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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 300 OF 97

Dated, the 25th September, '98.

BETWEEN :

Gopal Das

... Applicant

A N D

1. Union of India, rep. by the  
General Manager, S.C.Railways, Rail  
Nilayam,  
Secunderabad.
2. Divisional Railway Manager, South  
Central Railway, Broad Gauge,  
Sanchalan Bhavan,  
Secunderabad.
3. Sr. Divisional Railway Officer,  
S.C.Railways, Rail Nilayam,  
Secunderabad.

COUNSELS :

For the Applicant : Mr. J.V.Lakshman Rao

For the Respondents : Mr. V. Rajeswara Rao

CORAM:

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMIN)

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

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O R D E R

(PER : HON'BLE MR. R. RANGARAJAN, MEMBER (ADMINISTRATION))

1. Heard Mr. J.V. Lakshman Rao, Learned Counsel for the applicant and Mr. V. Rajeswara Rao, Learned Standing Counsel for the respondents.
2. The applicant in this O.A. was originally appointed as Commercial Clerk in 1980. Later, the applicant changed his cadre as Goods Guard from 1987. He underwent training as Guard and he is also possessing a Certificate of Competency. He further submits that he was also working as Passenger Guard intermittently. Later, he was posted as Inquiry Inspector, (Vigilance) in the scale of pay of Rs.2000-3200, a tenure post in the office of the Senior Deputy General Manager, Rail Nilayam, Secunderabad.
3. The applicant is an aspirant for the post of Passenger Guard. The Passenger Guard is a selection post and the fitness is decided on the basis of Written Test in accordance with the letter No.P(T)694/GM/Sangh/PNM/Lvi/Sub.No.2 dated 2.11.1988 at Annexure-IV to the O.A. A notification was issued on 3.5.96 calling for volunteers for selection to the post of Passenger Guard. The applicant was included in the list of volunteers. The number of vacancies assessed are 62, comprising of 55 Unreserved, 6 SC and 1 ST. The said notification is at Annexure-V to the O.A.
4. The grievance of the applicant is that no notice was issued while conducting the viva voce for selection to the post of Passenger Guards on 10.9.1996, and the DGM was not also informed earlier to the notification dt. 3.5.96 at Annexure-V to the O.A. for relieving him for the said viva voce Test. He further submits that at about 1.30 P.M. <sup>on 10.9.96</sup> he was

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informed telephonically to appear before the viva voce Board for the purpose. With the permission of the Head of the Office, the applicant appeared before the Viva Voce Board at 1400 Hrs. without any preparation. The applicant submits that he requested the said Board to put off the Viva Voce to a later date as he was not prepared for the same. The applicant submits that his request was not considered and on the other hand the Viva Voce Test was conducted without adhering to the syllabus prescribed for the purpose. The select list was released vide Memo. dt. 9.10.96 selecting 52 candidates as against 62 vacancies announced for the purpose, out of which 55 vacancies were earmarked for the O.C. candidates. The applicant submits that conduction of Viva Voce was in violation of the Rules and that the said selection was prejudicial to his case for promotion to the post of Passenger Guard. He submitted a representation dt.16.10.96 for inclusion of his name in that list and he also submitted another representation for the relief on 25.10.96, but he submits no reply had been received by him. The representation dt. 16.10.96 and the representation dt. 25.10.96 are enclosed at Annexure-VII and Annexure-VIII respectively to the O.A.

5. This O.A. is filed praying for a direction to the respondents to fill up all the 62 posts immediately as announced earlier. Though it is not stated in the O.A. by the applicant that his name should also be included in the panel, it is presumed that he wants his name to be included in the list.

6. A reply has been filed in this O.A. The main contention of the respondents is that the applicant failed to qualify

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himself in the V. Voce and hence he was not selected.

7. It was also submitted by the Learned Counsel to the respondents that the applicant having ~~not~~ attended the Viva Voce, he cannot challenge <sup>the same</sup> if his name is not included in the select panel.

8. On 26.3.97, the case was considered <sup>and</sup> /the 3 main contentions raised by the applicant are as follows :

i) The applicant was not given sufficient time to prepare for the Viva Voce.

ii) The notified vacancies ~~were~~ 62 whereas 52 posts were only filled, 10 more vacancies are yet to be filled and hence the name of the applicant should also be included against the unfilled vacancies.

iii) The selection was done only by means of Viva voce whereas it <sup>had to be</sup> ~~was~~ done by a Written Test followed by Viva voce.

9. We considered the contentions raised by the applicant. The third contention is taken up first for consideration. The applicant submits that the selection should consist of both Written Test and Viva Voce. But it has been stated by him in the O.A. that the Written Test was dispensed with and that only Viva Voce was to be conducted in terms of letter dated 2.11.88. If the applicant is aggrieved by not conducting the Written Test and conducted <sup>ing</sup> only Viva Voce Test, then he should have challenged that letter dt. 2.11.88. When a departmental order is in use, the applicant cannot request for any other mode of selection other than what is prescribed. If he <sup>was</sup> ~~is~~ aggrieved by the manner of selection indicated in the letter dt. 2.11.88, he should have challenged the same. But he did not challenge. Moreover, similar provision as contained in letter dt. 2.11.88 is also detailed in the <sup>IRFM</sup> recruitment ~~rules~~. Hence, his contention is rejected.

