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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDRABAD

ORIGINAL APPLICATION NO.232 of 1997

DATE OF ORDER: 8th JANUARY, 1999

BETWEEN:

1. D.KALYANRAM,
2. M.MANICKAM.

.. APPLICANTS

AND

1. Union of India rep. by its
General Manager,
South Central Railway,
Secunderabad,
2. The Financial Adviser & Chief
Accounts Officer, S.C.Railway,
Secunderabad,
3. The Chief Personnel Officer,
S.C.Railway, Secunderabad,
4. S.BALASUBRAMANIAM,
5. Miss. S.SUJATA.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr. G.RAMACHANDRA RAO

COUNSEL FOR THE RESPONDENTS: Mr.V.BHIMANNA FOR R-1 to R-3
Mr.P.KRISHNA REDDY FOR R4 & R5

CORAM:

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

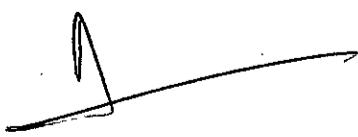
HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

JUDGMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.G.Ramachandra Rao, learned counsel for the applicants and Mr.Thyagarajan for Mr.V.Bhimanna, learned standing counsel for the official respondents and Mr.P.Krishna Reddy, learned counsel for the private respondents R-4 and R-5.

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2. There are two applicants in this OA. The 1st applicant was initially appointed as Junior Clerk Gr.II in the Accounts Department of South Central Railway on 25.3.74. He progressed in his career to the post of Clerk Gr.I and further to Senior Section Officer with effect from 1.1.86. At the time of filing this OA, he was working as Assistant Accounts Officer (Budget) with effect from 12.5.95 under R-2.

3. The 2nd applicant was initially appointed as Junior Clerk in the Accounts Department of South Central Railway on 28.9.72. He was thereafter promoted as Clerk Gr.I and Senior Section Officer with effect from 1.1.86. At the time of filing this OA, he was working as Assistant Accounts Officer with effect from 12.5.95.

4. On 21.6.91, a notification bearing No.AAD/E01 was issued for holding written test for formation of a panel for filling up the Group-B posts in the Accounts Department against 75% quota. Thereafter on 2.11.93, a further notification was issued bearing NO.AAD/E.02/93 calling for applications from Group-C staff of the Accounts Department holding the post in the grade the minimum of which is Rs.1400/- or in the higher Group-C grades and have put in a minimum of 5 years of regular service in the grade as on 23.1.94 and who have qualified in the Appendix 3 IREM Examination for filling up vacancies against 25% quota of selection for the post of AAO in continuation of the 75% selection.

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5. The relevant rules governing promotion of subordinate staff to Group-B service of Accounts Department are provided in Chapter II of IREM and ⁱⁿ the Railway Board circulars issued from time to time. The relevant rule in this connection is reproduced below:-

"In terms of Rule 201.1, "all vacancies in Group B are filled by promotion on the basis of selection of eligible Group 'C' employees and also on the basis of LDCE, wherever the scheme is in force. Where the scheme of LDCE is in force, selection is held to fill 75% of the ^avacancies and Limited Departmental Competitive Examination is held to fill the remaining 25% of the vacancies." Subsequently the ratio was revised to 70% and 30% respectively vide Railway Board letter No.E(GP)92/2/93, dated 03.11.1992."

6. The total vacancies which are to be filled from Group-C staff in accordance with the above rule were calculated as 32 and those 32 vacancies were to be filled to the extent of 24 vacancies through 75% selection and 8 vacancies through LDCE 25% selection. In the 75% selection, 19 posts were to be filled by OC, 4 by SC and one by ST whereas in 25% selection, 7 vacancies were to be filled by OC and one vacancy by SC. The applicants competed in 25% selection against OC quota and they belong to unreserved community.

