

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 39 OF 1999.

Cuttack, this the 5th day of October, 1999.

SHRI A. RAMA RAO.

....

APPLICANT.

VRS.

UNION OF INDIA & OTHERS.

....

RESPONDENTS.

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

(G. NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

10

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 39 OF 1999.

Cuttack, this the 5th day of October, 1999.

C O R A M :

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

SHRI A. RAMA RAO,
Aged about 58 years,
S/o late A. Surya Narayana,
at present working as Station Manager (NG),
Rayagada Railway Station, Rayagada,
At/PO/Dist. Rayagada, Permanent resident
of Pitila Sahi, At/PO/Dist. Rayagada. ... Applicant.

By legal practitioner : M/s. A. K. Nanda, J. Nayak, Advocates.

-Versus-

1. Union of India represented through its General Manager, SE Railway, Garden Reach Road, Calcutta-43.
2. Chief Personal Officer, S. E. Railway, Garden Reach Road, Calcutta-43.
3. Divisional Railway Manager, SE Railway, Waltair, Visakhapatnam-4, Andhra Pradesh.
4. Senior Divisional Operation Manager, S. E. Railway, Waltair, Visakhapatnam-4, Andhra Pradesh.
5. Senior Divisional Personal Officer, SE Railway, Waltair Visakhapatnam-4, Andhra Pradesh.

... Respondents.

S JOM By legal practitioner : M/s. R. Sikdar, A. Sikdar, S. Ghose,
additional Standing Counsel.

...

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, under section 19 of Administrative Tribunals Act, 1985, applicant has prayed for quashing the order dated 7-10-1998 reverting the applicant from his adhoc post of Station Manager, Rayagada to his earlier post of Deputy Chief Controller and transferring him under the Chief Controller at Waltair. He has also prayed for quashing the order dated 27.1.1999 at Annexure-11 reverting the applicant from the Ad-hoc post of Station Manager to the post of Deputy Chief Controller and transferring him under the Chief Controller Waltair. The third prayer is for a direction to the Respondents to allow the applicant to appear in the selection test for regularisation in the post of Station Manager which he was holding on Ad-hoc basis from 3-9-1997 and to declare that the Avenue Channel of promotion of 1998 is illegal and discriminatory. For the purpose of considering this case, it is not necessary to go into too many facts of this case and in any case, the main facts of this case are not disputed. Respondents have appeared and filed their counter opposing the prayers of applicant.

2. The admitted case between the parties is that earlier on the basis of orders which were in force from 1987, the post of Station Supdt, later on re-designated as Station Manager, was due to be filled up 70% by promotion from Deputy Supdt. which is the basic cadre for Station Supdt. staff; 10% to be filled by promotion from amongst the Deputy Chief Controller and another 10% by promotion from amongst the

J. Som.

Senior Divisional Transportation Inspector and the rest 10% by promotion from the Deputy Yard Master. Respondents have stated that in March, 1993 10(ten) vacancies were filled up in the rank of Station Supdt. of which 7(seven) vacancies were filled up by giving promotion to Deputy Supdt. and one each by giving promotion to Deputy Chief Controller, Senior Divisional Transportation Inspector & Deputy Yard Master. Applicant came under the group of Deputy Chief Controller and persons senior to him were considered and promoted in that promotion and therefore, the applicant's case not considered. Subsequently, because of vacancies arising due to retirement and otherwise, the applicant became the seniormost in that cadre of Deputy Chief Controller, while he was working at Visakhapatnam and in order dated 26.8.1997 he was given Ad-hoc promotion to the Post of Station Manager (NG) and was posted at Rayagada where he joined on 3.9.1997. This order of promotion is at Annexure-2 and from this it appears that the applicant was given Ad-hoc promotion against an existing vacancy. The channel of promotion was revised and this revision came into force admittedly from 2.2.1998. According to the revised channel of promotion 100% of posts of Station Supdt - redesignated as Station Manager, - was due to be promoted by giving promotion within the cadre itself i.e. by promotion of Deputy Supdt. and the channel of promotion provided to Senior Divi. Transportation Inspector and Deputy Yard Master was reviewed. The Departmental Authorities, in their notice issued on 17.2.1998 (Annexure-3)

J. Jom

decided to hold a selection for promotion to the post of Station Manager (NG) to fillup 11 vacancies and called three times the number i.e. 33 persons to the post. All these persons were from the Deputy Supdt. and Station Supdt. cadre and no person from the other three groups were called to this test following the new channel of promotion which had come into force w.e.f.