10. The second contention of the applicant is that 10 vacancies

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are left without filling and that those vacancies should also be filled as announced earlier. The applicant in the relief column has not requested for inclusion of his name in the left over vacancies. In any case, we consider that by this relief he wants his name to be included in the select panel for the post of Passenger Guard. This is possible only when the applicant is found fit for promotion to the post of Passenger Guard <sup>and</sup> <sup>is</sup> his name ~~can~~ be included in the empanelled list. In the interim order itself, we had directed the respondents to keep one <sup>of</sup> post Passenger Guard vacant till the disposal of this O.A. Hence, there must be one post vacant even now. This vacancy can be given to the applicant only if he is found suitable in all respects.

11. The first, <sup>three</sup> out of the ~~the~~ contentions raised by the applicant, is that he was not given sufficient time to prepare for the Viva Voce. He was informed at <sup>the</sup> last minute and was asked to appear for the Viva Voce even without giving any time to prepare himself for the Viva Voce. This appears to be a reasonable request. Any employee, who is asked to appear for the selection should be given some time so that he could come prepared for the Viva Voce. Nobody can be put on test without giving sufficient time to prepare.

12. The Learned Counsel for the respondents submits that the notification was issued on 3.5.96 alerting the candidates to keep themselves in readiness to appear for the Viva Voce. The applicant was informed about the viva voce test on 12.9.96 but not 10.9.96 as contended, (on the same day) to appear for the vivavoce test. Hence, he submits that sufficient time was given to the applicant to prepare himself for the selection *from its date & alert notice*

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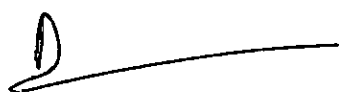
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12. The respondents submit that the applicant was informed at 1.30 P.M. on 10.9.96 to appear for the Viva Voce. It is for consideration whether that short period of time given from the after noon of 10.9.96 to 12.9.96 is sufficient for him to prepare for the selection.

13. We asked the Learned Counsel for the Respondents to produce the minimum time to be given for appearing in the Written Test and Viva Voce. In this connection the respondents submitted the Establishment Srl. Circular No.11 of 1975 which stipulates that minimum 21 days time calculated from the date of despatch of the notification intimating the staff about the date of Written Test or Viva Voce <sup>has</sup> to be given. Though the Learned Counsel for the respondents submit that an alert notice was issued much earlier and that the same fulfils the conditions laid down in the Establishment Srl. Circular No.11 of 1975, we disagree with the views of the respondents. The Srl. Circular No.11 clearly stipulates that 21 days notice calculated from the date of despatch of the notification intimating the staff about the date of the Written Test and Viva Voce is to be given. The notification dt. 3.5.96 was only an alert notice. It does not contain the date of Written Test or Viva Voce. Hence, 21 days time has to be given from the date of despatch of the notification fixing the date of the Written Test and Interview. The Viva Voce was fixed on 12.9.96 and the applicant was informed of the same on 10.9.96 at 1.30 P.M. which is far below the mandatory time to be given to the applicant to appear for the viva voce of 21 days. Hence, the applicant has a case for calling him for Viva Voce once again giving him 21 days notice and in case, he qualifies he should <sup>be</sup> empanelled in the select panel against one vacancy kept reserved for him vide interim order of this Tribunal dt.26.3.97.

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14. In this view of the matter the following directions are given :

a) The applicant should be called for the Viva Voce *afresh* in accordance with the rules for consideration of his promotion to the Post of Passenger Guard after giving him due notice of 21 days from the date prior to the date of fixing the date of the Viva Voce.

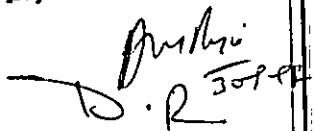
b) If the applicant is found fit his name should be incorporated in the select panel which was issued in pursuance to the notification dt. 3.5.96.

15. The O.A. is ordered accordingly. No order as to costs.

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

25.9.98

  
(R. RANGARAJAN)  
MEMBER (A)

  
30.9.98

Dated, the 25th September, '98.

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Copy to:

1. The General Manager, South Central Railway,  
Railnilayam, Secunderabad.
2. Divisional Railway Manager, South Central Railway,  
Broad Gauge, Sanchalan Bhavan, Secunderabad.
3. Senior Divisional Railway Officer, South Central Railway,  
Railnilayam, Secunderabad.
4. One copy to Mr. J.V. Lakshmana Rao, Advocate, CAT, Hyderabad.
5. One copy to Mr. V. Rajeswara Rao, Addl. CGSC, CAT, Hyderabad.
6. One copy to D.R(A), CAT, Hyderabad.
7. One duplicate copy.

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II COURTS

TYPED BY  
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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

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

AND

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

DATED: 3

~~ORDER~~/JUDGMENT

~~M. A. / R. A. / C. D. / H. D.~~

in

C.A. NO.

ADMITTED AND INTERIM DIRECTI NS  
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISCLOSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

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