7. The written examination for the 75% selection was fixed by the notification dated 21.6.91 and the date of

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examination was fixed as 31.7.91. In the meantime, there was litigation in regard to certain circulars issued by the Railway Board by filing OAs ~~on~~^{before} this Tribunal which were pending upto December, 1993. Thus for two years after the written test for 75% selection was completed, the selection against 25% quota could not be taken up. After the pending cases were disposed of by this Tribunal, the 25% selection as per the notification dated 2.11.93 was processed and finalised by empanelling 8 employees as finally selected against 25% quota by the notification dated 4.10.94. In this list, the names of the applicants were not finding a place. The contention of the applicants is that there were ineligible candidates numbering about 6 who were admitted for the selection and out of 6, R-4 and R-5 were selected and empanelled. They rely on the Railway Board's circular NO.E(GP)79/2/101, dated 16.6.85 (Annexure 'D' at page 16 to the OA) to state that "notice for the LDCE should generally be issued along with the notice issued for the selection against 75% vacancies with the indication that the dates for the LDCE would be announced later and also the number of vacancies to be filled on the basis of the LDCE should be mentioned in the notice for the information of the employees". The applicants further submit on that basis that the eligibility condition for minimum service eligibility of five years mentioned in Para 2 of the notification dated 2.11.93 should be related to the date of notification of 75% and it should not relate to any other date later than 21.6.91. They further add that para 2 of the notification dated 2.11.93 should state that those who appear for the 25% selection as per that notification should have put in a minimum of 5 years of regular service

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in the grade the minimum of which is Rs.1400/- or in higher Group-C grade as on 21.6.91 and not as on 23.1.94 as stipulated in the notification. If the later date of 23.1.94 is fixed for considering the minimum 5 years of regular service, then those who had not completed 5 years of service as on 21.6.91 will also compete with others. That is against the spirit of the Railway Board's letter dated 16.6.85. As the 25% selection for which the notification was issued on 2.11.93 stipulates the date for service eligibility later than 21.6.91, the date on which the notification for 75% selection was issued, the Railway Board's instructions dated 16.6.85 are violated. Because of that, the ineligible candidates who had not completed 5 years of regular service on 21.6.91 were admitted for 25% selection and 2 of them, namely, R-4 and R-5, were also empanelled. Thus chances of promotion for the applicants have been ~~jeopardized~~ [↑] ~~nullified~~. Had the above irregularity not been committed, R-4 and R-5 would not have come in the panel and the applicants would have been empanelled.

8. The applicants further state that the Southern Railway followed the direction given by the Railway Board in their letter dated 16.6.85 in regard to the service eligibility condition and hence the South Central Railway ~~was obliged~~ ^{has to} follow that practice. They submitted representation in this connection to R-2 by the representation dated 26.7.96 and earlier. However, in the meantime the Union also took up this issue for modifying the notification dated 28.6.96 (Annexure-J at page 22 to the OA) issued for subsequent 25% selection and to adhere to the Railway Board's letter dated 16.6.85. R-2 realised his mistake and

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issued the corrigendum to reckon the related service eligibility period for the 25% selection to that of issue of notification for 75% selection for the assessment period 1.7.94 to 30.6.96, as seen from the letter No.AAD/E02/1994/1995, dated 14.8.96 (Annexure-K at page 23 to the OA). After the issue of the letter dated 14.8.96 the applicants also took up the matter with R-2 for correcting the error which had ~~happened~~ ^{occurred} in LDCE selection held in 1994 by the representations dated 10.12.96 and 8.1.97 (Annexures-L and M, at pages 24 and 25 to the OA). In those representations they have quoted that "Due to administrative errors, staff are overlooked for promotion to higher grades either on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons, ^{can} be corrected ~~appropriate~~ and on promotion be assigned ~~correct~~ ^{correctly} seniority vis-a-vis their juniors already promoted irrespective of the date of promotion". The applicants submit that the said representations were not considered by R-2 and he did not rectify the mistake and thus injustice is caused to the applicants.

9. This OA is filed praying for a direction to R-1 and R-2 herein to rectify the panel published under the proceedings No.FA/CON/2/3/3, dated 4.10.94 in respect of Asst. Accounts Officers by including the names of the applicants at appropriate places with consequential and attendant benefits including promotion to the post of Assistant Accounts Officer from the due dates with seniority and arrears of pay.

