

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 205/90
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DATE OF DECISION 3-5-91

Mary Stella Rodriguez Applicant (s)

Mr. M. R. Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India Respondent (s)
(Secretary, Min. of
Railways) & 2 others.

M/s M.C.Cherian, Advocate for the Respondent (s)
Saramma Cherian &
T.A.Rajan

CORAM:

The Hon'ble Mr. N.V.Krishnan, Administrative Member

The Hon'ble Mr. N.Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

N.V.Krishnan, AM

The applicant is a Head Clerk in the Palghat Division of the Southern Railway. The next promotion is to the post of Chief Clerk. The main grievance of the applicant arises out of the proceedings for selection held in 1987-88 on the basis of a written test held in January 1988 and a viva voce held thereafter. She has also a grievance against the selection proceedings conducted in the ensuing year in respect of which she seeks some sympathetic consideration on the ground that she was not able to acquire the necessary experience in the Works Branch, relating to which

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were asked questions / in the examination. She has, therefore, sought the following reliefs:

- i) To declare that the applicant is entitled to be considered for promotion as Chief Clerk in any of the vacancies which arose during the year 1988 and to direct the respondents to consider and promote the applicant to such a vacancy on the basis of the written test held in January, February 1988 and the Viva Voce held thereafter, with effect from the date of adhoc promotion granted to her as per Annexure-IV.
- ii) Alternatively, to declare that the applicant is entitled to get appropriate moderation, in view of her success in the 1st written test and failure on the part of the respondents to afford her reasonable opportunity of acquiring required experience in the Works Branch, and to direct the respondents to consider her claims for promotion as Chief Clerk on that basis, with effect from the date of promotion of her juniors.
- iii) Direct the respondents to dispose of Annexure- V and Annexure-VIII representations, on merits and in accordance with law.

2. In regard to the selection for the year 1987-88, the specific grievance of the applicant is that the respondents properly had not estimated, at the time of initiating the selection proceedings in October 1987, the probable number of vacancies that would arise in the next one year so as to prepare a panel of the desired size. A written examination was held in accordance with the rules and 29 persons who came out successful were notified in the order of their seniority on 16.3.88 (Annexure-II) stating that they should be in readiness for the viva test. The applicant's name is at Si.No. 16 in this list. Subsequently, by the Ann.III notice dated 3.5.88, the respondent published the names of 11 persons ^{were} who empanelled after the interview. The applicant's name does not appear in the list. Her contention is that there was a larger number of vacancies than 11 and therefore, the panel of finally successful candidates should have included more names, including her name as well.

3. On the contrary, the respondents aver that when the selection process was initiated in October 1987, the Department could foresee only 12 vacancies viz. 9 existing vacancies and 3 a vacancies due to retirements to arise till 31.12.88. The panel was, however, restricted to 11 names only, as one vacancy had to be left for a scheduled tribe candidate.

4. This statement was hotly contested by the applicant. Therefore, she was permitted to file not only a rejoinder dated 4.8.90, but as many as 4 additional statements/rejoinders. Necessarily, the respondents too had to be given similar opportunities. Both the parties were given a final opportunity to present, in a summary form, their respective claims. Accordingly, the applicant submitted a statement dated 25th April 1991 and the respondents have also filed a summary statement dated 24.4.91. It is on the basis of these statements, the arguments were finally heard.

5. The applicant's case is that the 11 persons empanelled by the Ann.III notice dated 3.5.88 were promoted on 23.6.88. A copy of the order of promotion was produced for our perusal. Separately, by the Ann.IV order dated 16.11.88, 9 other persons, including the applicant, were promoted with effect from 2.6.88 to 30.11.88 as Chief Clerks, purely on an adhoc basis pending selection. The basic plank of the applicant's argument rests on these two orders, which necessarily establish that as on 23.6.88, there must then have been 20 vacancies, all of which occurred before that date. She contends that, after this date, the following three vacancies have arisen upto 31.12.88 which have been

ignored by the respondents in preparing the panel.

- a) Vacancy on account of the retirement of P SG Warrier on 31.7.88.
- b) Vacancy on account of the retirement of A Subbayyan on 30.11.88.
- c) Vacancy on account of the retirement of Supukutty Menon on 31.12.88.

Thus, in all, there are 23 vacancies. Of this, 7 vacancies were, admittedly, attributable to creation of new posts, some time in May 1988. Leaving this out, there were as many as 16 vacancies, instead of only 12, as claimed by the respondents. All these vacancies could have been anticipated and hence a panel of at least 16 names should have been prepared, which could then have included the applicant's name also.

6. The learned counsel for the respondents has explained the correct position in detail. He reiterated that only 12 vacancies could be anticipated and not 16 as alleged. The difference was explained as follows:

(a) Out of the 11 persons empanelled by the Ann.III order and were promoted by the order dated 23.6.88, 2 persons viz. Shri V.Vasunny and Shri M.K.Muhammed Gani (S.No.6 and 9 of Ann.III) were working as Head Clerks in the Construction Wing at Bangalore and Thambaram outside the Palghat Division. When the Ann.III panel was sent to the concerned authorities, letters were received from the Construction Wing at Bangalore and Thambaram seeking permission to retain these 2 persons at those places, after giving them promotion as Chief Clerks. This was agreed to. Therefore, 2 more vacancies arose after

the order dated 23.6.88 was passed. This could never have been anticipated in October 1987.

