

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE MRS. JUSTICE ANIS
WRIT PETITION No. 37190 OF 2013

ORDER: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The two petitioners herein are the applicants in O.A.No. 569 of 2010 on the file of the Central Administrative Tribunal, Hyderabad Bench. They called in question the selections, which have been carried out to the post of Junior Engineer Grade-II (Electrical) against 25% Intermediate Apprentice Mechanics (IAM) quota. It is not in doubt that 11 posts for this 25% quota have been notified and selections were carried out accordingly. As per para 219 of the Indian Railway Establishment Manual, the selection process comprises of a written test for assessing the professional ability and also an assessment of record of service and in case of any necessity, for conducting a viva voce exam. It is also the requirement that the professional ability should be assessed for a maximum of 50 marks, out of which, for a candidate to qualify, one should secure 30 marks. Similarly, the record of service can carry a maximum of 30 marks, thus, totalling to 80 marks, out of which the candidate for the purpose of qualifying must secure a minimum of 48 marks. That means the candidate is required to secure, in the aggregate, 60% of the marks.

The contention canvassed before us is that a professional ability test comprising of two papers was conducted for 100 marks each and the total marks were then reduced to 50 and as a result, the petitioners have suffered certain amount of prejudice. Their selection was impacted in the process. The other contention canvassed is that the record of service has carried 30 marks in the maximum and that was the tilting factor. Consequently, though candidates have secured substantially good number of marks in the written test/professional ability test, but yet, they ended up below in the overall merit ranking to those who have been granted liberally marks for record of service. It was also further urged that on 08.02.2010, the record of service was

prepared for three years at one go and consequently, the petitioners have been denied an opportunity to make an appropriate representation for upgrading their record of service and as a consequence of which, the marks, which have been set apart for record of service, got impacted and one of the petitioners at least could not get selected. So far as the other petitioner is concerned, his annual confidential record has not been made known to him much before the time, so as to provide him an effective opportunity to get it upgraded as is permissible under the Rules.

We are not at all impressed by any of these contentions. It is made clear that the professional ability test will be conducted in two separate papers. Whether each paper should carry maximum of 25 marks or it should carry 100 marks, is a matter of policy choice. In the instant case, the professional ability test papers - I and II were set for 100 marks maximum and thereafter, the marks secured by the candidates in the total has been proportionately reflected by dividing it by four. If 200 marks are divided by 4, we get 50. By doing so, the total percentage of marks secured by the candidate at the written examination would not get substantially altered at all. On a hypothetical basis, however, an argument is developed saying that between two candidates 'A' and 'B', 'A' may have secured nearly 12 marks more in the written examination for 200 than 'B', but when these marks have been proportionately reduced to 50, the difference in between the two got reduced to a mere 3 marks and if in the assessment of record, the difference between 'A' and 'B' amounts to 4, then, in spite of a better performance by one of the two at the written examination, which is the main stage of selection, the selection gets totally topsy turveyed. It is apt to note that assessment of record of service has many facets and components to it. It is not the mere physical attendance of an employee which is counted for the purpose of assessing the record of service. The promptness, the regular attendance and the devotion and dedication to duty and the planning

adopted at the work place and more than anything else, the responsive nature of the individual to the requirements of job are some of the most important and vital factors, which are taken into account and consideration while making an assessment of record of service of an employee. It is all the more so important in an industry, which is acutely manpower intensive, such as the Indian Railways, the responsiveness of an employee to the call of the duty and his own ability to plan ahead for services to be rendered and a constant updating of his own quality and efficiency and above all, his devotion to duty can make one stand out amongst several other peers. The reason is, quick response and absolute devotion to duty are two factors, which contribute greatly to the productivity of a supply chain managed industry like that of the Railways. For instance, if intimation is delivered to a technical hand that a particular train, which is likely to be received in few minutes time on a particular platform of a railway station, requires his attention and assistance in sorting out a technical snag, a prompt response on the part of an employee concerned to make himself readily available right at the place where normally the engine halts on the platform and also attending to the snag and clearing it strictly within the time limit of its normal halt at that particular station, is bound to come for appreciation from one and all. That would not only help the train to depart from that platform promptly but would also help the managers to keep themselves ready for receiving the next train to come on to the platform. Therefore, imponderable are the factors, which weigh with the human resources managers in the matter of assessment of record of service of an employee. Hence, the question, which has been raised that an element of subjectivity is playing a role in the matter of assessment of record of service, is not very impressive to us. Further, for filling up the 25% volunteers' quota, employees who are otherwise qualified are drawn from various branches and departments and there may not be uniform standards in the matter of evaluation of performance of their services. By the very

nature, since they are drawn from different units and different departments, the standards of assessment of their performance of service are bound to vary. It has got a direct bearing with regard to the nature of services required to be performed on the job which may not be identical or uniform across the breadth and length of all the cadres of the Railways. Therefore, we are no way impressed that the record of service has been made to play a more vital role than is really necessary in the matter of selection against this 25% quota.

The counter-affidavit made it very clear with regard to one of the petitioners that the record of service only will be maintained but not annual confidential record and even that record of service will be maintained only if it is so required. In other words, for rendering certain services, there is no necessity for the employee's record of service to be maintained. Since it was now so required with regard to one of the writ petitioners, the record of his service for three years has been prepared on one single day, namely 08.02.2010. That was because he is competing for these selections against 25% quota. But for his competing for this selection, there would not be any occasion requiring the record of service to be prepared or kept ready. Therefore, we cannot attribute any serious fault for preparing the record of service for three years at a time on 08.02.2010.

The learned counsel for the petitioner made a strenuous attempt to demonstrate before us that he has brought out several factors in his rejoinder affidavit filed before the Central Administrative Tribunal and the contents of the rejoinder affidavit have not gone into consideration by the Tribunal. We are also not impressed by this contention for the reason that a rejoinder affidavit (a reply affidavit) is only intended to facilitate a party to clarify a factual controversy set out in the counter-affidavit filed by the opposite parties. A rejoinder affidavit is not supposed to be used for making out an altogether new case. A party, if he has realized that there was necessity to raise additional grounds or new pleas in support of the *lis* raised by him in the main case, is

required to file an application seeking amendment of his pleadings or seek leave of the Court to raise additional pleas in support of his claim. In such an event, the Court will be obliged to provide an opportunity to the opposite party to meet such a case. Therefore, if a new case is sought to be made out in the reply-affidavit, the opposite parties will not have any opportunity to meet squarely any such new case. Therefore, we do not consider it to be a good practice to make out an altogether new case in the rejoinder affidavit and then complain that the Court has failed to take the same into account or consideration.

Since we do not find any merit in this Writ Petition, we dismiss the same at the admission stage. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

ANIS, J

27th July 2015

Mark LR copy
ksld