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10. From the above relief prayed, it is evident that the applicants are praying for the correction of the panel issued for 25% selection on 4.10.94 by including their names in the panel and deleting the names of R-4 and R-5 who, in their opinion, are ineligible to sit for that selection.

11. A reply and an additional reply and also written arguments on behalf of the applicants are filed. On the basis of those details, following position emerges:-

The official respondents contend as follows:-

(i) In the notification issued on 21.6.91 for 75% quota, no date has been indicated in regard to the service eligibility of officers who ~~were~~ are considered for 75% selection. On the basis of the vacancies assigned to 75% selection, the zone of consideration was fixed as per the extant rules. When no date has been fixed in regard to the ~~rules~~ of eligibility condition for 75% selection, there is no need to fix the cut off date for service eligibility condition in the 25% selection for which notification was issued on 2.11.93 as contended by the applicants and the cut off date 23.1.94 had been given so as to ensure that the qualified senior employees appear for merit-cum-fitness selection. Hence the notification dated 2.11.93 cannot be questioned on that score.

(ii) The applicants have not challenged the notification dated 2.11.93 especially the conditions laid

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down in regard to the possession of minimum 5 years of regular service in the grade as on 23.1.94 as laid down in para 2 of that notification. Without challenging the essential ingredients of that notification, the applicants cannot ask for their empanelment in the final select list issued by the notification dated 4.10.94. By the prayer in the relief column, the applicants only want to get themselves empanelled without challenging the conditions stipulated in the notification which in their opinion is erroneous and not adhering to the Railway Board's letter dated 16.6.85.

(iii) The applicants have submitted themselves for the selection without any hesitation and after having sat for the selection, they cannot protest against the final selection list. This is the dictum laid down by the Supreme Court in the reported case reported in AIR 1986 SC 1043 (Om Prakash Shukla v. Akhilesh Kumar Shukla). The respondents relying on the reported case in AIR 1993 SC 2444 (Union of India v. S.L.Abbas) submit that "Guidelines, however, does not confer upon the Government employee a legally enforceable right". By that, they mean that the instructions dated 16.6.85 of the Railway Board are only the guidelines issued by the Railway Board and that the circular does not confer upon the applicants herein any legally enforceable right.

(iv) The applicants are aware of the Railway Board's letter dated 16.6.85 and hence they should have protested if the notification dated 2.11.93 ~~was~~ is not in consonance with that of the Railway Board's letter. *Instead, But*

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they kept waiting for no reason and approached R-2 only in the year 1996. Even after that, they did not take any action and only when the above instructions of the Railway Board dated 16.6.85 were issued for adhering to in the later selection of 1996 as informed to the Union by the letter of R-2 dated 14.8.96, the applicants ~~perused~~ pursued their earlier representations and they approached this Tribunal thereafter in the year 1997. Thus about 3 years had elapsed from the date of holding the selection for the 25% quota when they filed this OA. Hence there is undue delay on the part of the applicants to take legal remedy in this connection which cannot be condoned.

(v) Even presuming that the letter of the Railway Board dated 16.6.85 was issued, this letter could have been lost sight of in view of the numerous dak letters received by R-2. The applicants being senior Supervisors, could have brought this to the notice of the respondent-authorities namely R-2 herein. When it was brought to the notice of R-2 by the Union, immediate action was taken to conduct the examination in accordance with the Railway Board's letter dated 16.6.85 and 25% selection was held in the year 1996. ^{accordingly.} Thus the respondents have exhibited their alertness when they came to know of the instructions and hence the action of the respondents for the earlier selection held in the year 1994 cannot be questioned.

(vi) A booklet containing the selection held from time to time from 1987 onwards in the Accounts Department was submitted thereby submitting ^{itself} earlier selections were also conducted similar to one held in the year 1994 and that precedence was strictly followed in the year 1994.

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Other Railways also held examination on the same lines. Hence questioning the selection held in the year 1994 will have serious repercussion on the earlier selection also.

