRP) in pursuance of the selection held on 28.1.1996 and 29.2.1996. "

The grounds on which the applicants have sought for the above reliefs are that the second respondent herein was not justified in cancelling the written test conducted on 28.1.96 and the results announced on 16.2.96; that the action of the second respondent is illegal and arbitrary and in accordance with the Rule 19 of the Sub-rule IREM manual the Selection Board had called for the viva-voce test, of all the candidates who had secured not less than 60% in the written test that there was no basis for cancelling the selection already held for the promotion to welfare inspectors that they had not indulged in any malpractice that they had successfully come out in written test/viva-voce that if there are any lapses in the written test held therein there is no justification to cancel the entire selection process and that the impugned proceedings in cancelling the written test is absolutely illegal.

Pr

an
They prayed for an interim order. Considering the reply filed by the respondents and also considering the various grounds taken by the applicants, this Tribunal stayed as an interim measure, the proposed written test to be held on 2.3.97 till the disposal of the OA.

The respondents have filed a reply. Their main contention is that after completion of the written test an ~~anonymous~~ ^{the} petition was received making certain allegations as to irregularities committed in the written test that the complaint alleged the irregularities and malpractices that an investigation was conducted into the said ~~anonymous~~ complaint that the investigation revealed that some of the candidates were awarded marks disproportionately that the answer scripts were sent for re-valuation by an officer who was higher in answer grade than the officer who originally valued the scripts that after compilation of the marks obtained in revaluation it disclosed that the observations made by the vigilence branch were correct that 5 candidates who were found eligible for viva voce test were found ineligible on revaluation that likewise 2 candidates who had failed in the written test were found to have passed that the matter was referred to the Railway Board with the remarks of the General Manager that the Railway Board after perusing the vigilence report ordered cancellation of the written test that there was justification for cancelling the written test that reasons were not disclosed in the notification cancelling the written test since vigilence report was considered strictly confidential that the Railway Board took a lenient view and ordered for re-examination that the representation dt. 24.1.97 and has been replied as per annexure 'F' / that there are no merits in the O.A.

Pr

The only point that requires to be considered is whether the respondent No.2 was justified in cancelling the written examination held on 28.1.1996.

The learned counsel for the respondents during the course of his arguments produced the file relating to cancellation of the examination containing the report of the vigilance cell and also 15 answer scripts.

From the vigilance report it is disclosed that no questions were leaked before the written test. No irregularity was found to have committed by the person who set the question paper. The investigation disclosed that the marks were awarded impartially except some small discrepancies. Investigation also disclosed the allegation of involvement of money was vague unspecific and could not be established. The vigilance cell also scrutinised the answer scripts. It disclosed that 5 candidates who were found to have been passed and eligible for viva-voce test were actually failed after revaluation of their answer scripts, further 2 candidates who were found to have failed in the written test were actually found to have passed and eligible for the viva voce test after revaluation.

When there was no leakage of question paper, when there was no illegality in valuation of the answer scripts and when the irregularity was noticed by the vigilance staff was only trivial, we humbly feel that the decision of the respondent-2 to cancel the entire written test was unreasonable and unjust.

Another ground which prompted the respondent-2 to cancel the written examination is that the question paper consisted of only narrative type questions and no objective type questions had been set. It is also found that valuation of narrative questions differ from one valuator to another. No malafide

intention on the part of the original valuator could have attributed and the allegations made in the anonymous complaint were vague and were difficult to establish.

If the respondent-2 intended to include both narrative/objective type questions for the test then the respondent No.2 should have given sample questions to be set to the person who set the questions. Non-setting of objective type of questions cannot be made a ground to harass the candidates.

The candidates had answered the questions that were set. This in our opinion cannot be a ground for cancelling the written test. Therefore in our humble view cancellation of the written test held on 28.1.96 is not on sound and justifiable reasons.

The respondent-2 if he is satisfied that the revaluation done by an officer higher than the person who originally revalued the answer scripts then on the basis of the said re-valuation prepare a list of eligible candidates for viva voce test. On that basis the respondent No.2 may conduct viva voce test and finalise the selection process and prepare a panel.

