

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 748 OF 1994

DATE OF ORDER



BETWEEN:

1. K.Ramakrishna Raju,
2. J.Sankara Reddy,
3. YRS Benarjee,
4. J.Praveen Kumar,
5. Md.Anwar Sadiq,
6. B.Wilson Babu,
7. S.A.Sadiq,
8. L.Nirmal Kiran,
9. K.Venkata Pradyimma,
10. R.Vara Prasad,
11. G.Sreenivasa Rao,
12. S.Chandrasekhar,
13. N.Malakondaiah,
14. T.Venkateswara Rao,
15. B.Kishore,
16. G.Rama Krishna,
17. K.V.Nagabhushanam,
18. Kum. D.Preeti Laxmi,
19. Kum.C.Kiranmaya,
20. Kum. P.Susanna,
21. P.Venkateswara Rao,
22. R.Madhu,
23. V.Sree Rama Kumar,
24. D.Priya Vadhan.

APPLICANTS

AND

1. Union of India represented by the General Manager, South Central Railway, Secunderabad,
2. The Chief Personnel Officer, S.C.Railway, Secunderabad,
3. The Divisional Railway Manager, S.C.Railway, Vijayawada.

RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr.G.RAMACHANDRA RAO

COUNSEL FOR THE RESPONDENTS: Mr.MV RAMANA, Addl.CCSC

CORAM:

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

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

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direction to the respondents to operate the panel of apprentices TCMS Grade III and ESMS Grade III (as per proceeding No.B/P.563/V/RC/93, dated 7.7.93 (Annexure-5 to the OA) with all consequential and other attendant benefits.

7. The main contention of the applicants is that the panel was prepared in accordance with the rules. The empanelment was done earlier to the issue of the letter dated 12.7.93 whereby instructions were issued to fill the vacancies only with the approval of the General Manager. Hence that letter is not applicable for the selection in question. Further, it was initially informed to R-3 by the letter dated 10.12.93 that operation of the panel dated 7.7.93 will result in increase in staff strength and hence the results of the selection should not be implemented. But, that stand was shifted later by the impugned letter dated 2.6.94 that the panel had to be cancelled in view of the irregularities that had taken place during the process of selection. The applicants submit that the shifting of reason itself is a proof that cancelling the selection is irregular and is an arbitrary exercise of power and is not tenable.

8. The applicants further submit that in case some irregularities have been committed, it is not necessary to cancel the entire selection. The empanelment of only those candidates whose selection is suspected on bonafide reasons can be deleted from the panel and the rest of the panel be operated. Though the applicants in their OA had submitted that the selection was not cancelled by the competent

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7.7.93. The panel was declared provisional and the names of the selected candidates were arranged in the order of merit. The memorandum dated 7.7.93 also states that the offer of appointment as apprentices will be issued to individuals in due course.

4. A decision was taken by the General Manager, which was communicated by letter dated 12.7.93 bearing NO.P(RC) 563/VI that no recruitment in Group-C categories should be made without his personal approval. It is stated that in terms of the instruction which covered the recruitment in question, a reference was made with all/details to CPO, Secunderabad on 6.8.93 to communicate the specific approval of the General Manager for operating the panel dated 7.7.93. The applicants dispute that the instruction of 12.7.93 ~~does not~~ cover the recruitment in question as those instructions were issued later than 7.7.93, the date of issue of the panel.

5. While the matter stood thus, it is stated that some irregularities as catalogued in para 4 of the reply were disclosed ~~were~~ and hence a decision was taken with the approval of the General Manager for cancelling the said selection. That decision was conveyed to R-3 by the impugned letter D.O.No.P(SG)563/Artisans/Vol.VII dated 2.6.94 (Annexure-8 to the OA).

6. Aggrieved by the above, the applicants have filed this OA to set-aside the impugned order D.O.No.P(SG)563/Artisans/Vol.VII, dated 2.6.94 (Annexure-8 to the OA) on the file of R-2 and for a consequential

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Though we agree that the applicants have no vested rights for posting, the cancellation of the selection is to be done only if there were serious malpractices which cannot be rectified.

11. Hence we called for the records connected with this selection and perused the enquiry report and also the notings of the Vigilance Officer's and the General Manager on the file.

12. The first irregularity noted was that the written examination had commenced two hours behind the schedule due to delay in receipt of question papers. It is not the case of the respondents that the delay had resulted in leakage of the question paper. Probably there was only one centre for this examination and hence the question of leakage does not arise even though the examination started late. The General Manager had accepted the reason that the delay was due to the extensive work involved in the preparation of the question paper, the time on hand being short. Hence he exonerated the officer concerned for this lapse as can be seen from notings on Page 38 of the File, No. G 265/4/424/93/BZA.

13. The second irregularity pointed out was that the answer books of 51 candidates were not bearing the Invigilator's signatures leading to a doubt about possible malpractices. It is seen that the question paper consists of multiple choice. How far malpractices can be indulged in such a question paper even if it is not signed by the Invigilators has not been fully brought out in the enquiry.

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authority, later they admit that the selection cancelled by the General Manager may be in order. But the cancellation of the panel once approved should not normally be cancelled or amended unless there is strong reasons to do so. The applicants submit that the above submission is in accordance with the sub-para k & l of para 219 of I.R.E.M.

Vol.I.

9. The stand of the respondents is that the cancellation of the panel was necessitated on account of irregularities noticed in the selection by the Vigilance Cell and hence the panel was cancelled by the impugned order dated 2.6.94 after obtaining the General Manager's approval who is the competent authority to cancel the panel. The learned counsel for the respondents further submits that the applicant do not have any vested rights for appointment even if they are empanelled. In the reported case 1997 SCC (L&S) 364 (Hanuman Prasad v. Union of India), the Apex Court had held that the cancellation of the selection for the post of Ticket Collector was in order when the cancellation of that panel for Ticket Collectors was challenged. The present case is similar to the reported case in that the panel of Ticket Collectors was cancelled due to the malpractices committed.

10. We have gone through the reported case. The facts of that case reveal that the Ticket Collector's selection was cancelled due to the fact that the question papers were leaked out earlier to the date of examination. In the present case, the cancellation was done not for the leaking of question paper but for some other alleged malpractices.

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of the Government for this lapse as observed by the General Manager.

16. Some more minor discrepancies were noticed in other papers also. But those discrepancies, in our opinion, can not lead to cancellation of the whole selection (Panel).