2.2.1998. Even though applicant has been working on ad-hoc basis as Station Manager (NG) from 3-9-97 because of the new channel of promotion, he did not get a chance to get regularised in that post. In the context of the above facts, applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have pointed out that in 1993, applicant's could not be considered in his group because he was much junior. It is also stated that in the adhoc appointment order at Annexure-2, it was clearly mentioned that the adhoc appointment will not confer on him any right to get regularised in that post. It is also stated that in view of intending restructuring after 1993, further selection and appointment did not take place to the post of Station Supdt. and this was taken up only after the new promotion rules came into force w.e.f. 2.2.98 and the selection test has been ordered strictly in accordance with the new promotion rules. On the above grounds, the Respondents have opposed the prayer of the applicant.

S. Jam.

4. We have heard Mr.A.K.Nanda, learned counsel for the applicant and Mrs.R.Sikdar, learned Additional Standing Counsel appearing for the Respondents and have also perused

the records.

5. From the above stand taken by the parties in their pleadings it is clear that the channel of promotion was changed in order dated 2.2.1998 and the promotion was confined to the cadre itself and the line of promotion given to other three categories were revoked/removed. This has been challenged by the applicant but in support of his prayer, learned counsel for the petitioner has not shown how by cutting out this channel of promotion in future, to the Group of Deputy Chief Controller to the post of Station Manager, his interest would be adversely affected. The Deputy Chief Controller would have their own channel of promotion and there is nothing wrong on the part of the Departmental Authorities to confine the promotion to the cadre itself. In view of this, the prayer of applicant to quash the new channel of promotion & removing 10% promotion quota meant to other three categories is held to be without any merit and is rejected.

6. The second point which arises for consideration is that even though the new rules of promotion has come into force admittedly w.e.f. 2.2.1998, from the pleadings of the parties, it appears that the Departmental Authorities are going to fillup the vacancies which have arisen prior to 2.2.1998 in accordance with the new rules of promotion. Law is well settled that when a recruitment rule to a post is changed, only the vacancies ^{which} arise after such amendment will have to be filled up on the basis of the amended rules and the vacancies which have arisen earlier to the amendment of the rules, will have to be

S. Jam

filled up as per the earlier rules which was in force prior to the amended rules. This has been laid down by the Hon'ble Supreme Court in the case of Y.V. RANGAIAH VRS. J. SRINIVASA RAO reported in AIR 1983 SC 852. The relevant observation of Their Lordships of the Hon'ble Supreme Court as quoted below:

"The vacancies which occurred prior to amended rules, shall be governed by old Rules and not by the amded Rules".

7. In this case in notice dated 17.2.1998, 11 vacancies have been notified. Obviously some of the vacancies would relate to a date prior to 2.2.1998 because retirement vacancies, if any would have occurred only after 31.1.1998. It is also seen that the Ad-hoc promotion was given to the applicant against an existing vacancy in order dated 26.8.1997. So this vacancy was also pre-existing. Thus, all the vacancies in the rank of Station Manager, which were existing prior to 2.2.1998 will have to be filled up in accordance with the law laid down by the Hon'ble Supreme Court, referred to above, in accordance with the earlier Recruitment Rules. In view of this, the selection and appointment of persons in accordance with the new Recruitment Rules against the vacancies which were existing prior to the amended rule (Annexure-6) can not be sustained. This does not however, mean that the applicant if-so-facto, will be appointed or will be regularised. Even as per the old Recruitment Rules, applicant has to appear the test and to qualify for the post. In consideration of this, this Original Application is disposed of by giving a direction to the Departmental Authorities that out of the eleven

S. J. Jamm

VB

vacancies which was notified on 17.2.1998, such of the vacancies which occurred prior to 2.2.1998 should be filled up in accordance with the earlier promotion rules. We however, make it clear that besides these eleven vacancies which have been notified in order dated 17.2.1998, if there are any other vacancies which have occurred prior to 2.2.1998 then the same also will have to be filled up in accordance with the earlier Recruitment Rules and in that process of selection, the applicant must take his chance alongwith others in accordance with the quota system which was earlier in force.

8. Before parting with this case we would like to observe that in order dated 19.3.1999, pending adjudication of this dispute, we had directed the Respondents to allow the applicant to sit at the written examination scheduled to be held on 22.3.1999 and it was ordered that the result of the applicant should not be declared. In view of the above order, the Respondents are free to declare the result of the applicant and take further action in accordance with law and rules with regard to the written examination taken by the applicant.

9. In the result, the Original Application is disposed of in terms of the above observation and direction. No costs.

← →
(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
3.10.99