We feel that re-examination will cause much hardship to the candidates. Admittedly the notification issued on 21.8.95 could not be finalised for nearly 20 months. In case re-examination is allowed then it may unnecessarily prolong the matter and cause frustration in the minds of the eligible candidates. This also is one of the grounds on which we feel that the action of the respondent-2 in cancelling the examination is not justified.

For the reasons stated above we feel it proper to issue following directions to the respondents:-

2

(a) The action of the respondent No.2 in issuing the notification of even number Dt.22.1.97 is arbitrary and not on sound principles. Hence the said notification is hereby set aside.

(b) The Respondent-2 shall, on the basis of the re-~~valuation~~ done by the officer higher in rank than the officer originally valued the answer scripts prepare the list of eligible candidates for the viva voce test. The respondents shall then fix a reasonable date for viva voce test. On the basis of the performance in the viva voce test to be held and on the basis of the marks obtained on re-valuation a panel of selected candidates be prepared expeditiously.

(c) In case the respondent No.2 is satisfied that any of the candidate(s) had indulged in any malpractice in the written examination conducted on 28.1.96 then the respondent shall delete the said candidate(s) from the list obtaining approval from the competent authority to delete such names, after recording the reasons for the same and intimate the decision to the concerned candidates.

Thus the OA is disposed of. No order as to costs.

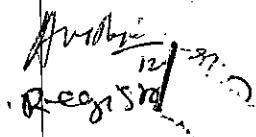
(Answer scripts and proceedings record furnished by the respondents for verification have been perused and returned to the respondents.)


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)

8/5/97


(R. RANGARAJAN)
MEMBER (ADMN.)

Date 8.5.97


Dy. Regd.

58

Copy to:-

1. The General Manager, South Central Railway, Union of India, Rail Nilayam, Secunderabad.
2. Chief Personnel Officer, South Central Railway, Rail Nilayam, Secunderabad.
3. One copy to Sri. G.Ramachandra Rao, advocate, CAT, Hyd.
4. One copy to Sri. K.Siva Reddy, SC for Rlys, CAT, Hyd.
5. One copy to Deputy Registrar(A), CAT, Hyd.
6. One spare copy.
7. One copy to Hon'ble Mr. B.S.Jai Parameshwar, J.M. CAT, Hyd

Rsm/-

~~self~~
12/5/97 CC by
13/5/97

12/5/97

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.R.UG. RAJAN : M(A)

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR:
M(J)

DATED: 8/5/97

ORDER/JUDGEMENT

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

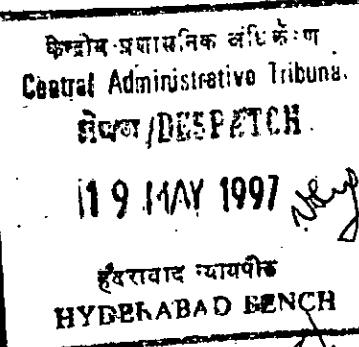
D.A. No.

206/97

ADMITTED/INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS

YLKR

I COURT



CCT
mtys
J

High Court File No. 110/98

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

WRIT PETITION NO. 12686 of 1998

Petition was filed in the High Court of Andhra Pradesh by Sri S. Vijaya Kumar Against R.m., S.C.Rlyl, Sec-2nd & Ans.

against the Order/Judgment of this Hon'ble Tribunal dt. 8-5-97 and made in O.A.No. 206/97.

The High Court was pleased to Dismiss, Allow, Order Interim Suspension stay the operation of Judgment on 8-7-98.

The Judgment of the Tribunal in O.A.No. 206/97 and the letter/order of the High Court of Andhra Pradesh enclosed herewith for perusal.

Submitted.