17. If some ineligible candidates were allowed to sit for the examination, their names may be deleted even if they are empanelled. The General Manager in his noting in Page N-31 states that no malafides could be established in that selection. The successor General Manager also was of the same opinion as can be seen from the noting N-40. Nowhere it is explained why those irregularities should entirely necessarily lead to cancellation of the selection. No detailed reasons can be ascertained for cancellation of the selection on the basis of the alleged irregularities in conducting the selection. Lack of planning and rushing through the selection process may be the reasons for the number of ills in this selection. Further a reading of the proceedings, the tenor and language of the correspondences with the Railway Board prompt us/ feel that the cancellation was done possibly to satisfy the Vigilance Cell of the Railway Board.

18. Under the facts and circumstances of this case, we feel that the cancellation of the entire panel was ~~was~~ not warranted. However, the respondents are at liberty to amend the panel if malpractices are attributable to any of the empanelled candidates. This is possible only if this panel is a provisional panel. But, before doing so, the

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report. The General Manager in his notings at Page 38 has not attributed any malafides to the officer concerned but only recommended counselling to the officer incharge of the examination centre for this failure. The General Manager has also not commented that this irregularity is a serious one and hence the selection has to be cancelled.

14. The viva-voce scheduled to be held on 28.6.93, was held only on 2.7.93. This in no way affects the selection and hence the cancellation of the selection on this ground cannot be done.

15. The answer books of two candidates namely Kumari D.Anuradha, selected candidate under Sl.No.1 and Shri K.Raghu, another selected candidate under Sl.No.2 in the panel of Apprentice TCM Gr.III showed overwriting and corrections in the answers. An analysis of the past performance of these two candidates in their previous examinations namely SSC etc. showed that they were only average students. Hence these candidates obtaining the 1st and 2nd rank in the Apprentice TCM Gr.III panel was suspected. If, on extensive scrutiny, it was found that these two candidates had indulged in malpractices, then the proper course of action would be to delete their names from the panel instead of cancelling the entire panel. The General Manager was also of the opinion that the officer who had valued their papers should have brought the corrections and overwriting to the notice of his superior officers and should have taken guidance from the superiors. The evaluating officer has to be communicated the displeasure

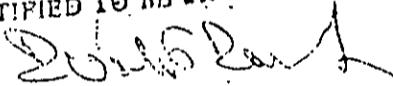
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reasons for the deletion of any candidate from the panels has to be recorded and got approved by the competent authority.

19. In the result, the impugned letter D.O.No.P(SG)563/Artisans/Vol.VII dated 2.6.94 is set-aside. But liberty is given to the respondents to amend the panels as observed in para 18 supra:

20. The OA is ordered accordingly. No costs.

EXTRA COPY
CERTIFIED TO BE TRUE COPY



कानूनी अधिकारी
COUNT OFFICER

कानूनी अधिकारी का दावा किया गया है

कानूनी अधिकारी का दावा किया गया है

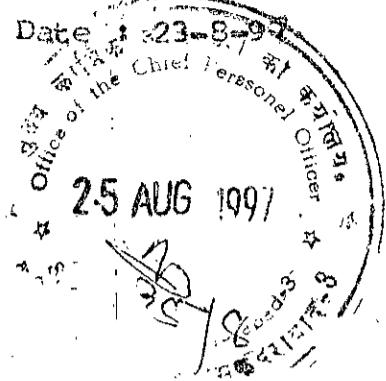


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Vijayawada.

No. LNK/1/97.



To

The Chief Personnel Officer,
IVth floor,
Rail Nilayam,
South Central Railway,
Secunderabad.

Sir,

Sub:- Recruitment of App.ESM/PCM.Gr.III.BZA division,
S.C.Rly.

Ref:- Your letter No.P(SC)563/Artisan/Vol.VII(Pilot)
dated 08-08-97.

.....

With reference to the show cause notice issued vide letter under reference, I submit the following few lines for your kind consideration.

1. It is true that the Hon'ble CPT/Tyd has disposed of the O.A.No.748/94 filed by me and 23 others on 25-4-97 setting aside the letter No.P(SC)563/Artisans/Vol.7 dated 2-6-94. However, liberty was given to the Respondents to amend the panel if modifications are attributable to any of the empaneled candidates.

2. Now under the letter dated 8-8-97 cited above, it is alleged that I have helped to qualify to be called for interview and later empaneled through unfair means. This allegations is made only to match the liberty given by the Hon'ble Tribunal to amend the panel of malpractice is attributable to any empaneled candidate. Factually, I am neither the valuation officer nor a member of the selection committee. The allegations made will give a room to any prudent mind to arrive at the logic stated above. I being an outsider, no Rly. officer is known to me and it is absurd to state that I have managed your officers and involved in an alleged malafidies.

3. The allegation that "One" mark is allotted to a wrong answer and thereby I secured 55 marks to be qualified for the Viva-voce is not correct. It is not the case of the administration that I have put "One" marks mark in my answer sheet. The entire action of conducting

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the examination was done by the authorities of the administration. You will appreciate that both the successive General Managers were of the opinion that no malafide could be established in the selection. Even the Hon'ble Tribunal has held the same in its Judgement dated 25-4-1997. That be the position, if by a bonafide mistake if the valuator has awarded "ONE" mark, THE ONLY "ONE" MARK, the candidate who is not at all at fault, cannot be degraded.

4. The present allegation against me has been levelled only to take revenge for filing the O.A. The Administration put forth many malpractices as a defence to sustain the action for cancelling the panel but the allegation now levelled against me is not one of them. The malpractices pointed out by the administration during the hearing of the O.A. are more serious than the malpractice, if any now alleged (though not admitted by me). For any reason, the alleged malpractice cannot be attributable to me and therefore the proposed action cannot be taken in view of the clear terms "the respondents are at liberty to amend the panel if malpractices are attributable to any of the empanelled candidates", as indicated by the Hon'ble Tribunal in its judgement dated 25-4-1997.

For the above reasons, I request your goodself to drop the proposed action and I may be given the appointment as ESM's Grade-III. As employer of a mighty department of the Government of India, I hope justice will be given to me in this matter.

Thanking you,

Yours faithfully,

I. Nirmal Kiran

(I. NIRMAL KIRAN).



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SOUTH CENTRAL RAILWAY

Headquarters Office,
Personnel Branch,
Secunderabad.
Dt. 24-08-1997

No.P(SG)563/Artisan/Vol.VII(Pilot)

To
Sri L.Nirmal Kiran,
S/o S/o L.T.S. Scrima,
Head Clerk, S.Y.R.C's Office,
VIJAYAWADA - 520 001.

