

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application Nos. 510/2011

Reserved on: 10.10.2018

Order pronounced on: 23.10.2018

Between:

1. P.V. Krishnaiah, S/o. Kurma Rao,
Aged about 51 years, Occ: SSE/C&W,
O/o. Sr. Divisional Mechanical Engineer,
South Central Railway, Vijayawada,
R/o. Vijayawada.
2. G. Srinivasa Rao, S/o. G.V. Rao,
Aged about 48 years, Occ: SSE/C&W,
O/o. Sr. Divisional Mechanical Engineer,
South Central Railway, Vijayawada,
R/o. Vijayawada.
3. V.S. Rama Raju, S/o. V. Subba Raju,
Aged about 47 years, Occ: SSE/C&W
O/o. Chief Mechanical Engineer,
South Central Railway, Rail Nilayam,
Secunderabad, R/o. Secunderabad.

...Applicants

And

1. Union of India, Rep. by
The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
2. The Chief Personnel Officer,
South Central Railway, Rail Nilayam,
Secunderabad.
3. The Chief Mechanical Engineer,
South Central Railway, Rail Nilayam,
Secunderabad.
4. B. Ramanjaneyulu,
S/o. Not known to the applicant,
Aged major, Occ: SSE/C&W, O/o. Sr. DME,
South Central Railway, Guntakal.
5. P. Sampath Kumar,
S/o. Not known to the applicant,
Aged major, Occ: SSE/WS,

O/o. Railway Workshop,
South Central Railway, Rayanpadu, Vijayawada.

6. G. Lazarus Kumar,
S/o. Not known to the applicant,
Aged major, Occ: SSE/C&W,
O/o. SR. DME, SC Railway, Vijayawada.

...Respondents

Counsel for the Applicants ... Mr. M.V. Krishna Mohan
Counsel for the Respondents ... Mr. S.M. Patnaik, SC for Railways

CORAM:

Hon'ble Mr. B.V. Sudhakar ... *Member (Admn.)*
Hon'ble Mr. Swarup Kumar Mishra ... *Member (Judl.)*

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA is filed questioning the action of respondents empanelling ineligible candidates in Group 'B' cadre, namely respondents 4 to 6, for the post of AME/AWMs (Asst Mechanical Engineer/Asst Works Manager) vide impugned order no P.607/F-Gaz/Con/Mech/Reg/2009 dt 1.4.2011 issued by the 2nd respondent.

2. Brief facts are that the applicants are working as Sr. Section Engineers in the respondents organisation. The respondents in order to form Group B panel for the post of AME/AWMs against 70 % quota under regular selection issued a notification dt 4.5.2010 for 11 vacancies with 8 for unreserved (UR), 1 for SC and 2 for ST. The applicants responded to the notification, cleared the written exam as well as the medical and appeared at the viva voce on 31.3.2011. The selection panel was out on 1.4.2011 empanelling respondents 4 to 6 who belong to SC community against UR vacancy. As the applicants were not empanelled the OA has been filed.

3. The contention of the applicants is that as per the notification it has to be selection which implies that meritorious candidates have to be selected. Marks

scored by the applicants are higher than those scored by the respondents 4 to 6. The applicants referred to the verdict of this Tribunal in OA 644/2006 and cited certain judgments of Honorable Supreme Court, though not relevant, to support their cause mostly dealing with reservations. They have also taken recourse to the judgment of this tribunal in OA 594/2006 and 153/2007 wherein a similar plea was allowed and that the present OA is squarely covered by the OAs referred to. The applicants being apprehensive that the respondents would shortly issue posting orders on the basis of the impugned order they had to come directly to the tribunal, as an emergency measure.

4. The respondents claim that the written exam is for 150 marks and that the qualifying marks are 90 marks. The written exam is followed by a medical exam and thereafter there would be viva voce for 50 marks with qualifying marks prescribed as 30 marks. Based on the written exam and viva voce, results were declared on 1.4.2011 empanelling 8 employees which included the applicants. The respondents state that for 70 percent quota the selection is based on inter se seniority as per rule 204.9 of IREM vol –I and that they followed the railway board instructions contained in Ir dt 11.7.2002 and Ir dt 20.6.2003, where in it is stated that a candidate who is an SC candidate selected on merit shall be adjusted against the UR quota. The respondents have countered submissions furthered by applicants in regard to reservations based on certain observations of Honourable Supreme Court but not relevant to the case as has already been stated above. Respondents' main emphasis is that the formation of Group B panel against 70 percent quota means the selection is "seniority-cum-suitability" subject to qualifying in the written exam, medical test and viva voce. The applicants are junior to the respondents 4 to 6 and that the applicants were aware of this fact as the *inter se* seniority was circulated along with notification on

4.5.2010. Lastly the respondents contend that applicants did not exhaust all the channels of remedy before they approached this tribunal.

