

A. Xavier Vs. the General Manager Southern Railway, Chennai and Others

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Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Sep-14-2011

Judge : P.R. Raman, Judicial Member & the Honourable Mr. K. George Joseph, Administrative Member

Appeal No. : Original Application No. 1039 of 2010

Appellant : A. Xavier

Respondent : The General Manager Southern Railway, Chennai and Others

Advocate for Def. : Mr. Thomas Mathew Nellimoottil

Advocate for Pet/Ap. : For the Applicant: R. Premchand, Advocate. For the Respondents: Thomas Mathew Nellimoottil R1 - R5, Advocate.

Judgement :

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. The applicant in this O.A is aggrieved by the non-inclusion of his name on the panel for the post of Junior Engineer-II/Bridges against 25% promotional quota.

2. The applicant is presently working as Technician Grade-I under the Senior Section Engineer/Bridges, Trivandrum Division, Southern Railway, Kollam. He had participated in the written test for the post of Junior Engineer-II/Bridges held as per Annexure A-1 letter dated 11.12.2.2009. To the knowledge of the applicant, the

respondents have not published the result of the written test so far. As per order dated 26.10.2010 issued by the 2nd respondent, seven persons have been placed on the panel for the post of Junior Engineer-II/Bridges. Aggrieved by the non-inclusion of his name on the panel, he has filled this O.A for the following reliefs:

(i) To call for the records leading up to Annexure A3 and set aside the same to the extent it denies the applicant promotion to the post of Junior Engineer Grade-II in the pay band of Rs. 9300-34800 with grade pay of Rs. 4200/- against 25% promotion quota;

(ii) To issue a direction to the respondents 1 to 4 to consider the applicant for promotion to the post of Junior Engineer Grade-II in the pay band of Rs. 9300-34800 with grade pay of Rs. 4200/- against 25% promotion quota with effect from 26.10.2010;

(iii) To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

3. The applicant contended that he fared well in the written examination and legitimately expected to be selected for promotion. The marks obtained in the written test alone is to be taken to finalise the select list as clarified by the respondents vide Annexure A-1 letter dated 11.02.2009. Therefore, the respondents are duty bound to publish the result of the written test before issuing Annexure A-3 order dated 26.10.2010. The 9th respondent as per Annexure A-1 order could not have appeared for the written examination but has found place in Annexure A-3 order which itself shows that the selection process was arbitrary. The respondents have failed to consider the claim of the applicant by conducting a selection process which was biased, irrational, discriminatory and arbitrary and not in accordance with the relevant instructions.

4. The official respondents in their reply statement countered the arguments of the applicant. They submitted that the result of the written test was published vide letter No. P(S)608/I/8/JE/II/Bridges dated 05.05.2010 (Annexure R-3) wherein his name has been included since he had qualified in the written examination. The selection consisted of written examination to assess the professional ability

followed by verification of record of service by scrutinizing the performance of the candidates, examining the confidential reports and other relevant records. The entire selection was conducted as per Paras 215 and 219 of the Indian Railway Establishment Manual (IREM) at Annexures R-1 and R-2. Therefore, the allegation of the applicant that the action of the respondents is arbitrary and illegal, is not correct. The 9th respondent was erroneously left out while calling the eligible candidates for the written examination and hence his name was included in the list subsequently and allowed to appear in the supplementary written examination held on 17.04.2010. As he was qualified by securing above 60% in aggregate, he was placed on the panel dated 26.10.2010.

5. We have heard Mr. R. Premchand, learned counsel for the applicant and Mr. Thomas Mathew Nellimoottil, learned counsel for respondents 1 to 5 and perused the records.

6. The respondents have averred that they have conducted the selection as per Paras 215 and 219 of the IREM at Annexures R-1 and R-2. According to the respondents, as per Paras 215 and 219 of the IREM, selection consisted of written test to assess the profession ability for which 50 marks are assigned; for record of service 30 marks are assigned and for seniority, 20 marks are assigned. The applicant has not disputed this averment.

7. As per letter dated 11.12.2009, the respondents have notified that "The selection will consist of written test only, as per Railway Board's letter dated 07.08.2003. The objective type questions will be set for about 50% (in the range of 45% to 55%) of the total marks for the written test. The list of employees in the order of seniority who are required to appear for the selection is enclosed as Annexure-I. The employees shown in the enclosed list may be alerted to be in readiness to appear for the written examination to be conducted for the above selection. The time, date and venue of the written examination will be advised shortly."

The letter further states that "The attested copies of SRs and ACRs files including ACR for year ending 31.03.2009 of the above employees may be kept ready for immediate transmission to this office as and when called for."

8. The applicant relies on the statement that the selection will consist of written test only in which objective type questions will be set for about 50% of the total marks for the written test. It is not clear whether the remaining 50% of the marks is set apart for non objective type of questions or not. As per the statement of the respondents, 30 marks are set apart for record of service and 20 marks for seniority over and above the 50 marks in the written test as per Paras 215 and 219 of the IREM. The applicant has not challenged the said paras. The applicant failed to notice that the employees are alerted for writing the examination in the order of their seniority and that the Service Records and ACRs are called for. There are enough indications in the letter dated 11.12.2009 that besides written test, seniority and service records including ACRs are relevant for the selection. By stating that the selection consists of written test only, the respondents meant that there will not be any viva voce test. The respondents could have very clearly stated that the selection would consist of written test for 50 marks and assessment of service records including ACRs for 30 marks and seniority for 20 marks as per Paras 215 and 219 of the IREM. It would have made things clear to the employees.

9. We have gone through the relevant records of selection and find that although the applicant got high marks in the written test, when the marks of written test and the marks given for service records and seniority are added to it, he is down in the list. The respondents have followed an objective and transparent method of selection. We do not find anything arbitrary or illegal in the selection process. All said and done, the letter dated 11.12 2009 lacks clarity. The respondents could have avoided this deficiency. That by itself does not make the selection process conducted in accordance with Paras 215 and 219 of the IREM arbitrary or illegal.

10. In the light of the above, we do not find any reason to interfere with the selection process. Devoid of merit, the O.A is dismissed. No order as to costs.

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