SHOW CAUSE NOTICE

Sub: Recruitment of App.ESM/TCM Gr.III -
Vijayawada Division - S.C.Railway.

The Hon'ble Central Administrative Tribunal, Hyderabad Bench, in their order dated 25th April, 1997, in O.A.No.748/1994 filed by Sri K.Ramakrishna Raju & 23 others, observed that the Respondents are at liberty to amend the panel if malpractices are attributable to any of the empanelled candidates. The Tribunal also set-aside this office proceedings No.P(SG)563/Artisans/Vol.VII dated 2-6-1994.

2. In defence to the orders of the Tribunal, the General Manager decided on 1-8-1997, to set-aside the impugned proceedings No.P(SG)563/Artisans/Vol.VII of 2-6-1994 in which decision of G.M. was communicated to DRM/Vijayawada cancelling the panel published under Ref.No.B/P.563/V/RC/93 dated 7.7.1993. Accordingly, this office letter No.P(SG)563/Artisans/Vol.VII dated 2-6-1994 stands set-aside and panel dated 7-7-1993 stands revived.

3. Keeping in view the observation of the Tribunal mentioned in para 1 herein above, action has been taken to verify whether the candidates placed on panel dated 7-7-1993 are rightly entitled to be retained on the said panel. In the course of verification, it is found that you had in fact secured 54 marks. You were, therefore, not entitled to be called for interview. However, by mistake, for an incorrect answer, you were awarded one mark. Owing to this you had secured 55 marks (the minimum marks required to qualify to be called for interview) and based on this you were called for interview and later placed on panel No.B/P.563/V/RC/93 dated 7-7-1993. It is, therefore, obvious that but for the one mark wrongly awarded to you, you would not have made it to interview and later to the panel. Evidently you were helped to qualify to be called for interview and later to empanelment through unfair means.

4. It has therefore been prima-facie decided by the competent authority to remove your name from the panel No.B/P.563/V/RC/93 dated 7-7-1993.

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5. You are hereby given an opportunity to submit representation, if you desire so, against the *prima facie* decision taken by the competent authority, within 15 days of receipt of this Notice. Your representation, if any received within the specified time, will be taken into consideration by the competent authority before he takes the final decision. If you fail to submit the representation within the specified time, final decision will be taken *ex parte*.

6. Please acknowledge receipt.

You may use
for Chief Personnel Officer.

Copy to :

1. DRM(P)BZA for information, please.
This connects his ref. No.B/P/Con/563/V/RC/93 (Pilot)
dated 7-8-1994.

2. ALO/HQ/SC for information, please.
This connects his ref. No.G.148/P/156/BZA/CAT/94
dated 6-6-1997.

You may use
for Chief Personnel Officer.

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By Regd Post
Ack Due

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South Central Railway

Headquarter's Office,
Personnel Branch,
Secunderabad.

No. P(SG)563/Artisan/Vol.VII(Pilot) Dt. 16.09.1997.

To
Shri L.Nirmal Kiran,
S/o Sri L.T.S. Sharma
Head Clerk, Sr.DPO's Office,
S.C.Railway, Vijayawada-1.

Sub: Recruitment of App. ESM/TCM
Gr.III - Vijayawada Division -
S.C.Railway.

...

Your representation dated 23.8.97 has been considered carefully by the General Manager. The observation and the decision of the General Manager are furnished below:

* Sri L.Kiran Kumar, in his reoly dated 23.8.97 denied his involvement in the alleged malpractice in which he was helped to qualify in the written examination by awarding him the much needed one mark. He attributed the mistake to the evaluator, on the ground that he is an outsider and no railway officer is known to him. It is observed that he is the son of Sri L.T.S.Sarma, Head Clerk of Sr.DPO's office, Vijayawada. Hence, he cannot call himself a rank outsider with no prior links for access to the Railway Officers. So, there are grounds to believe that his empanelment is not without any outside help. Whether the involvement of the candidate in this affair is direct or otherwise, it is clear that he was not entitled to be called for interview based on his actual performance in the Written Test. Hence, I decided to delete his name from the panel".

Accordingly action is being taken to publish the panel dated 7.7.93, deleting your name from the said panel.

Acknowledge receipt of this letter.

CV Narayana
(C.V. Narayana)
for Chief Personnel Officer.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No: 1484 of 1997

Between:

L.Nirmal Kiran, S/o L.T.S.Sarma,
Hindu, aged about 27 years,
Occ: Un-employee,
Resident of Vijayawada.

... Applicant

- And -

1. Union of India, represented
by General Manager,
South Central Railway,
'Rail Nilayam',
Secunderabad.

2. The Chief Personnel Officer,
South Central Railway,
'Rail Nilayam',
Secunderabad.

3. The Divisional Railway Manager,
South Central Railway,
Vijayawada Division,
Vijayawada.

... Respondents

REPLY STATEMENT FILED ON BEHALF OF THE RESPONDENTS

I, S.Tamil Cholai S/o. Shri R.Sivagnanam, aged
45 years resident of Secunderabad, Occupation
Government Service, do hereby solemnly affirm and
state as follows:-

2. I am working as Senior Personnel Officer (R&DAR)
in the office of the Respondent No.2 and dealing with
the subject matter of the case and as such well
acquainted ^{With} all the facts of the case. I am filing
this counter affidavit on behalf of all the Respondents
as I have been authorised to do so.

*Reh
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22/9/98*

I submit that I have read the contents of O.A.
filed by the applicant and deny each and every

G. M. C.
महायक सामिक अधिकारी
द. म. रेलवे, श. । विभाग
तिक्कदार
Ass't Personnel Officer
S.C. Rly. H Qrs. Office Secunderabad

Reh
वरिष्ठ अधिकारी ..2
द. म. रेलवे सिक्कदार
Senior Personnel Officer
S.C. Rly., Secunderabad

allegation made therein except those which are specifically admitted here-under. The applicant is put to strict proof of allegations and averments. The O.A. does not disclose any valid and substantial grounds for the grant of relief prayed for and it is barred by limitation.