5. There was no representation or submissions made by the respondents 4 to 6 though notices were served on them.

6. Heard the learned counsel and perused the records relevant to the case.

7. The learned counsel for the applicants pleaded that the selection has to be based on merit and not on seniority whereas the learned counsel for the respondents countered stating that under 70 percent quota it is only seniority cum merit and that the applicants feigning ignorance is illogical given their years of experience in the respondents organisation. The seniority list in only meant to decide the candidate's eligibility for sitting in the exam is the contention of the ld counsel for the applicant and *per contra*, ld. Counsel for the respondents asserts that it is the main yard stick for the final selection to be made on seniority cum merit.

8. In the present OA there is no dispute regarding seniority nor about the question of reservation. Averments made by either side have no relevance to this case on this count as was also observed by the respondents in their reply statement. The essential question therefore to be answered is whether the selection is based on merit or seniority. To do so, it would be helpful to look at the important features of the notification issued by the respondents dt 4.5.2010 which are as under:

- i) To form a Group B panel by selection.
- ii) There shall be a written exam followed by a viva voce.

- iii) Maximum Marks for the written exam will be 150 and the qualifying marks shall be 90. Similarly for viva voce the maximum marks would be 50 and that the qualifying marks shall be 30 .
- iv) Candidates have to clear a medical test after written test to appear for viva voce.

Thus as can be seen from the essential elements of the notification there is no mention about the clause of seniority cum merit which the respondents have been urging all throughout their reply statement. The learned counsel for the respondents has been vociferously arguing that the employees are expected to know these aspects and that if they did not know they need to have sought clarification. This is beyond logic as the respondents are conducting an exam for Group B level which is a sufficiently sensitive senior position and therefore they cannot abdicate their responsibility. A notification has to be clear stating its objective, eligibility criteria and the process. When the main criteria itself lucidly states that it is 'selection' based on written exam and viva voce it means that competition has been set to select the meritorious and not otherwise. Having stated so in the notification they cannot claim that they have applied the principle of seniority cum merit after the process of written exam, viva voce and declaration of the marks was over. The first applicant has scored 133.40, the second 157.60 and the third 130.90 marks respectively. In contrast fourth respondent scored 125, fifth respondent scored 133 marks and the sixth respondent scored 123.80 marks respectively, as published vide respondents Ir dt 6.4.2011, which are evidently lower than that of the applicants. Hence the applicants are meritoriously placed with reference to the respondents 4 to 6. The observation of Honourable Supreme Court in *K. Manju Sree vs State of Andhra*

Pradesh & anr reported in **2008 (3) SCC 512**, comes to the rescue of the applicants where in it was stated that

“32. In Maharashtra SRTC Vs. Rajendra Bhimrao Mandve, this Court observed that, “the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced”. In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game had been played and the results of the game were being awaited. That is unacceptable and impermissible.”

Exactly the same thing happened in the case on hand. The respondents did not adduce that the criteria for selection is seniority cum merit but they applied it after the entire process was over which is a serious malady as per Honourable Supreme Court.

9. Another pertinent observation of the Honourable Supreme Court which impinges on this case is reported in *N. Suresh Nathan and ors vs Union of India and ors* reported in **2010 (5) SCC 692**, wherein it was held that:

“In Jai Narain Misra (Dr) v State of Bihar a three Judge Bench of this court held that the question of seniority was not relevant for promotion to the selection post in the language of the judgment of this Court in Jai Narain Misra (Dr) v State of Bihar. (SCC p 32 par 3)

“3. It was not disputed before us that the post of Director of Agriculture is a selection post. Therefore, the question of seniority was not relevant in making the selection. It is for the State Government to select such officer as it considers as most suitable. In this view we think the High Court was not justified in going into the question of seniority nor will we be justified in going into that question.”

10. Once we telescope the above two judgments on to the facts of the case in question it would be evident that we cannot apply the principle of seniority cum merit to a selection post as has been declared in the notification and further after the entire process of selection has been completed changing the rules of the game

to that of seniority cum merit instead of merit is impermissible. Hence the action of the respondents is illegal and arbitrary going against the law laid down by the Honourable Supreme Court. Respondents averments are based on presumptions and assumptions. A crucial thing like an exam deciding the career of employees cannot be based on assumptions. Yardsticks laid are to be uniform, transparent and easily understandable but can never be imaginary as is seen in the present case. Not to speak by a model employer like the respondents who represent the State. Consequently the order issued by the respondents bearing the No.P. 607/F-GAZ/Con/Mech/Reg/2009 dt 1.04.2011 is quashed.

11. Thus in view of the facts stated above the respondents are directed to consider as under:

- i) Promote the applicants under unreserved category notionally from the date they are eligible to the posts of AME/AWM with all consequential benefits like fixing seniority, working out increments due etc. that would become due consequent to this order.
- ii) No back wages need to be drawn from the date due till the date of joining in the said promoted post.
- iii) Time frame fixed to implement the order is 3 months from the date of receipt of the order.

12. OA is allowed as above. No order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 23rd day of October, 2018

evr