

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.514 of 1999

DATE OF JUDGMENT: 23rd AUGUST, 1999

BETWEEN:

M.SHIVAKESAVULU

.. APPLICANT

AND

1. The General Manager (representing UOI),
South Central Railway,
Secunderabad,
2. The Chief Works Manager,
Workshops, S.C.Railway,
Hubli, Karnataka State,
3. The Workshop Personnel Officer,
S.C.Railway,
Hubli, Karnataka State,
4. The Senior Instructor/TTS/Electrical,
S.C.Railway, Workshops,
Hubli,
5. The Regional Director,
Ministr of Labour,
National Council for Vocational Training,
Southern Region, Guindy,
Madras-600032.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. S.RAMAKRISHNA RAO

COUNSEL FOR THE RESPONDENTS: Mr.C.V.MALLA REDDY, Addl.CGSC

for R-1 to R-4.

Mr.V.Rajeswara Rao for R-5

CORAM:

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

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

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JUDGMENT

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

Heard Mr.S.Ramakrishna Rao, learned counsel for the applicant, Mr.C.V.Malla Reddy, learned standing counsel for R-1 to R-4 and Mr.V.Rajeswara Rao, learned standing counsel for R-5.

2. The undisputed facts of this case are as follows:-

The applicant in this OA had undergone Apprenticeship Training in the faculty of Electrical under the Senior Instructor, Technical Training School (TTS)/ Electrical Workshop, Hubli from 4.6.93 to 3.6.94 and appeared for the examination in April, 1997. It is stated that he passed the examination. Later he applied for a post in Group-D categories of Diesel Shed/Workshop when notification was issued in that connection by the Memo No.L/P.565/CCAA/SUB/97, dated 19.7.97 (Annexure A-III to the OA). The applicant was not considered whereas his batch mates 18 in number who had also completed the Act Apprenticeship in the Railway establishment and passed the examination were posted in Group-D categories in pursuance of the notification dated 19.7.97. The applicant submitted representation to the Workshop authorities i.e, R-2 and R-3 herein and also to the Chief Personnel Officer, S.C.Railway. As he did not get any relief he approached the Unions. It is stated that ^{the} father of the applicant who is a Fitter in the Diesel Shed, Guntakal Division had approached the General Manager through SCRMU by filing a representation. It is also stated that a Fact Finding Enquiry was conducted by the Assistant Electrical Engineer under the control of R-2 and he submitted a report stating

that the applicant had not submitted the xerox copy of the certificate issued by the National Council for Vocational Training (NCVT) along with his application and hence rejection of his case ^{was} ~~is~~ in order. On the basis of the above details, the Union was informed by the impugned letter dated 18.11.98 treating the case ^{as} ~~closed~~ ^{and that} ~~it~~ it is the failure of the applicant to collect the proper certificate and submitting it along with the application form and hence the applicant is not entitled for consideration and appointment in Group-D post in pursuance of the notification dated 19.7.97.

3. This OA is filed to set-aside the impugned order NO.P.Mech./694/Union/77/5/98, dated 18.11.98 addressed to the General Secretary, S.C.Railway Mazdoor Union, Secunderabad (R-1 herein) rejecting the case of the ^{him} applicant for considering ~~for~~ screening and empanelment of Course Completed Act Apprentice in Railway Establishment and for consequential appointment as Khalasi, and for a further ~~consequential~~ direction to the respondents to conduct a supplementary screening for the applicant as per the notification dated 19.7.97 and empanel the applicant along with his batch mates with retrospective effect from the date his batch mates were appointed as Khalasis.

4. A reply has been filed in this OA. The main contention of the respondents in this OA is that the applicant had not taken initiative to collect NCVT certificate from the Chief Instructor of Basic Training Centre and ^{to} ~~produce~~ ^{produce} a xerox copy of the certificate along with his application. The father of the applicant


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approached R-4 and obtained a letter dated 4.10.97 addressed to R-5 about the original certificate of his son having not been received in the office of R-3. The respondents submitted that the applicant should have contacted the correct official i.e., the Chief Instructor of the Basic Training Centre. The respondents also submit that the application of the applicant was incomplete as the required information in Column 9 of the application was not filled. He got certificate from R-3 on 5.7.97/ as seen from his application form. The last date for submission of the application was 11.8.97. The applicant had enough time to collect the certificate and fill in the application form correctly and submit the same. Instead of that, he submitted the incomplete application and hence rejection of his case is in order.