3. Notification No.B/P.563/V/3/WIM/TCM/Vol.2 dated 27.1.93, 28.1.93 and 5.2.93 (Annexure A-1, A-2 and A-3 to the OA) was issued calling for applications from the wards of the Railway employees, from the Employment Exchanges for sponsoring the names of the candidates, from casual labour artisans working in different departments and from serving employees in Group D of Signal and Telecommunication Department of the Division for forming a panel of 19 candidates as Telecommunication Maintainers Gr.III and 15 candidates for Electrical Signal Maintainers/Grade III against the 50% direct recruitment quota to cater to the needs of the Vijayawada - Visakhapatnam Railway Electrification Project.

4. A total of 937 applications were received and out of them, 537 applicants were found eligible for consideration. All the eligible candidates were subjected to written test on 27.6.93; 80 candidates including SCs/STs qualified in the written examination and they were called for viva-voce on 2.7.93. Out of the 80 candidates only 75 appeared for viva-voce. Based on the performance in the written tests and viva-voce, 18 candidates were placed on the panel


ATTESTOR

सहायक नामिक अधिकारी
दू. म. रेलवे, प्रधान कार्यालय
सिकंदराबाद

A. S. I. Personnel Officer
Rly. Q. S. Office Secunderabad


वरिष्ठ नामिक अधिकारी ...3
दू. म. रेलवे सिकंदराबाद
Senior Personnel Officer
S.C. Rly., Secunderabad.

for Apprentice TCM, Grade-III and 13 candidates were placed on the panel of Apprentice ESM, Grade III as per Memorandum No.B/P.563/V/RC/93 dated 7.7.93 (Annexure-5 of the OA). The said panel was approved by the competent authority on 7.7.93. The panel was declared provisional and the names of the selected candidates were arranged in the order of merit. The Memorandum dated 7.7.93 also states that the offer of appointment as Apprentices will be issued to individuals in due course.

5. A decision was taken by the General Manager, which was communicated by letter dated 12.7.93 bearing No.P(RC)563/VI that no recruitment in Group C categories should be made without his personal approval. It is stated that in terms of the instructions which covered the recruitment in question, a reference was made with all the details to Chief Personnel Officer, on 6.8.93 to communicate the specific approval of the General Manager for operating the panel dated 7.7.93. The applicants dispute that the instruction of 12.7.93 do not cover the recruitment in question as those instructions were issued later than 7.7.93, the date of issue of the panel.

6. While the matter stood thus, some irregularities in the selection process took place and hence a decision was taken with the approval of the General Manager for cancelling the said selection. That decision was conveyed to R-3 by the impugned letter D.O.No:P(SG)563/Artisans/Vol.VII dated 2.6.94.

G.M.C.S
सहायक कर्मचारी
द. ए. रेलवे, पश्चिम रेलवे
विभाग अधिकारी
S.C. Personnel Officer
S.C. Railway Office Secunderabad

S.C. Rly.
वरिष्ठ कर्मचारी ..4
द. ए. रेलवे सिक्कियाबाद
Senior Personnel Officer
S.C. Rly., Secunderabad,

7. Aggrieved by the said cancellation, some of the candidates approached this Hon'ble Tribunal by filing O.A.No:748/94. Under the facts and circumstances of this case, the Hon'ble Tribunal felt that the cancellation of the entire panel was not warranted. However, the Respondents are at liberty to amend the panel if malpractices are attributable to any of the empanelled candidates. This is possible since this panel is only a provisional panel. But, before doing so, the reasons for the deletion of any candidate from the panel has to be recorded and got approved by the competent authority.

8. In compliance with the Tribunal Order in O.A. 748/94 dt.25.4.97 the Respondents verified the records and found that -

- a) Answer Books of 51 candidates were not bearing signatures of Invigilators thereby leading to a conclusion that replacement of answer scripts had taken place with malafide intention. This is in violation of the extent orders contained on the subject as available in circular No: P(R)605/Con. dt.6.9.1988.
- b) The eligibility criteria for calling candidates to written test has not been properly followed - in that unqualified and ineligible candidates were admitted to selection.
- c) There were over writings and corrections in the marks awarded in answer books seemingly with the object of making some ineligible candidates get through the recruitment.

C. O.C.S.

सदायक कामिनी अधिकारी
दू. म. रेलवे, प्रधान कार्यालय

विभागाधारी

As. Personnel Officer

S.C. Bld, Secunderabad

Stamps
बरिट-कम्पनी अधिकारी ..5
दू. म. रेलवे सिकंदराबाद
Senior Personnel Officer
S.C. Bld, Secunderabad

- 5 -

d) In one case, a correct answer was not given marks. on account of this, the candidate was declared failed and thereby became ineligible for interview.

e) 5 additional marks were added to a candidate who had no additional qualification other than the minimum qualification prescribed.

All these irregularities go to prove that norms for conducting the recruitment were not followed properly. What is evident from the above irregularities is that favouritism had been shown by the Recruitment Committee members in evaluation of the performance of the candidates.

9. The Respondent No.1 in response to the orders of this Hon'ble Tribunal in OA verified the recruitment proceedings and found that the candidates who might have resorted to malpractices rendering themselves ineligible to be placed on the panel. The Respondent I found prima-facie case against Ms.D.Anuradha, Mr.K.Raghu and Mr.N.Nirmal Kiran, the applicant herein. As such, they were ineligible to be placed on the panel. Accordingly, the candidates were served with show cause notice on 8.8.97 vide Annexure R2, R3 & R4.

10. It is further submitted that the applicant was issued show cause notice dated 8.8.97 (Annexure-R4). In the course of verification, it is found that the applicant had in fact secured 54 marks. Therefore, the applicant is not entitled to be called for interview. However, by mistake, the applicant was awarded 1 mark for incorrect answer. Owing to this, the applicant

C. M. C.

ATTESTOR
अधिकारी
द. म. रेलवे प्रशान्त कार्यालय
सिंगाराबाद

Associate Officer
S.C. Rly. Office Secunderabad

DR. R. M. R.
DEPONENT ...6
बरिट कामिक अधिकारी
द. म. रेलवे सिंगाराबाद
Senior Personnel Officer
S.C. Rly., Secunderabad

has secured 55 marks (the minimum marks to qualify to be called for interview) and the applicant was called for interview. Consequently, the applicant was placed on the panel No.B/P/563/BRC/93 dated 7.7.93. The applicant would not have been made it to interview and later to the panel but for 1 mark wrongly awarded to him. Evidently, the applicant was helped to qualify, to be called for interview, later to the empanelment through unfair means.

