

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

...

O.A. No. 479/1992.

Tuesday this 16th day of November, 1993.

CORAM

Hon'ble Shri N.Dharmadan, Judicial Member

Hon'ble Shri S.Kasipandian, Administrative Member

K.Sudhakaran,
Personnel Inspector, Gr.I,
Divisional Office,
Southern Railway,
Palghat.

..... Applicant

By Advocate Shri P.V.Mohanan

Vs.

1. The General Manager,
Southern Railway,
Park Town, Madras.

2. Chief Personnel Officer,
Southern Railway,
Park Town, Madras.

3. B.Subramaniam, Welfare Inspector,
Southern Railway, Head Quarters
Office,
Madras.

... Respondents

By Advocate Shri M.C.Churian, (for R1&2)

By Advocate Shri R.Singaravelan (for R3)

O R D E R

S.Kasipandian, AM

The applicant in this case joined as Clerk in the Railway on 24.6.64. He got selected to the post of Personnel Inspector, Grade III in 1984 and further selected to the grade of Personnel Inspector, Grade II in 1987 in the scale of Rs 1600-2600. The applicant, along with Respondent-3 and others, applied for selection to the post of Assistant Personnel Officer in Grade-B in the Personnel Department for filling up 75% of vacancies.

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2. The learned counsel for the applicant stated that the procedure for selection to the said post is governed by Rule 203.5 governing promotion of subordinate staff, which reads--

"Since employees from the different streams will be eligible to appear for the selection, their integrated seniority for purposes of the selection should be determined on the basis of total length of non-fortuitous service rendered in grade Rs 2000-3200 (R.S.) and above. In other words the date of appointment to the grade Rs 2000-3200 (R.S.) on a non-fortuitous basis will be the criterion."

The selection is based on a written test, to adjudge the professional ability, Viva Voce and assessment of records by the Selection Committee. After all these tests were conducted, a list of 109 candidates who had secured the qualifying marks in the written examination held on 29.12.90 and the supplementary written test held on 20.1.91 as part of the selection for promotion to the post of APOs against 75% quota was published in Annexure-I on 25.2.91. From out of this list a provisional list of selected candidates for promotion to the post of APO, Group B to fill up 27 vacancies was published in Annexure-II on 25.3.91. The learned counsel for the applicant pointed out that the procedure for preparing the panel from out of the candidates who got the qualifying marks is laid down in Rule 204.8 and 204.9. They are extracted below:

"204.8 The successful candidates shall be arranged as follows:

- (1) Those securing 80% marks and above graded as 'Outstanding.'
- (2) Those securing between 60% marks and 79 % marks graded as 'Good'.

204.9 The panel should consists of employees who had qualified in the selection, corresponding to the number of vacancies for which the selection was held. Employees securing the gradation 'Outstanding' will be placed on top followed by those securing the gradation 'good', the interse seniority within each group being maintained."

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3. The learned counsel for the applicant has produced Annexure-10 which shows the gradation of the persons contested for the selection and their inter se seniority position. The contention of the applicant is that though he is senior to Respondent-3 as on the date of inclusion in the select list in Annexure-II, Respondent-3's name has been included in the panel in preference to his name which is illegal and arbitrary. As such, the learned counsel for applicant submitted that Annexure-2 is to be quashed as illegal.

4. The learned counsel for respondents pointed out that the procedure for selection is governed by Rule 203.8 and not 203.5 as pointed out by the learned counsel for applicant because the selection is not confined only to those in the grade of Rs 2000-3400. Moreover, there was no limitation on the number of contestants for the post as it would have been in the case if Rule 203.5 was to be applied. In the present case all those who were eligible and who volunteered for the selection were considered in terms of Rule 203.8. As may be seen from Annexure-10 both the categories of officers, i.e. those who were in the grade of Rs 2000-3200 as well as those who were in the grade of Rs 1600-2600 were considered for selection. Both the applicants and Respondent-3 come in the second category and their inter se seniority was considered in terms of Exbt.R1 according to which "all staff in the revised scale of pay of Rs 1600-2600 on non-fortuitous basis in the grade as on 1.8.90" were eligible for consideration. According to the learned counsel for respondents the total number of vacancies were only 27 and the Respondent-3 was the 27th candidate in the panel which was prepared in accordance with Rule 204.8. Both the applicant and the respondent-3 were graded as 'good', Since the applicant had secured 66 marks and the Respondent-3, 67.75 marks respectively. Respondent-3 was included in the the panel not because he has secured higher marks than the applicant but he was considered senior to the applicant as

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on 1.8.90.