5. We have also received a reply from R-5. R-5 submits that the applicant was declared passed in the National Counsel for Vocational Training (NCVT) in April, 1997 with Registered No.M/95/0135/E and he was issued certificate No.119010. The certificate of the applicant along with the certificates of the other 18 batch mates were sent to the establishment of the workshops at Hubli on 10.6.97 (i.e, well before 11.8.97 which is stated to be the last date for receipt of applications for empanelment of Khalasis). In view of the above, it is for the respondents No.1 to 4 to answer the basic averments in this OA.

6. A perusal of the notification dated 19.7.97 indicates that the following details are essentially to be answered by the applicant. In the notification dated 19.9.97, the last date for receipt of applications was notified as 11.8.97. In para 7(b) of the notification it is stated that,



"Copies of certificates in support of age and educational/technical qualifications duly attested by Gazetted Officer, should accompany the applications. Candidates belonging to SC, ST & O.C should also enclose the latest Caste Certificate issued by the Competent Authority. ORIGINAL CERTIFICATES/TESTIMONIALS SHOULD NOT BE SENT WITH APPLICATIONS."

In the application form to be submitted by the applicant, under item 9 under the heading "Technical Qualification", it is stated that the attested copies of the certificate to be enclosed. Columns under item 9 have to be completed fully indicating the details in regard to the course completed under Act Apprenticeship Scheme.

7. The two important documents which were perused by us from the files are, (i) the note of the Fact Finding Inquiry submitted by the AEE/S/HBL enclosed at Folio 80 of file No.L/P.565/CCAA/ SUB/97 and, (ii) the application form submitted by the applicant at Folio No.63 of File NO.L/P.648/OA 514/99/HYB.

8. The main reason for rejection of the case of the applicant is that he failed to produce the attested copy of the NCVT certificate issued by R-5. It is an admitted fact that the said original certificates of the applicant and 18 others of his batch mates were received by the Chief Instructor, Basic Training Centre on 16.7.97. Had the applicant contacted the Chief Instrucotr, Basic Training Centre for collecting the certificate, his ~~XXXXXXXXXX~~

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certiificate could have been handed over to him, along with other 18 batch mates. The applicant instead of collecting that certificate and enclosing a xerox copy of the same, did not take any action to receive it from the concerned authority. He is trying to put ^{the} blame on the respondents that his certificate was misplaced by the Office Superintendent working in the Basic Training Centre and hence he could not get the certificate. This is a baseless and false submission. The applicant alone is responsible for not collecting the certificate from the concerned authority and attaching it to the application. He also failed to fill the columns under Column 9 fully. He left the columns blank. Even though he obtained certificate from R-4 on 5.7.97, he did not take any action before the closing date for submissions of application along with NCVT certificate. It is their sole contention that the applicant is fully responsible in not fulfilling the conditions mentioned in the application form due to his negligence and hence the applicant cannot get any relief in this connection.

9. The respondents also submit that on the instructions from R-1, a Fact Finding Inquiry was conducted by the AEE/S/HBL working under R-2. As per the conclusions of the AEE, on the circumstances leading to non delivery of NCVT certificate to the applicant herein is solely due to the failure on his part and the responsibility of collecting the certificate rested with the applicant which he failed to collect. He also failed to brought it to the notice of the higher-ups in the Railway administration.

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10. From the above submission it is to be seen whether the apportioning of the blame to the applicant only is in order or not or whether the administration also has to be blamed for certain lapses.

11. The Fact Finding Inquiry was conducted by the AEE under R-2 and he submitted his report on 1.6.98. It is a fact that the said inquiry report was furnished without hearing the applicant herein who is the complainant. ~~Whether~~ ~~hearing~~ hearing of the applicant who is the complainant is or not is the first point to be decided. essential// The respondents submit that it is only a Fact Finding Inquiry and principles of nature justice are not violated in concluding the inquiry without hearing the applicant.

12. The ~~ERR~~ Fact Finding Inquiry was started because of the complaint from the applicant. ~~*****~~
The Fact Finding official cannot ignore the right of the complainant to be heard as the complainant will explain the various points which in his opinion have not been fulfilled by the respondent-authorities. He will also bring to the notice of the Fact Finding official the various points to be looked into before deciding the issue. Hence concluding the Fact Finding Inquiry without hearing the applicant is not an appropriate course of action. The respondents' contention that the principles of nature ^{al} justice are not violated is not a point for consideration. The respondents may not be aware of the various points to be considered in the opinion of the complainant before concluding the inquiry. Hence we feel, the note submitted by the AEE on

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1.6.98 without hearing the applicant herein who is the complainant, cannot be treated as a complete enquiry and conclusion arrived at cannot also be termed as a judicious conclusion. The note of the Fact Finding official has to be seen only from that angle.