11. The applicant filed his reply to the show cause notice dated 8.8.97 on 23.8.97. The reply was carefully considered by the General Manager and finally decided to delete the applicant's name from the panel of App.ESMs (Gr.III) and passed orders giving reasons and the same was communicated to the applicant (Annexure R5).

12. It is submitted that the applicant is the son of Sri L.T.S.Sharma, Head Clerk of Sr.Divisional Personnel Officer's Office, Vijayawada. Hence the applicant cannot be said a rank outsider with no prior links for access to the Railway officers. Hence there are grounds to believe that his empanelment is not without any outside help. It is clear that he was not entitled to be called for interview based on his actual performance in the written test. It has therefore been decided to delete the name of the applicant from the panel.

13. The contention of the applicant that there was no allegation of malpractices attributable to him is

G. D. S.
लहायक कार्यालय
रेलवे विभाग कार्यालय
R.
A.M.
S.C.

S. R. S.
DEPONENT
करिट कार्म्म अधिकारी ...7
द. म. रेलवे सिक्कदराचार
Senior Personnel Officer
S.C. Rly., Secunderabad

IN THE CENTRAL ADMINISTRATIVE

TRIBUNAL, HYDERABAD BENCH

AT HYDERABAD.

IN OA. NO: 1484/97

Between:

L. Nirmal Kiran.

Applicant

and

U.O.I. Rep. by

General Manager, South Central
Railway, Railnplayam, Secunderabad.

and 2 others

Respondents

Reply statement on behalf
of the Respondents



Filed by

C. Venkata malla Reddy, Advocate
S.C. for Railways

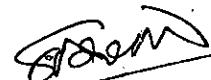
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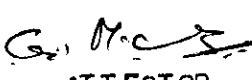
not correct and is false. It is submitted that the General Manager, Respondent No.1 in compliance to the Tribunal Order dated 25.4.97 in OA No.748 of 1994 had carefully considered all the material particulars and applicant's representation, dated 23.8.97 passed reasoned orders to delete the name of the applicant from the panel dated 7.7.93 and the same was communicated to the applicant through proceedings No:P(SG) 563/Artisan/Vol.VII (Pilot) dated 11/16.9.97 (impugned letter).

14. The applicant's contention that the supporting reasons for the decision taken by the General Manager are illegal and arbitrary, is incorrect and baseless. The evaluator awarded 1 mark to an incorrect answer (Question No:25) which helped the applicant to qualify for interview. Admittedly the applicant is an ineligible candidate placed on the panel. Hence the decision to delete the name of the applicant from the panel is legal and as per the directions of the Hon'ble Tribunal.

For the reasons stated above, there are no merits in the OA; it is therefore, prayed that this Hon'ble Tribunal may be pleased to dismiss the OA with costs.

Sworn and signed on this
day of 1998
at Secunderabad and signed
before me.


D.P.O.
क्षेत्र प्रशासनिक अधिकारी
द. म. रेलवे सिक्किंघाम
Senior Personnel Officer
S.C. Rly., Secunderabad,


ATTESTOR
लहायक कार्यालय अधिकारी
द. म. रेलवे, प्रधान कार्यालय
सिक्किंघाम
Asst. Personnel Officer
S.C. Rly., Secunderabad

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

••
O.A.No.1484/97.
- - - - -

Date of decision: 23-4-1999.
- - - - -

Between:

L.Nirmal Kiran. .. Applicant

And

1. Union of India represented by
General Manager, South Central
Railway, Rail Nilayam, Secunderabad.
2. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
3. The Divisional Railway Manager,
South Central Railway,
Vijayawada Division, Vijayawada.

Respondents.

Counsel for the Applicant: Sri V.Venkateswara Rao.

Counsel for the Respondents: Sri C.V.Malla Reddy.

CORAM:

Hon'ble Sri R.Rangarajan, Member (A)

HON'BLE Sri B.S.Jai Parameshwar, Member (J)

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n

O.A.No.1484/97.

JUDGMENT

(by Hon'ble Sri R. Rangarajan, Member (A))

Date of decision: 23-4-1999.

Heard Sri V. Venkateswara Rao for the Applicant.

None for the Respondents.

Notification No.B/P.563/V/3/WIM/TCM/Vol.2

dated 27.1.1993, 28.1.1993 and 5.2.1993 (Annexures A-1,

A-2 and A-3 to the O.A.) was issued calling for appli-

cations from the Wards of the Railway Employees, from

the Employment Exchanges for sponsoring the names of

the candidates from casual labour artisans working in

different departments and from serving employees in

Group "O" of Signal and Telecommunication Department

of the Division for forming a panel of 19 candidates

as Telecommunication Maintainers Gr.III and 15 candidates

for Electrical Signal Maintainers/Grade III against the

50% direct recruitment quota to cater ~~to~~ the needs of the

Vijayawada-Visakhapatnam Railway Electrification Project.

Though 937 applications were received, 537 applicants were

found eligible for consideration. On the basis of the

written test held on ~~on~~ 27.6.1993, 80 candidates including

~~SCs/STs.~~ ¹⁶⁰ were qualified in the written examination and

they were called for viva-voce on 2.7.1993. Out of 80

candidates only 75 appeared for viva-voce. Based on the

performance in the written test and viva-voce, 18 candidates

were placed on the panel for Apprentices TCM, Grade-III and

13 candidates were placed on the panel of Apprentices ESM, Gr.III

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as per Memorandum No. 8/P.563/V/RC/93 dated 7.7.1993 (Annexure-5 to the O.A.). That panel was approved by the Competent Authority on 7-7-1993. However, some irregularities were noticed in the selection process and a decision was taken with the approval of the General Manager for cancelling the said selection. That decision was conveyed to R-3 by the impugned letter D.O.No.P(SG)563/Artisans/Vol.VII dated 2.6.1994.

Aggrieved by the said cancellation, some candidates approached this Tribunal by filing O.A.No.748/94. The Judgment of the Tribunal in the said O.A., is at Annexure A-II Pages13 to 21 to the O.A.). This Tribunal felt that the cancellation of the entire panel was not warranted. However, the respondents are at liberty to amend the panel ~~if~~ if malpractices are attributed to any of the empanelled candidates, as the panel was a provisional panel. The Tribunal,however, directed that before doing so, the reasons for the deletion of any candidate from the panel has to be recorded and ^{it} get/approved by the competent Authority

In accordance with the above directions, the applicant was given a show cause notice bearing No.P(SG)563/Artisan/Vol.VII(Pilot) dated 8-8-1997 (Annexure A-II Page 24 to the O.A.) stating that he has secured 54 marks in the written test and hence he is not entitled to be called for interview. It is stated in the said Notice that, ~~however~~, by mistake, for an

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the applicant was incorrect answer, you ~~were~~/awarded one mark, that on account of this, he had secured 55 marks (the minimum marks required to qualify to be called for interview) and based on this he was called for interview and later he was placed on panel No. B/P.563/V/RC/93 dated 7.7.1993, It was, therefore, obvious that but for the one mark wrongly awarded to him, he would not have ^{been} called for interview and later was placed on the panel. Evidently, he was helped to qualify to be called for interview and later to empanelment through unfair means.