12. The applicants in the rejoinder submit that there is no need to challenge the notification dated 2.11.93 especially Para 2 of that notification so far it concerned service eligibility condition and if the names of the ineligible candidates, namely R-4 and R-5, are deleted from the final select list dated 4.10.94, ends of justice will be met and those who have come up in the selection fulfilling the service eligibility condition can be empanelled instead of the ineligible candidates, namely R-4 and R-5. In their opinion, their names are to be included in the empanelment list as they had obtained the requisite marks to come within the quota of 7 earmarked for OC candidates. They further submit that there is no question of delay. They have represented their case soonafter they came to know about the Railway Board's letter dated 16.6.85. They cannot be blamed for not bringing the contents of the Railway Board's letter dated 16.6.85 as instructions of this letter are fully followed in the other Departments of Railways for which R-3 is the coordinating officer. The proposal of Accounts Department is vetted by R-3. Hence it cannot be said that the respondents lost sight of the letter of the Railway Board dated 16.6.85. They rely on the reported judgement of the Andhra Pradesh High Court reported in 1994(2) SLR (A.P) 649 (Smt. V.Rama Chowdary v. University of Hyderabad) to state that selection of a candidate who did not satisfy the eligibility criteria will lead only to set-aside that selection and ordering of fresh selection as per the criteria laid down.

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13. They also rely on the Supreme Court decision reported in AIR 1998 SC 91 (State of Rajasthan v. Hitendra Kumar Bhatt) to state that ignoring ^{the} cut off date would cause injustice to others who had not applied because of the cut off date. The applicant relying on the para 208.3 of IREM submit that "representations against selections should be dealt with on merits without restriction of any time limit for such submission".

14. The private respondents also contend more or less ^{lines} on the same fashion as the official respondents. The learned counsel for the private respondents contended that the applicants have cleverly worded the relief portion so as to get their names included without challenging the notification which is not tenable.

15. As stated earlier, the prayer in this OA is to empanel the two applicants herein in the panel issued on 4.10.94 deleting the names of the alleged ineligible candidates namely R-4 and R-5 from that list against the OC quota.

16. Firstly, it should be considered whether the prayer in this OA can be allowed without any repercussions that may follow if the OA is allowed in view of the nature of the relief asked for in this OA. To decide the above, we have perused the selection proceedings and also related notes.

17. The two applicants in this OA had appeared for the 25% quota selection in response to the notification

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dated 2.11.93. No doubt, there were number of employees who had responded to that notification. Only 19 candidates were found fit for the viva-voce. Out of those 19 candidates who were called for viva-voce test, 8 candidates (7 from OC community and one from SC community) were empanelled. The names of the two applicants herein do not find a place amongst the empanelled OC candidates. If the application is allowed as prayed for in this OA by empanelling the two applicants herein in the panel dated 4.10.94 deleting the respondents 4 and 5, then similar grievance ~~will~~ ^{may} ~~be forthcoming~~ ^{but forth} from among those who were called for viva-voce test, as in their opinion they have ^{do} come up successfully in the selection and ^{submit their} ~~by~~ names should also be included in the panel ^{eventually} ~~deleting some of those~~ who are less meritorious than them. This grievance ~~cannot~~ cannot be ruled out. From a perusal of the marks obtained by the applicants and the others who were called for viva-voce test, it appears that the grievance of others as pointed out earlier cannot be ruled out. It may be possible either both the applicants or one of the applicants may not find a place in the altered panel as prayed for in this OA in view of the rank position. Thus a flood gate will be opened for redressal of similar grievance and if no action is taken by ~~small file~~ the respondent-authorities, there is every likelihood of legal proceedings being initiated in future on the file of this Tribunal. Giving a direction which will lead to such ~~and multiplying of litigation~~ ^{Scope for} repercussions as stated above is not very healthy. Hence the direction should be to ensure that the case is decided finally and fully without any ~~further~~ litigation in this connection. If the present prayer is allowed, then the closing of this case will not be final and similar ~~such~~ cases may ^{crop up} ~~arise~~ in future. It is not necessary for us to

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explain the above repercussions indicating the position as ~~out~~ ^{with} brought ~~down~~ in the selection proceedings ~~so as~~ to ensure secrecy of the selection proceedings. However, a perusal of the selection proceedings by us makes us to come to a conclusion that the repercussions ^{and diligences} as pointed out earlier cannot be ruled out.