13. The applicant had obtained the certificate from R-4 in his application form and that certificate was dated 5.7.97. It is a fact that R-5 is working under the Chief Training Inspector and is responsible for giving BTC Training to the Act Apprentices. Hence it cannot be said that R-4 is not aware of the receipt of the original NCVT certificate from R-5 addressed to the Chief Training Instructor. Even if he ^{was} ~~is~~ not aware of the same when the application form especially under coumn 9 ^{was} ~~is~~ not fully completed, he should have alerted the applicant to approach the Chief Training Instructor for getting the certificate and filling up the portion under column 9 fully. Instead of that, he had given the letter to approach R-5 which, in our opinion, is not a proper disposal of the case of the applicant by R-4. Hence in that respect, the Department had failed to discharge its duty properly.

14. In the Fact Finding Inquiry, the AEE had submitted in the last para that,

"Perhaps, the Senior Instructor/TTS/UBLS could have guided this candidate, who was the only Apprentice on Electrical side, in the matter of proper submission of the Application,

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i.e, to include copies of certificates duly attested or filling up all relevant columns, which would have gone a long way in helping the candidate in not committing such minor errors, to the extent of losing an employment opportunity despite possessing the requisite qualifications. This, as a humanitarian act."

The above view of the Fact Finding official is the same as the view expressed by us as above. Hence the case of the applicant could have taken a turn, had R-4 ~~been~~ ^{time} advised the applicant suitably in this connection.

15. The NCVT certificate was received by the Chief Training Instructor, TTS on 16.7.97. The ~~tested~~ ^{time} procedure for handing over the certificates to the candidates is by placing a notice on the notice board advising the concerned to collect the certificates. Alternatively, a communication will be sent by post to all those whose certificates are to be handedover. It appears that none of these methods have been resorted to by the CTI, Basic Training Centre. It is also stated that 18 of the certificate holders had taken the certificates except the applicant. In which case, it ~~should not~~ ^{have been} ~~be~~ very difficult for the CTI to inform the applicant to receive the same by attending his office or at least instruct others to inform the applicant suitably to receive the certificate. None of these methods has also been adopted by the CTI.

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16. The applicant submits that he ^{was} ~~is~~ in Guntakal. Hence, coming to Hubli every now and then to check whether the certificates are available for him to collect, will involve expenditure. An ~~unemployed~~ cannot visit Hubli often to check the availability of the certificates with CTI at Hubli. In that view, it is to be held that the respondents have not acted judiciously in handing over the certificate to the candidate.

17. The applicant is also partly responsible in not approaching the higher officials in ^{the} Railways either R-2 or R-3 inquiring about the receipt of the certificate. If he had done so, probably they would have taken suitable action to get the certificate.

18. The impugned letter dated 18.11.98 in our opinion has been issued without looking into the above points. They fully relied on the note of the Fact Finding official i.e, AEE while passing the order rejecting the case of the applicant.

19. In view of the foregoing paragraphs, a part relief has to be given to the applicant. But that relief will not give him any right for showing him as having been empanelled along with other 18 batch mates as he is also partly responsible in not approaching the authorities concerned for getting NCVT certificate.

20. In the result, following direction is given:-


i) The impugned order No.P.Mech./694/Union/77/5/98, dated 18.11.1998 is set-aside.



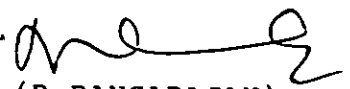
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ii) If the applicant had not already submitted NCVT certificate, if so advised, he may submit that certificate to R-2 or R-3 within a period of 7 days from the date of receipt of ^{copy of} the judgment, with acknowledgement. If such a certificate is received within the stipulated time, then R-2 or R-3 should allow the applicant to correct the earlier application ^{form} submitted by him on the basis of that certificate. The corrections to be made by the applicant should be verified and countersigned by R-2 or R3. After submission of the certificate and the application with corrections, the applicant should be subjected to a supplementary screening for appointing him as Group-D in the appropriate department in pursuance of the notification dated 19.7.97. If he is found suitable, he should be appointed in the vacancy which is available now in the ~~appropriate department and in the appropriate~~ cadre in Group-D. If no vacancy is available, then his name should be kept in the waiting list for considering him when the next vacancy arises. The applicant is entitled for seniority in the Group-D in the seniority group in which he is going to be appointed only from the date of his joining that post. His age qualification should be considered only in accordance with Para 4 of the notification dated 19.7.97.

21. The OA is ordered accordingly. No order as to costs.


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

23/8/99


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 23rd AUGUST, 1999

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