The applicant was given an opportunity to explain his conduct by submitting a representation against the decision taken by the Competent Authority within 15 days from the date of receipt of that notice.

The applicant had submitted his representation dated 23.8.1997 Annexure A-III~~m~~ Page 22 to the O.A. addressed to the Respondent No.2. Para 3 of that representation is very much relevant for purpose of this case which is extracted hereunder:

"The allegation that "ONE" mark is allotted to a wrong answer and thereby I secured 55 marks to be qualified for the Viva-voce is not correct. It is not the case of the administration that I have put "One" mark in my answer sheet. The entire action of conducting the examination was done by the authorities of the administration. You will appreciate that both the successive General Managers were of the opinion that no

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malafide could be established in the selection. Even the Hon'ble Tribunal has held the same in its judgment dated 25.4.1997. That be the position, if by a bonafide mistake, if the ~~the~~ Valuer has awarded "ONE" mark, THE ONLY "ONE" MARK, the candidate who is not at all at fault, cannot be degraded."

~~However,~~ the Applicant in his representation has stated that he was appointed because of the earlier O.A.

On the basis of the representations received from ~~this~~ ~~Case~~ the applicant, ~~it~~ was considered by the Respondent No.1 and ~~he~~ was rejected, thereby deleting his name from the panel published on 7.7.1993 by the impugned order dated 16.9.1997 (Annexure A-V Page 26 to the O.A.).

This O.A., is filed to set aside the impugned order dated 16.9.1997 issued by the Respondent No.2 and for consequential direction to the respondents to retain the name of the applicant in the panel dated 7.7.1993 issued by the Respondent No.3 for appointment to the posts of Telecommunication Maintainers and Electrical Signal Maintainers in Signal and Telecommunications Department, South Central Railway, Vijayawada with all consequential benefits such as appointment, seniority, arrears of pay and allowances etc.

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A reply has been filed by the respondents. It is stated in the reply that Respondent No.1 found prima facie case against the applicant herein and hence he found the applicant not eligible to be placed on the panel. Final action of deleting the name of the applicant/was done from the panel after issuing a show cause notice to the applicant. The respondents have come to the conclusion that the applicant was helped to qualify to be called for interview. Hence, the respondents state that they are justified in deleting the name of the applicant in the panel.

The only reason given for deleting the name of the applicant from the panel is that he got only 54 marks in the written test, that he managed to secure one more mark which helped him to appear for the interview and later included his name in the panel.

The respondents submit that one mark was added for a wrong answer and thereby the ~~xx~~ 54 marks obtained by him were ~~xx~~ upgraded to 55 and that one mark ~~xx~~ had been ~~xx~~ added to 54 marks, he would not have ~~xx~~ qualified to be called for interview and later to be included in the panel;

The applicant has stated in his representation that he being an outsider, no Railway officer was known to him and that the allegation that he was helped by somebody to qualify to be called for interview and later to empanelment through unfair means is not correct.

: 6 :

A study of the reply of the respondents clearly indicates that there is no evidence to prove that the applicant was instrumental in making getting to obtain one ~~mark~~ mark to an incorrect answer. It may be possible that the Valuer might have felt that the applicant deserves one mark ~~mark~~ even for an incorrect answer. Perhaps that answer may not be totally incorrect, might be partly correct. Hence, he might have given the applicant one mark, for reasons known to him. Unless, the respondents clearly prove that the addition of one mark was done at the instance of the applicant in order to get him qualified to appear for the interview, mere suspicion and surmise that the applicant obtained ~~mark~~ mark one more by unfair means for an incorrect answer will not stand in the way of the applicant to get him qualified for the interview. As stated ~~above~~ earlier, the respondents failed to prove that one mark was given to his the applicant by/unfair means. No motive has also been attributed ~~to~~ the applicant or ~~to~~ his father who is a grant ~~retired Railway Employees~~ to ~~obtain~~ ~~mark~~ one mark to an incorrect answer.

Little determined to help

The rejection of the representation of the applicant by the impugned order dated 16.9.1997 on the ground that the applicant was responsible for awarding of one mark to an incorrect answer is not justified. The operative portion of the rejection order reads as follows:

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Sri L.Kiran Kumar, in his reply dated 23.8.1997 denied ~~gave~~ his involvement in the alleged malpractice in which he was helped to qualify in the written examination by awarding him the much needed one mark. He attributed the mistake to the evaluator, on the ground that he is an outsider and no railway officer is known to him. It is observed that he is the son of Sri L.T.Sarma, Head Clerk of Sr.DPO's Office, Vijayawada. Hence, he cannot call himself a rank outsider with no prior links for access to the Railway Officers. So there are grounds to believe that his empanelment is not without any outside help. Whether the involvement of the candidate in this affair is direct or otherwise, it is clear that he was not entitled to be called for interview based on his actual performance in the written test. Hence, I decided to delete his name from the panel."

When the respondents submit that he is an outsider and that his father was a Head Clerk of Sr.DPO's Office and that would have enabled him to get one mark, in our ~~other side's~~ ^{other side's} opinion, is not a proper answer to reject his representation. Simply because the applicant's father happened to be a Railway Employee, the respondent authorities are not justified in coming to the conclusion that the applicant "cannot call himself a rank outsider with no prior links for access to the Railway Officers." We firmly believe that the Railway Administration will not yield to influence and swayed away by the interference of the subordinate officers.

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It should have been brought out clearly with cogent reasons as to how the applicant's father is connected and able to convince the authorities to grant one mark to his son to an incorrect answer in the written test in order to qualify for interview. In the absence of any such evidence, the action of the respondents in giving the impugned order dated 16.9.1997 cannot be said to be justified and proper. Mere suspicion cannot be a reason to deny the applicant to get empanelled in the select list and appointed in the Railways on that basis.

