

Central Administrative Tribunal
Principal Bench
New Delhi

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O.A. No. **2576/97** Decided on **5.1.99.**

P.K. Chakravarty. Applicant
(By Advocate: **Sh. K.N.R. Pillai**)

Versus

UDI. Respondents
(By Advocate: **Shri R.P. Agarwal**)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying
benches of the Tribunal or not ? No.

Adige
(S.R. Adige)
Vice Chairman (A)

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A. No. 2576/1997

New Delhi: this the 5th day of JANUARY, 1998.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

P. K. Chakravarty,
S/o late Shri A. K. Chakravarty,
Technical Assistant,
Statistical & Economics Directorate,
Railway Board,
New Delhi.
R/o 203, Sector-I, Sadiq Nagar,
New Delhi - 49

... applicant.

(By Advocate: Shri K.N.R.Pillai)

Versus

Union of India,
through the
Secretary,
Ministry of Railways (Railway Board),
Rail Bhawan,
New Delhi-1

.... Respondents.

(By Advocate: Shri R.P. Agarwal)

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicant impugns the filling up of the post of Assistant Traffic Control Office (ATCO) by transfer on deputation initiated by Circular dated 9.12.96 and prays that the post be filled up through promotion as per recruitment rules.

2. Applicant contends that there are two posts of ATCO (Rs.2000-3500), the RRs of which at Annexure-II, by which posts are to be filled up by promotion failing which by transfer on deputation and failing both, by direct recruitment. For promotion, the source is from Technical Assistant (Rs.2000-3200) working as Statistical CA of Railway Board with 2 years' regular service in the grade.

Applicant contends that he is the seniormost T.A. (Rs.2000-3200) in Dte. of Statistics and Economics (Cost Accounts Branch) of Railway Board and fulfills all the essential qualification prescribed in the RRs but respondents are not filling up the post as per RRs, but consequent to one of the posts falling vacant, instead of filling it up by giving him promotion as per the RRs, they are seeking to fill it up on regular basis through a deputationist.

3. Respondents in their reply challenge the OA. They state that one post of ATC 0 was created in 1978 and as per the RRs notified on 21.7.87 (Annexure- R I) the said post was to be filled by promotion failing which by transfer on deputation, and failing both, by direct recruitment. They state that the second post of ATC 0 was created vide letter dated 27.1.79 (Annexure- RII) wherein it was clearly stated that the said post would be operated in the scale of Rs.840-1200 for those who were drawn from Appendix III-A qualified Accountants, and in scale Rs.660-1200 for others. This post was made permanent in March, 1996. The post was filled up initially by transferring Asstt. Accounts Officers/ Section Officers (Accts) from Railway on regular basis, but on the recommendation of a Committee of Sr. Officers and keeping in view the fact that the costing system followed by the Railway was of a technical nature and was different from that followed in the usual commercial enterprise, it was considered desirable to fill the post by transfer on deputation by an officer holding analogous post on regular basis or with 3 years

regular service in the post in the scale of Rs.1640-2900 and satisfying certain essential conditions including field experience. Respondents thus do not deny that there are two posts of ATCOs, but argue that the RRs are applicable only for the post of ATCO I. In this regard to ATCO II they state that as per norms prescribed by the competent authority, it is to be filled by transfer on deputation from officers having field experience.

4. We have heard applicant's counsel Shri Pillai and respondents' counsel Shri R.P. Agarwal. We have also perused the materials on record and given the matter our careful consideration.

5. The point for adjudication is whether respondents are legally required to fill up the post of ACIO II on regular basis in accordance with the procedure prescribed in the RRs for filling up the post of ACIO I.

6. Admittedly when the RRs were notified on 21.7.87 (Annexure-R1) both posts stood created, one by order dated 26.4.78 and the other by order dated 27.1.79 (Annexure-RII). While the first post of ACIO stood created in the scale of Rs. 650-1200, the second post of ACIO stood created in the scale of Rs. 650-1200, but prescribed a higher scale of Rs. 840-1200 for Appendix III qualified Accountants. Although the RRs were notified on 21.7.97 when both posts were in existence, in its preamble only the post (and not posts) of ATCO is referred to; in Col.2 of the Schedule to the Rules only one post is mentioned, and in Col.4 relating to pay scales, only one scale namely Rs.2000-3500 is mentioned, and

there is no mention of a higher scale for Appendix III qualified Accountants. It is no doubt true that against the figure 1 in Col.2 of the Schedule, there is an asterisk against which are the words "subject to variation dependant or workload", but the RRs were framed under Article 309 of the Constitution, and the rule making authorities must be held to have been aware that when the RRs were notified on 21.7.87 there were not one but two posts with the designation ATCO in existence. If then in the preamble to the RRs they spoke only of the post (and not posts) of ATCO; in Col. 2 of the Schedule they referred to only one post of ATCO; and in Col.4 regarding pay scales they gave only one pay scale namely Rs.2000-3500 and made no mention of a higher pay scale for Appendix III qualified Accountants, we are compelled to hold that the rule making authorities treated the post of ATCO II as a different post, not covered by the notification dated 21.7.87, although carrying the same nomenclature i.e. Assistant Traffic Control Officer.

7. Furthermore from the incumbency statement, a copy of which is taken on record, it is clear that from its inception early in 1979 right upto 30.10.90 the post of ATCO II was filled not by promotion from Technical Assistants but by Asstt. Accounts Officers after which it has been filled by adhoc arrangement while the post of ATCO I was filled all along by promotion from amongst Technical Assistants. It is true that in the High Powered Committee's recommendation dated 5.12.88 (Annexure-RIII) it is stated that the

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work content and job requirements of ATCO I and ATCO II are the same, and it is also true that the present vacancy of ATCO II was created consequent to the incumbent who was a Technical Assistant being transferred as ATCO I, but applicant gets a legally enforceable right to have the post filled up in accordance with the procedure prescribed in the RRs only if he can establish that the RRs do cover that post. The facts noticed in para 7 above lead us to conclude that the rule making authorities treated the post of ATCO II as a different post not covered by the notification dated 21.7.87.

8. Furthermore respondents have stated that upon a proposal being received to detail applicant to look after the duties of the post till a regular selection was held, his claims along with others who had represented to be appointed against the post were considered, but the competent authority decided to give adhoc promotion to an Inspector State (AC) Branch. The RRs prescribe the post to be a selection post and even if we assume that the RRs also include the post of ATCO II, it is not that the case of applicant was not considered.

9. Perhaps this entire controversy could have been avoided if respondents had given a slightly different nomenclature to the post of ATCO II. While it is still open for them to do expeditiously (and while doing so, also prescribe its duties and functions), but if, as we see, the RRs are limited to filling up of the post of ATCO I,

respondents cannot be legally compelled to fill up the post of ATC O II in accordance with the procedure prescribed in these RRs, and are free to devise their own procedure for filling up the post of ATCO II through executive instructions, which cannot be legally interfered with, unless the same is found to be arbitrary, illegal or malafide, or in any other way violative of Articles 14 and 16 of the Constitution.

10. In the present case, it cannot be said that the procedure followed by respondents in filling up the post of ACTO II in accordance with executive decision suffers from any of the aforesaid infirmities to warrant judicial interference.

11. The OA therefore is dismissed. No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
MEMBER(J).

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(S. R. ADIGE)
VICE CHAIRMAN (A).

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