
(2012) 10 AP CK 0113
In the Andhra Pradesh High Court
Case No : Writ Petition No. 21331 of 2012

E. Sai Ram and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Citation : (2013) 2 ALD 678

Hon'ble Judges : G. Rohini, J;C. Praveen Kumar, J

Bench : Division Bench

Advocate : K.R.K.V. Prasad, for the Appellant; Gouri Shankar Sanghi (SC for Railways), for the Respondent

Final Decision : Dismissed

Judgement

C. Praveen Kumar, J.—The applicants before the Central Administrative Tribunal, Hyderabad Bench at Hyderabad preferred the present writ petition seeking issuance of writ of certiorari to declare the Proceedings No. P(GAZ) 607/PB/70/2008 dated 11.5.2012 issued in respect of notification for formation of Group B posts of Assistant Personnel Officer vide letter dated 23.3.2009 and order of the Tribunal dated 11.5.2012 as illegal, unconstitutional, and is in violation of the rules governing the selection for Group B promotions. The facts in issue are as follows:

Pursuant to a notification dated 23.3.2009 issued by respondent No. 3 for formation of panel for promotion of Group B posts of Assistant Personnel Officer in Personnel department against 70% quota, the writ petitioner applied for the same. The second and third petitioners appeared for the written examination held 14.11.2009 while the first petitioner appeared in Supplementary written examination held on 4.1.2010, for those who could not make it on 14.11.2009. The results of the written examination were declared by the third respondent vide proceedings dated 10.2.2010 enlisting 40 candidates and petitioners figured at Sl. Nos. 34, 23 and 6 respectively. After getting confirmation from the first respondent, the third respondent announced the list of successful candidates for

viva voce on 1.4.2010. The petitioners stood at S. Nos. 27, 19 and 6 in the list of 32 candidates announced by the third respondent for viva voce which was scheduled to be held on 15.4.2010. While things stood thus, the unsuccessful candidates approached the Tribunal challenging the action of the respondents in deleting their names in communication dated 1.4.2010. In view of the same, the viva voce scheduled on 15.4.2010 was postponed on administrative reasons. In respect of candidates who approached the Tribunal vide OA No. 343 of 2010 and 380 of 2010, initially interim directions were given allowing them to appear for viva voce and later modified to the effect that they are entitled for selection.

2. While thing stood thus, a decision was taken to reevaluate the answer sheets of those candidates who have appeared for written examination held on 14.11.2009 and 4.1.2010. After revaluation, the entire process of selection was cancelled by the second respondent on 5.1.2012 in the light of vigilance investigation report pointing out the irregularities. Challenging the said decision OA No. 48 of 2012 and OA No. 61 of 2010 were filed before the Tribunal and the Central Administrative Tribunal by its order dated 15.2.2012 disposed of the O.As with a direction to the respondents to complete the selection on the basis of available record by working out a viable, reasonable and prudent criteria in short listing the candidates for viva voce. The said decision of the Tribunal was challenged in Writ Petition Nos. 7963 of 2012 and 7967 of 2012. A Division Bench of this Hon"ble Court by its order dated 4.4.2012 declined to interfere with the order passed by the Tribunal.

3. The third respondent vide proceedings dated 11.5.2012 conveyed the decision of the second respondent i.e. the General Manager, South Central Railway to the effect that in compliance of the order of Hon"ble Tribunal in OA Nos. 61 of 2012 and 48 of 2012, the General Manager has decided:

(i) To cancel the viva voce ordered for 32 candidates, who secured qualifying marks and were called for viva voce vide this office Letter No. P/Gaz/607/Con/Pers/Reg/2009 dated 1.4.2010.

(ii) To declare the written examination results of 18 candidates who have secured qualifying marks in the 2nd evaluation and to call them for viva voce.

4. As a result of the decision, the second respondent has cancelled the list of 32 candidates whose results were declared vide proceedings dated 1.4.2010 and 3rd respondent relying upon 2nd evaluation declared the names of only 18 candidates as having secured qualifying marks in second evaluation and called them for viva voce to be held on 1.6.2012. Out of 18 candidates selected, 14 were from the earlier list of 32 and remaining 4 candidates were selected based on marks obtained in revaluation. As the names of the petitioners are not enlisted in the notified list of 18 candidates, they filed OA No. 525 of 2012 for a direction that they should also be called for viva voce in terms of results declared vide proceedings dated 1.4.2010. To put a quietus to the litigation, the Tribunal by its order dated 11.6.2012 directed that "all the 32 candidates have to be

called for interview irrespective of the fact that all of them have secured 90 marks after averaging both marks or not." Challenging the said order, the present writ petition is filed.