In view of what is stated above, the impugned order No. P(SG)563/Artisan/Vol.VII(Pilot) dated 16.9.1997 is set aside. The name of the applicant should not be deleted from the empanelled list and he should be given the post of either Tele-communication Maintainer Grade III or Electrical Signal Maintainer Grade III in Signal and Telecommunications Department readily available now or in the vacancy that arises in the immediate future. The applicant is entitled to pay and allowances on par with his immediate junior in the initial empanelled list who has been appointed on the basis of the panel dated 7.7.1993. His seniority, fixation of pay and allowances should be done accordingly.

His fixation of pay on par with his immediate junior is only notional and he shall get the actual pay on notional the basis of fixation of pay from the date of his appointment.

: 9 :

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

(B.S.JAI PARAMESHWAR) (R.RANGARAJAN)
MEMBER (J) MEMBER (A)

Date: 23rd April, 1999.

Dictated in open Court.

P.S.

sss.

P.S.

This OA was disposed of with a direction on 23-4-1999. Sri C.Venkat Malla Reddy, learned counsel for the respondents represented that he may also be heard before giving a final direction in this connection. As the judgement was not signed by them, we agreed to hear Sri C. Venkat Malla Reddy. Accordingly Sri Malla Reddy was heard on 29-4-1999. It was submitted by the learned counsel for the respondents, Sri Malla Reddy that one mark was given for a wrong answer. The answer given in the answer-sheet by the applicant is not in accordance with the ^{key} answer-sheet supplied to the Examiner along with the answer-sheets. Hence, he requested for perusal of the Key-answer-sheet and the answer sheet of the applicant and then decide the issue.

2. He was permitted to produce answer-sheet along with key to the question paper and handover the same to the Court

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Officer some time in the middle of May, 1999. Accordingly he has submitted a sealed cover to the Court Officer. It was perused.

3. The sealed cover contained only the answer-book of the applicant and not ^{the} key to the questions. Hence it was posted under the caption 'for being mentioned' on 31-5-99 when Sri Malla Reddy submitted that he will collect the other documents and produce today.

4. Accordingly he has produced the key to questions also along with the answer-sheet of the applicant. It was pointed out by him that answer to question No.25 should be 'A' and not 'D'. The applicant gave 'D' as correct answer whereas the key answer indicates 'A' as correct Answer. As the Examiner had given one mark for the wrong answer the mark granted to that answer should be deleted. In which case the applicant would have obtained only 54 marks and hence he is not eligible for consideration for viva-voce test.

5. He also pointed out that answer for question No.52 is 'C' whereas the applicant has given two answers viz. 'D' and 'C'. Hence he lost mark for that question also. On perusal of the answer given to Question No.52, it is seen that the answer 'D' has been cut off and answer 'C' is left untouched. It is possible that the applicant could have cut off 'D' and written 'C'. It may also be possible that the Examiner could have cut off D and left answer C untouched. Hence none could come to a decisive conclusion in regard to that. We are of the opinion that the applicant has given answer 'C'; hence he is entitled for allotment of marks for Question No.52.

Br

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6. Question No.25 reads as follows :

The State finds itself in a bind in this matter as on many other issues.

The multiple choices given under this question are :

- a) Nuisance
- b) Depression
- c) Problem
- d) Conflicts.

7. The applicant has given 'd' as correct answer

whereas the key-answer shows 'a' as the correct answer.

In our opinion the question itself is vague. When issues are involved it may be a conflict between various

interested groups. The Government has to resolve that conflict and find correct answer. Nuisance arises only when too many people press for a relief. In that case the nuisance created by so many people has to be tackled.

Hence, we are not sure whether the key-answer is right or not. The key answer may be right or the answer given by the applicant may be right. The Examiner probably found that he agreed with the view expressed by the applicant in the answer-sheet and hence neglected the answer given in the key-answer. The Examiner could have referred this case back to the authorities concerned who supplied both answer-sheets and key-answers. It appears that the Examiner took it upon himself to take 'conflict' as correct answer and hence awarded mark to the applicant. No proof has been shown that the Examiner granted marks to other examinees for that question as per the key answers but changed his view only in the case of the applicant. The respondents should not wait for the Bench to question them elaborately to submit their views. It ^{should} would be done by them only. Hence, we see ample reason to decide that

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Examiner had decided that 'D' is the correct answer and hence he granted marks to the applicant to Question No.25. However, the point at issue is whether the applicant has ^a pressurised the Examiner to give mark for wrong answer. The learned counsel for the respondents submitted that there was lot of pressure for selecting people for these posts and because of that only the Examiner had given mark to a wrong answer. But beyond that no evidence is available to us to come to that conclusion. As there are no evidence to come to the conclusion that the mark to that question was ^{granted} ~~answered~~ by the Examiner due to pressure on him brought by the applicant, we cannot say that the deletion of that mark is in order. As there are no evidence to come ^{of Coercion by the applicant on the Examiner} to the conclusion, in our view the mark given to the applicant stands good. As he secured the necessary marks he was called for the interview and that he was selected also.

8. In view of what is stated above we find that there is no reason to change our earlier direction given before hearing Sri Malla Reddy. Hence, the earlier decision given in page-8 of the judgement stands good.

9. The answer-sheet of the applicant and the key-answer sheet are returned back in sealed cover after perusal.

10. The OA is disposed of. No costs.

B.S. Jai Parameshwar

(B.S. Jai Parameshwar)
Member (Judl)

26/9

R. Rangarajan

(R. Rangarajan)
Member ("dmn.)

Dated : June 2, 1999
Dictated in Open Court

Am
8683

Copy to:

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

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

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 (J)

DATED: 23-4-99 82688

ORDER/ JUDGEMENT

clubbed together

MA./RA/CP. No.

IN

O.A. NO. 1484/97

ADMITTED AND IN TERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/ REJECTED

NO ORDER AS TO COSTS

SRR



Form No.9:
(See Rule 29)

BY.R.P.A.D.

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD.
1st Floor, HAC Bhavan, Opp: Public Garden, Hyderabad. 500004 A.P.

ORIGINAL APPLICATION NO.

OF 199

1484. 7

Applicant(s)

V/S

Respondent(s)

Loyiramul Kitegohri:

The G.M., S.C.Rlys, Sec'bad. &
2 others.

V.Venkateswara Rao.

(By/Central Govt. Standing Counsel)

To.

Mr.C.V.Malla Reddy, SC for Rlys.