Deputy Registrar (J)

~~Regd~~

Hon'ble Vice-Chairman

Hon'ble Member (A) I

Hon'ble Member (A) II

Hon'ble Member (J)

IN THE HIGH COURT OF JUDICATURE: ANDHRA PRADESH: AT HYDERABAD
(SPECIAL ORIGINAL JURISDICTION)

WEDNESDAY THE EIGHTH DAY OF JULY
ONE THOUSAND NINE HUNDRED AND NINETY EIGHT

:PRESENT:

THE HON'BLE MR.JUSTICE: B. SUBHASHAN REDDY

AND

THE HON'BLE MR.JUSTICE: VAMAN RAO

WRIT PETITION NO.12686 OF 1998

Between:

S.Vijaya Kumar. .. Petitioner.

and

1. Union of India, rep. by the General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
2. Chief Personnel Officer,
South Central Railway, Rail Nilayam,
Secunderabad.
3. Central Administrative Tribunal (CAT)
Hyd. Bench, at Hyderabad, rep. by its
Chairman. .. Respondents.

Petition under article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of certiorari quashing the reliefs 2 and 3 given by the Hon'ble Central Administrative Tribunal, Hyderabad Bench in O.A.No.206 of 1997 by its Judgment dated 8-5-1997 and consequently direct the 2nd respondent to consider and approve my candidacy for being selected to the post of Welfare Inspector Gr. III.

For the petitioner : Mr. M. Sivananda Kumar, Advocate.

For the respondents 1 & 2 : Mr.G.S.Ganghi, Advocate.
(SC FOR South Central Railways).

For the respondent no.3 : Mr. B. Adinarayana Rao, S.C. for
Central Govt.

THE COURT MADE THE FOLLOWING ORDER :

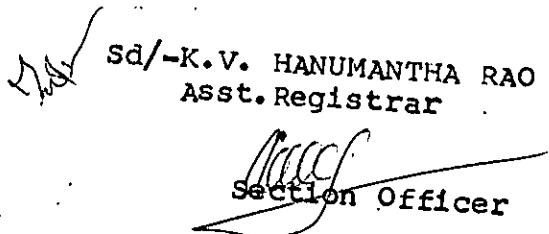
The learned counsel for the petitioner apprehends that his plea may not be accepted on the ground that the order dt.17-9-1997 is passed pursuant to the disposal of the O.A.No.206 of 1997 by the Tribunal.

We make it clear that if the petitioner files a O.A. against the orders dt.17-9-1997 passed by the first respondent, he shall be permitted to raise all pleads including the aspects on which he feels adversity in the previous orders passed by the Tribunal in O.A.No.206 of 1997 and a comprehensive pleading and argument may be permitted by the said Tribunal and the matter be adjudicated on the basis of the said pleading and argument.

The writ petition is accordingly disposed of.

No costs.

SD/-K.V. HANUMANTHA RAO
Asst. Registrar


Section Officer

To

// true copy //

1. The General Manager, South Central Railway, Rail Nilayam, Secunderabad.
2. Chief Personnel Officer, South Central Railway, Rail Nilayam, Secunderabad.
3. Chairman, Central Administrative Tribunal (CAT) Hyderabad Bench, at Hyd.
4. Two cd copies.
5. One cc to Mr. Gouri Shanker Sanghi, Advocate. (OPUC).

WRIT PETITION N^o.12686 of 1998

ORAL ORDER: (per Sri B.Subhashan Reddy, J)

This writ petition is filed questioning the orders passed by the Central Administrative Tribunal, Hyderabad Bench passed on 8-5-1997 in O.A.No.206 of 1997. By the said order the Tribunal set aside the notification dt. 22-1-1997 issued by the second respondent and issued certain directions as contained in clauses a, b and c of the judgment.

Pursuant to the said order fresh proceedings were issued on 17-9-1997 and now the petitioner says that this proceeding does not enure to his benefit as his name is not found in the select list in the cadre of Welfare Inspectors. But the order dt.17-9-1997 is a consequential order of the Tribunal and the petitioner has to challenge this order dt.17-9-1997 passed by the second respondent by filing a separate O.A. before the Central Administrative Tribunal.