18. The assessment of vacancies as made out before calling for applications for 75% quota and 25% quota was perused by us from the note put up by the Deputy CAO(G) on 3.5.91 approved by R-2, R-3 and R-1. As can be seen from the notings, the total number of vacancies were assessed upto 30.6.93 taking into account the retirement ~~that took~~ ^{going to take} place as on 30.6.93. The total vacancies assessed for that period was 32 which were divided into two portions ^{namely} ~~for~~ 75% selection quota and 25% selection quota. 24 vacancies were earmarked for 75% selection quota and 8 vacancies for 25% selection quota.

19. A study of the Railway Board's letter dated 16.6.85 does not clearly indicate the date upto which it should be reckoned for the purpose of fixing the minimum eligibility service condition. The applicants submit that in the Southern Railway and the other Departments in the Railways, the date of eligibility is fixed based on the ~~date of the~~ date of notification for 75% selection. On that basis, the applicants herein submit that the notification for the written test for the 75% selection was issued by the notification dated 21.6.91 and hence that date ^{above} is the relevant date for fixing service eligibility condition for 25% selection quota. But it is not very clear from the

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Railway Board's letter dated 16.6.85 the date which should be taken note of for fixing the service eligibility condition for 25% selection. As stated earlier, the Railway Board's letter dated 16.6.85 is not very clear. Further, when the vacancies were assessed upto 30.6.93 for the present selection both for 75% and 25% quota, whether it will be in order to fix the date for the service eligibility condition earlier to that period. As per the contentions of the applicants, the date of the notification issued fixing 75% selection quota i.e, 21.6.91, is the date for service eligibility condition. The vacancies were assessed upto 30.6.93. The eligibility service condition fixed in the 25% selection is 23.1.94. Thus the whole case needs to be looked into from the various angles before deciding the exact date for fixing the cut off date for the service eligibility condition. In that view, the interpretation of the Railway Board's decision contained in their letter dated 16.6.85 becomes relevant. Such interpretation is not available possible to be given on the basis of the material in this OA. Even if the interpretation is to be obtained in the affidavit of the OA, the OA may have to be suitably worded making necessary amendment so as to express the views of the applicants herein. If such amendment is made then that will lead to reconsideration of the reply by both the official and private respondents. Hence on that consideration also, allowing this OA in the present form with the relief asked for may not be very appropriate.

20. It is stated that the applicants were empanelled in the next 75% selection quota. If the applicants were

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empanelled in the previous 25% selection quota; that would mean upgrading their seniority and there may be objections from those who are in the panel in which the applicants were initially empanelled for the Group-B post. This may also give room for complaints from the others who were not given similar treatment.

21. Thus from the above appreciation of the repercussions that will follow by allowing this OA with the relief asked for in this OA, we feel that challenge to the selection is essential and on that basis only a final direction can be given either setting aside the selection proceedings or allowing the selection proceedings.

22. A question may arise as to how to fix the seniority and pay fixation of those selected by the fresh selection if ordered for filling up the post for which the notification was issued earlier on 2.11.93. Fixation of seniority and pay fixation may not pose a very serious problem at that time and can be fixed on the basis of various contentions to be raised at that time in the fresh proceedings and also on the basis of the rules and regulations in this connection. Hence it is opined that it is preferable that the notification for the 25% selection issued on 2.11.93 itself is challenged especially para 2 of the notification which stipulates the minimum five years of regular service condition in the appropriate grade as on 23.1.94.

23. The learned counsel for the applicants submit that even though the prayer in this OA is for empanelling

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the applicants in the panel issued on 4.10.94 deleting the names of the respondents 4 and 5 from that panel, this prayer can be moulded by the Tribunal suitably so as to Conclude end the proceedings.