5. The learned counsel for Respondent-1&2 submitted that the applicant got promotion to the scale of Rs 2000-3200 only on 20.11.91 against a de-reserved vacancy from 30.7.90 vide Annexure-8. This promotion cannot give seniority to the applicant over Respondent-3 as on 1.8.90. As against this, the learned counsel for the applicant quoted judgments in G.P.Doval and others V. Chief Secretary, Govt. of UP and others (AIR 1984 SC 1527) and Rajbir Singh and others V. Union of India and others (AIR 1991 SC 518) to show that the adhoc appointment should also be taken into account in determining his seniority vis-a-vis Respondent-3 and he got his appointment in Grade-I post only on 10.4.91. But the applicant got his adhoc appointment on 30.7.90 which has been subsequently regularised by the order in Annexure-8 dated 20.11.91.

6. The questions that arise for consideration in this case are--

- (i) whether on the facts and circumstances of the case what would be the crucial date for determining the inter se seniority of officers for the purpose of applying Rule 204.9; and
- (ii) whether the number of vacancies for the purpose of selection should be confined to the date on which the application for selection was called for or the date on which the selection panel was prepared.

7. Regarding the first issue, the learned counsel for Respondents 1 & 2 pointed out that unless some sanctity is attached to the date on which the inter se seniority of the officers considered for selection on the basis of the date of calling for application, it would be opening the floodgates for various claim^{ants}, who would raise seniority

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disputes on the basis of their promotions on subsequent dates. He has quoted the latest findings of the Supreme Court in support of his contention, in Union of India & Another Versus K.Subramanian & Another(SLP 6346-46A/93). In this case, the Supreme Court has categorically declared that:

"We agree with the learned Additional Solicitor General that the date of eligibility has to be seen on the last date for inviting the applications. Eligibility subsequent to that date is of no consequence."

8. The learned counsel for Respondents 1&2 has stated that the order in Annexure-2 has to be sustained because as may be seen from Annexure-10 the inter se seniority amongst the officers as on 1.8.90 referred to in Exbt.R1 has been taken into account. But a close scrutiny of Annexure-10 reveals that this is not quite true. For instance, Respondent-3 at Sl.No.48 happens to be junior to one Shri K.Philipose at Sl.No.49 because the date of appointment of Shri Philipose in the grade of Rs 1600-2660 is 7.3.86 whereas that of Respondent-3 is only 2.7.86. Moreover, Sl.No.49 has scored more marks than Sl.No.48, but his name has not been included in the panel. As such it is difficult to believe that the inter se seniority of the contestants as on 1.8.90 has been strictly followed in the preparation of selection panel.

9. Regarding the second issue the learned counsel for applicant has rightly pointed out that while Exbt.R1 indicates the vacancy to be filled in as 27, total number of vacancies to be filled up is shown as 29 as per Annexure-10. He has also pointed out that the total number of vacancies has been increased subsequently as mentioned in his rejoinder as follows:

"It has been stated in the counter affidavit that there are only 27 vacancies of APOs. This is misleading information. At present, 25 persons

from the panel have already been promoted as APOs. 2 more candidates, S/Shri Sethumadhavan and Radhakrishnan, were also promoted as APOs on the basis of a common judgement issued by the Hon'ble Tribunal as per the directions in the judgement in OA 149/92 and 837/92. Apart from this, the respondents have inducted 2 IRPS personnel from Railway Board, viz. Shri Rajendran and Sri Devashis Ohri into APOs cadre recently. Thus total number of vacancies filled has been raised to 29. In addition to the above 29 vacancies, one post of APO is vacant at Mysore Division and also one at Madras Division. Thus the total number of vacancies to be filled during this year will be 31."

10. If the number of actual vacancies as on date of preparation of the panel is 31, then perhaps, there will be a case for inclusion in the panel, the applicant and Respondent-3 and also Shri Philipose who is senior to both of them as on 1.8.90. For the reasons above explained, the ends of justice would be met only if Annexure-2 is revised, taking into account the total number of vacancies as on the date of preparation of the panel. In the light of the above observations, both the applicant and respondent-3 may make suitable representations to Respondents 1&2 enlisting their claims in detail within a period of 2 weeks and Respondents 1&2 may revise their order in Annexure-2 in accordance with rules and in the light of the latest decision of the Supreme Court as referred to above and dispose of the representations within a period of 3 months from the date of receipt of the same. Status quo can be maintained till such revised panel is prepared, which should be done within a period of 4 months positively. The application is allowed as above. No order as to costs.

S. Kasipandian
16.11.93
(S. Kasipandian)
Member (Administrative)

N. Dharmadan
16.11.93
(N. Dharmadan)
Member (Judicial)