5. The learned Counsel for the first petitioner mainly contended that the second evaluation is bad in law as the second respondent is not competent to order second evaluation. According to him, the action of declaring a fresh list based on the second evaluation by adding new names which were not there in the list of 32 candidates, which was the subject-matter of previous round of litigation, is in violation of the orders of the High Court. It is further contended as there was no irregularity in the 1st evaluation, conducting 2nd evaluation by the second respondent is not permissible more so when he is not competent to do so. According to him Para 204.1 of IREM, selection of candidates for empanelment is based on a procedure and the direction of the Tribunal to call all the 32 candidates for viva voce is illegal and contrary to the provisions of law.

6. On the other hand, the learned Counsel for the respondents would contend that in terms of Rule 202.1 of IREM, General Manager is the competent authority for constitution of selection committee for making recommendations in respect of staff considerable and suitable for promotion to Group B. Under Rule 204.10 of IREM, General Manager is the competent authority to approve the recommendations of the committee. As large number of irregularities were found in first evaluation by the vigilance authorities, the General Manager had taken a decision for revaluation of answer books of all candidates to ensure fair selection. According to him, the said exercise resulted in 18 candidates securing qualifying marks i.e. 90 marks. He thus contended that there was no illegality in the proceedings dated 11.5.2012.

7. The material available on record expose that due to irregularities in 1st evaluation, a second evaluation was ordered by the General Manager and the viva voce scheduled to be held on 15.4.2010 was postponed. The need for second evaluation would be clear if the large scale variations in both the evaluations are noted.

i. In the main examination held on 14.11.2009, out of 179 employees appeared, 28 employees have qualified in 1st evaluation and only 08 employees qualified in 2nd evaluation.

ii. In the supplementary examination held for absentees on 4.1.2010 out of 57 employees who appeared, 12 employees have qualified in 1st evaluation and 08 employees qualified in 2nd evaluation. Apart from 08 employees another 02 employees who had failed in 1st evaluation have qualified in the 2nd evaluation.

8. In those circumstances, the General Manager thought it fit to have second evaluation of answer sheets. As noted earlier, the Tribunal in OA No. 48 of 2012 and OA No. 61 of 2012 did not give any findings with regard to two evaluations but directed to complete the process based on available record. The said findings were also upheld by the High Court.

9. In the absence of any rules prohibiting revaluation, it is open to the respondents to adopt a course which is just and fair. As the vitiating factor was at the stage of valuation, the authority thought it fit prudent to start from the place where the process has been vitiated. As the integrity and honesty of the person who has revaluated the papers is not doubted, we feel that there is no illegality in ordering revaluation and General Manager is competent enough to do it in view of the Paras 204.1 and 204.10 of IREM. The said paras in IREM clearly ascribe power to the General Manager. Further, the Government of India vide Memo No. E(NG)1-2009/PM1/1 dated 8.7.2009 gave all the powers to the General Manager of Zonal Railway and Production Units to take a decision whether revaluation is required to be ordered or not and if so, which part(s) of the question papers are required to be revaluated.

10. An identical issue came up for consideration before a Division Bench of Madras High Court in Writ Petition No. 1351 of 2009 and Batch. The Court was dealing with a situation where the retired employees were given the job of evaluation of answer scripts of candidates who appeared for a written examination conducted by Railways for Group B Personnel Assistant post. The officers committed gross impropriety in awarding marks in excess of maximum marks etc. Because of the said illegal acts, the applicants before Tribunal were able to get minimum of 90 marks out of 150. The Court upheld the process of revaluation in the absence of any rule prohibiting the same. The Bench held that so long as the revaluation is done objectively, fairly and uniformly, there can be no objection to further steps being taken on the basis of revaluation.

11. The above discussion answer the two queries raised by the learned Counsel for the appellant.

12. Now what is the viable, reasonable and prudent criterion for short listing the candidates. It is very easy to find fault with the procedure evaluated in short listing the candidates but difficult to come out with a scheme which is free from comment and which would satisfy all concerned.

13. In order to give a quietus to the litigation and evolve a procedure which is not prejudicial to anyone of the 32 candidates the Tribunal formulated a procedure wherein and where under all the candidates who have qualified in both the evaluations, should be called for viva voce test and based on the marks obtained, merit list has to be prepared and selection has to be made accordingly. Since no illegality was observed in the written examination conducted earlier, the average marks of both the evaluation were directed to be taken into consideration and same shall be added to marks secured in viva voce. The Tribunal also found that in the process of averaging, the candidates may secure less than minimum marks i.e. 90. To get over the said problem, all the 32 candidates were directed to be called to the viva voce irrespective of the fact whether they secured 90 marks after averaging or not. The disadvantages or advantages if any works out equally to both the sides and no one can be said be totally aggrieved by the above scheme/procedure. For the aforesaid reasoning,

we do not find any reason to interfere with the order of the Tribunal and accordingly the writ petition is dismissed confirming the order dated 11.6.2012 passed in OA No. 525 of 2012 by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad. As a sequel to above, no order be passed in amendment petition filed by the writ petitioners.