24. Moulding of the prayer by the Tribunal, in our view, is permissible so far the moulding does not affect the rights of other employees concerned in this connection and also moulding is only an interpretation and elaboration of the prayer made in this case. But we find that moulding of the prayer in this OA as suggested by the applicants may not only affect the rights of some other employees connected in this case but also cannot be considered as an interpretation and elaboration of the present prayer. Empanelling the applicants in the final panel dated 4.10.94 or setting aside the selection proceedings are two different issues. By setting aside the notification dated 2.11.93, the applicants themselves will lose their entitlement if they are entitled for empanelling in the present panel. Thus moulding in the present case is not a mere interpretation or elaboration but turning down the prayer of the applicants in this OA if necessary, such results cannot be given without proper details. Hence moulding of the prayer as suggested by the applicants in this OA is not a feasible alternative. Thus the submission as above by the learned counsel for the applicants cannot be accepted.

25. As recorded in the earlier paras of this judgement, there are number of other contentions raised in this OA by the parties concerned. Though it may be

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possible to answer, to a certain extent, the contentions raised as above, we restrain ourselves from doing so. In the view that is taken now, if a fresh OA is to be filed challenging the notification dated 2.11.93 especially the service eligibility condition, any opinion expressed by this Bench on the various contentions raised, will only prejudice the case of the parties, namely, applicants, official respondents and the private respondents while dealing with that fresh OA if filed. Hence to avoid such prejudice, we restrain from expressing any further opinion in this connection on the contentions raised above, except saying that these contentions may be repeated along with the other contentions also, if necessary, in future proceedings, if any, filed.

26. The applicants in this OA rely on the judgement of the Andhra Pradesh High Court reported in 1994(2) SLR 649 (Smt.V.Rama Chowdary v. University of Hyderabad) to substantiate their case. In that case we find that the selection was not quashed by the learned Single Judge for the reasons stated therein. But on appeal, the order of the learned Single Judge was set aside and a fresh selection was ordered to be held as per the selection criteria laid down. Hence our view as expressed above is strengthened by the above citation referred to by the learned counsel for the applicants.

27. The learned counsel for the applicants relying on Para 208.3 of the IREM submitted that the representations against the selection should be dealt with on merits without restriction of any time limit for their submission.

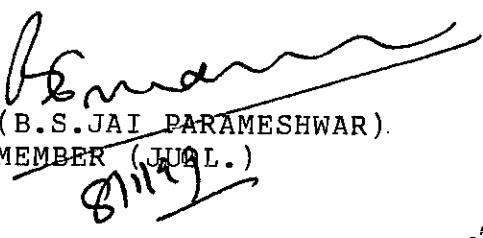
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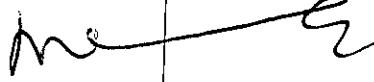
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Hence in the view of the applicants themselves, there is no limitation for initiating fresh legal proceedings challenging the selection. The applicants themselves are of the opinion that the rule of limitation will not apply in case they challenge the selection. If so, the applicants may not have any worry in regard to the limitation in filing a fresh OA.

28. From the above appreciation of the case, we feel that the applicants cannot be given the relief as prayed for in this OA and hence the OA is liable only to be dismissed. However, this dismissal will ~~not~~ stand in the way of the applicants to file a fresh OA challenging the notification for the 25% selection issued on 2.11.93, particularly challenging the minimum service eligibility condition as laid down in para 2 of that notification.

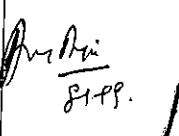
29. In view of the reasons stated above, the OA is dismissed but liberty is given to the applicants to file a fresh OA if they are so advised, challenging the notification dated 2.11.93 issued for filling up the 25% posts of AAOs in accordance with law. No order as to costs.


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


(R.RANGARAJAN)
MEMBER (ADMN.)

DATED: 8th January, 1999

vsn


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95/199 S
1ST AND 2ND COURT

COPY TO:-

1. HDHNJ
2. HHRP M(A)
3. HBSJP M(J)
4. D.R.(A)
5. SPARE

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 MR.H.RAJENDRA PRASAD :
MEMBER (A)

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

THE HON'BLE MR.B.S.JAI PARAMESWAR :
MEMBER (C)

DATED: 8/1/99

ORDER/JUDGMENT

M.S.A./R.A./C.P.NO:-

In

O.A. NO.

232/97

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

Copy

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
ब्रेष्ट / DESPATCH

18 JAN 1999

हैदराबाद न्यायपीठ
HYDERABAD BENCH