(b) In October 1987, it was known that Shri P.S.G Warrier would superannuate on 31.7.88. However, he took leave preparatory to retirement in May itself. Hence the vacancy was already taken advantage of in making the postings of 20 persons in June 1988. This vacancy cannot be counted again from 31.7.88 as, done in para 5. *Supra*

(c) The retirement of A.Subbayyan as Chief Clerk on 30.11.88, no doubt, created a vacancy on that date. But this vacancy could not be anticipated in October 1987 as Shri Subbayyan was then only a Head Clerk. Nobody could have anticipated in October 1987 that he would pass the examination and his name would be got empanelled in Ann.III.

7. We are, therefore, satisfied that though the total number of vacancies till 31.12.88, other than new posts, was 15, the Department could anticipate only 12 vacancies in October 1987 as stated by the respondents. In the circumstances, we do not find any fault with the respondents in having prepared a panel of 11 names only, leaving one vacancy for a scheduled tribe candidate.

8. The learned counsel of the applicant then contended that, as admitted by the respondents, they considered 9 vacancies which existed in October 1987 and 3 new vacancies due to arise thereafter till the end of 31.12.88. It is also admitted that 20% of such new vacancies, other than

new posts to be created, will also have to be added while preparing the panel. He, therefore, submitted that as 20% of 3 vacancies is .6, one more post could have been added and a panel of 13 names could have been prepared.

9. The learned counsel for the respondents submitted that, in fact, only 11 vacancies in all would have been available, as the panel is to be prepared for a 12 month period, i.e. for the vacancies arising till October, 1988. Therefore, strictly speaking, the vacancy of Supukutty Menon on 31.12.88 should have been excluded. That vacancy was reckoned to make up for the 20% of new vacancies, which, otherwise, would have been only .4 and should have been ignored.

10. We are of the view that, if the respondents included the vacancy of Supukutty Menon on 31.12.88 in their calculations, they were bound to also provide for 20% of the new vacancies on that basis. However, reckoning the vacancy of Supukutty Menon on 31.12.88 was itself improper. Therefore, the applicant cannot claim any concession on the basis of an improper decision. Nevertheless, we notice that, for all practical purposes, only 11 vacancies have been taken into account for preparing the panel, though for a different reason, and not 12 as estimated. We are, therefore, of the view that no prejudice has been caused to the applicant on this ground.

11. The second and third prayers really relate to the 1988-89 selection. In the examination held in October 1988, the applicant did not pass in the written

states that examination as she did not have sufficient experience of one Branch about which questions were asked. When the results in the written examination were announced on 22.11.88 and she found that she had failed, she preferred the Ann.V representation dated 28.11.88. That representation was addressed to the Senior Divisional Engineer with a copy to the second respondent, with a specific prayer to review her written examination paper in the October 1988 examination. A further representation (Ann.VIII) has also been made in this connection wherein it is pointed out that in the Works Branch she got 2 marks less than the qualifying marks. Hence she has sought condonation of the short-fall and permission to appear for the viva voce. That representation has been addressed to the General Manager, Southern Railway. These representations have not been disposed of.

12. The counsel for the respondent, however, submits that in regard to the second selection examination held in 1988-89, the applicant had already filed OA 488/89 challenging her failure in that examination and the empanelment list published in April 1989. That OA has been dismissed by the Ann.VI judgement. It is, therefore, contended that the applicant cannot now raise any other issues in regard to that selection.

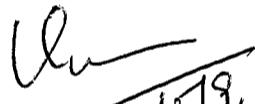
13. While we appreciate the stand taken by the respondents, we notice that what the applicant seeks is a sympathetic consideration by the Department for condoning the short-fall of 2 marks she secured in that examination. She has filed 2 representations (Ann.V and VIII) and she is entitled to a consideration of those representations, only in so far as they concern the selection in 1988-89.

In the circumstances, we are of the view that the ends of justice will be met by issuing suitable directions in this case.

14. We, therefore, dispose of this application by directing the second respondent to consider the Ann.V representation concerning the 1988-89 selection in all its aspects and forward his report, within one month from the date of receipt of this judgement, to the General Manager, Southern Railway, Madras, before whom the Ann.VIII representation is pending for consideration. Though the latter has not been impleaded as a party in this case, we hope that he will call for the Ann. VIII representation concerning the 1988-89 selection and it will be considered by him in the light of the report that may be submitted to him by the 2nd respondent and other relevant considerations, including his powers, if any, to grant such prayers in exceptional cases.

There will be no order as to costs.


 (N.Dharmadan) 3.5.91
 Judicial Member


 (N.V.Krishnan) 3/5/91
 Administrative Member