1. The General Manager, Union of India, South Central Railway, Secunderabad.
2. The Chief Personnel Officer, South Central Railway, Secunderabad.
3. The Divisional Railway Manager, South Central Railway, Vijayawada Division, Vijayawada.

Whereas an application filed by the above named applicant under Section 19 of the Administrative Tribunal Act, 1985 as in the copy annexed hereunto has been registered and upon preliminary hearing the Tribunal has admitted the application.

Notice is hereby given to you that if you wish to contest the application, you may file your reply along with the document in support thereof and after serving copy of the same on the applicant or his Legal practitioner within 30 days of receipt of the notice before this Tribunal, either in person or through a Legal practitioner/ Presenting Officer appointed by you in this behalf. In default, the said application may be heard and decided in your absence on or after that date without any further Notice.

Issued under my hand and the seal of the Tribunal.

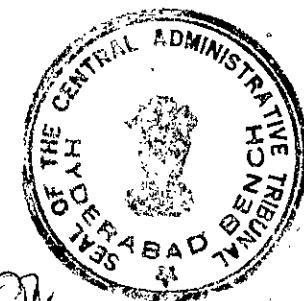
This the . . . Sixth, day of . . November, . . . 1997. 7.

//BY ORDER OF THE TRIBUNAL//

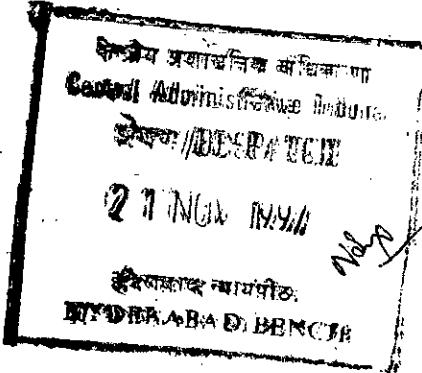
Date: 13-11-97.

FOR REGISTRAR.

Ch
17/11/97



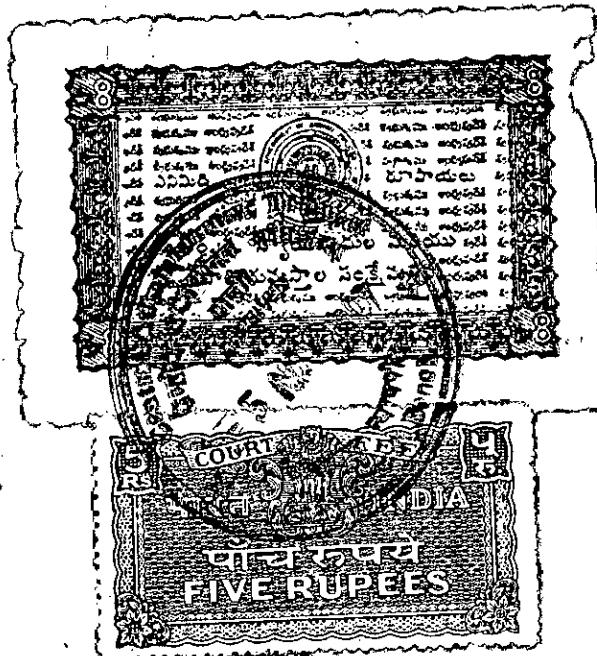
OK



S.R.No.

District

In the Central Administrative
Tribunal at Hyderabad



O.A. No. of 199

VAKALAT

ACCEPTED

Vakalat

b7

Date199

My V. VENKATESWAR RAO
Cphen ADVOCATE

Applicant
Counsel for Petitioner
Respondent

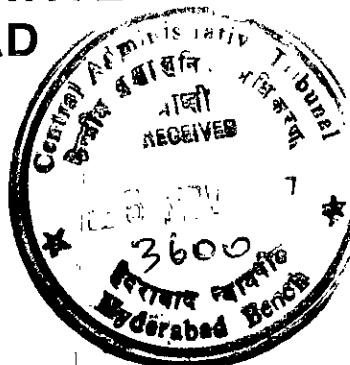
Address for Service : Phone : 7665481

V. Venkateswar Rao,
Advocate
1-8-430, Chikkadpally,
Hyderabad - 500 020.

IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL AT HYDERABAD

O.A. No.

1484 of 1997



L. Nizam Khan

Applicant

Union of India and Ors ^{VERSUS}
I/We

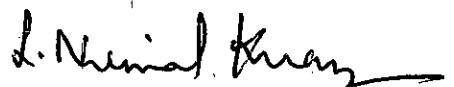
Respondent

Applicant-Petitioner

in the above Application/Petition do hereby appoint and retain
Respondent

 V. VENKATESWAR RAO, 
ADVOCATE

Advocate/s of the Tribunal to appear for me/us in the above Application/Petition and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of my application connected with the same or any decree or order passed therein including all applications for return of documents or the receipt of any moneys that may be payable to me/us in the said Application/Petition and also to appear in all applications for leave to the Supreme Court of India and for review of judgement and to enter into compromise.



I Certify that the contents of this Vakalat were read out and explained in (.....) in my presence to the executant or executants who appeared perfectly to understand the same and made his/her/their signature or marks in my presence.

Executed before me this 28th day of October 1997


Advocate, Hyderabad.

54
On The Central Administrative

Tribunals, Hyderabad Bench,

At Hyderabad.

In O.A. No 1484/97

Between:

L. Nirmal Kiran

... Applicant.

And

U.O.T. Rep. by

General Manager, south central
Railway, Railnlayam, Secunderabad.
and 2. others.

... Respondents

Memo of Appearance



Filed by:

C. Venkata Malla Reddy, Advocate
S.C. for Railways.

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/PA/SP/PTNA

1484 of 1997

Between:

L. Nirmal Kiran

.. Applicant(s)

vs

Union of India Represented by
General Manager, South Central Railway
Railnilyam, Secunderabad.
and 2 others.

.. Respondents

MEMO OF APPEARANCE

I, C. Venkata Malla Reddy, Advocate, having been
appointed as Standing Counsel for Railways by the
Ministry of Railways, Government of India, New Delhi,
hereby appear for applicant Nos.

Respondent Nos. and undertake to plead and
act for them in all matters in the aforesaid case.

Place : Hyderabad

Date : 22/9/98

C. Venkata Malla Reddy

(C. VENKATA MALLA REDDY)
Standing Counsel

Address:

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Dwarakapuri Colony,
Punjagutta,
Hyderabad - 500 82.

PHONES : 314952 / 316530

3851952

