

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T. ~~XXXXX~~

211/90

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DATE OF DECISION 28.2.92

G.Skariah

Applicant (s)

M/s.K.Ramakumar & V.R.Ramachandran Advocate for the Applicant (s)

Versus

~~Union of India, represented by the
General Manager, Southern Railway,~~ Respondent (s)
Madras and 3 others.

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

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, 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

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 10th March, 1990 as amended on the 10th May 1990 the applicant a Field Worker, Family Planning under the Southern Railway has challenged the impugned order dated 13.1.1990 at Annex ~~handed by respondent 4,~~ ^{FW's} refusing to forward his application for the post of Extension Educator and has prayed that the respondents be directed to promote the applicant as Senior Clerk/Compilation Clerk/Extension Educator in accordance with the rules with all consequential benefits. ^(FW)

2. The applicant has been working as a Field Worker in the scale of Rs.950-1400 in the Southern Railway. The old pay scale of this post was Rs. 260-350. Before the pay revision ^{they} were entitled to be promoted as Senior Clerk or Compilation Clerk both of which were in the pay scale of Rs.330-560. These Clerks were entitled to be promoted as Extension Educator in the scale of Rs.425-700. After the pay revision while the pay scale of

Senior Clerk was revised from Rs.330-560 to Rs.1200-2040 , the pay scale of Compilation Clerk was revised from Rs.330-560 to Rs.1400-2000. The pay scale of Extension Educator was revised from Rs.425-700 to Rs.1600-2660. It will, thus, be seen that before pay revision both the Senior Clerks and Compilation Clerks were equally entitled to be promoted as Extension Educator, ^{but} after the revision of the pay scales, the Compilation Clerk occupied a higher rank than that of Senior Clerk and a Senior Clerk had to go through the intermediate level of Compilation Clerk before aspiring for the post of Extension Educator . The promotion as Senior Clerk and then as Compilation Clerk was by non-selection i.e, by seniority, whereas promotion to the post of Extension Educator was by selection. The applicant's grievance is that in the Southern Railway in the cadre of Family Welfare Organisation constituted in 1983 the post of Senior Clerk and Compilation Clerk were kept unfilled, thus depriving the Field Workers like the applicant ^{of} ~~from~~ getting promotion. After repeated representations the applicant's application for the post of Extension Educator was refused to be forwarded by the impugned order at Annexure-F on the ground that he did not possess the educational qualification. He has argued that prescription of a Degree for the post of Extension Educator applies to the direct recruits in accordance with the Recruitment Rules at Annexure-A but not to the promotees.

3. In the counter affidavit the respondents have stated that the applicant has since been promoted as a Senior Clerk in the scale of Rs.1200-2040 with effect from 21.8.90 when he took over the higher post. They have conceded that the Railway Board constituted a separate cadre of Family Welfare Organisation by bifurcating the existing medical department but the implementation of the scheme was delayed as the modalities of implementation were under discussion. In 1983 the Railway Board prescribed the qualification for the post of Extension Educator laying down ten years service as Health Inspector in Railways or a Degree with at least five years association with Railway Family

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Welfare programme. Only two employees who fulfilled the conditions in 1983 were selected. No selection or promotion was made for the post of Senior Clerk/Compilation Clerk and no person junior to the applicant in the category of Field Worker has been promoted or appointed as Senior Clerk or Compilation Clerk. Only in 1989 the Railway Board issued orders at Annexure-B stating that the next promotion of a Field Worker will be to that of Senior Clerk by non-selection, i.e., by seniority. The next promotion would be that of a Compilation Clerk only after completing two years as Senior Clerk. Further promotion will be as Extension Educator by selection. The respondents have produced the Railway Board's orders at Exts. R2, R3 and R4 in support of their contention. They have stated that the applicant has no right to be promoted with retrospective effect as Senior Clerk earlier than the date on which he was given such promotion and took over as Senior Clerk. Since no person junior to him has been promoted, he cannot claim retrospective promotion.

4. In the rejoinder the applicant has pointed out six vacancies of Senior Clerks and five of Compilation Clerks in the Southern Railway after 1983 and given some instances of Clerks promoted as Senior Clerks in the general line to argue that in the Southern Railway promotion posts in the Family Welfare Organisation were being filled up by drafting staff from the general side.

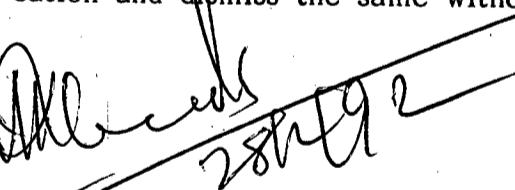
5. In the reply statement to the rejoinder the respondents have shown that in the seniority list of Field Workers the applicant was occupying the 9th position in 1983 when the sanctioned strength of Senior Clerk/Compilation Clerk was only four. Thus, even if the vacancies had been filled up in 1983 the applicant could not have been promoted. In accordance with the restructuring done in 1986 also it has been shown that the applicant would be working as Sr. Field Worker or Senior Clerk as at present. Even if he had been promoted as Sr. Field Worker with effect from 1.4.86 he would become eligible for

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the post of Compilation Clerk in 1988 but would not have been considered then for want of vacancies. Against the existing one vacancy of Compilation Clerk there are two persons senior to the applicant waiting to be promoted.

6. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Since no person junior to the applicant in the cadre of Field Worker has been promoted superseding the applicant's claim, the applicant can have no grievance about his late promotion as Senior Clerk. It is for the administration to decide whether the vacant posts should be filled up or not. It has been shown that even if the vacancies of Senior Clerk/ Compilation Clerk in 1983 had been filled up, the applicant would not have been promoted because of his low seniority. Even now, there are two persons senior to the applicant who are waiting to be promoted as Compilation Clerk. The question of the applicant being promoted or considered for promotion as Extension Educator does not arise at present because the applicant has not even reached the next lower level of Compilation Clerk.

7. In the facts and circumstances we see no force in the application and dismiss the same without any order as to costs.


(A.V. Haridasan)
Judicial Member


28.2.92
(S.P. Mukerji)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
R.A.77/92 in ERNAKULAM BENCH

D. A. No. 211/90 ~~XXXXXX~~ 102

DATE OF DECISION 15-6-92

G.Skariah Applicant (s)

Mr.K.Ramakumar Advocate for the Applicant (s)

Versus

Union of India rep. by Respondent (s)
General Manager, Southern Railway
and others

Mr.M.C.Cherian Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

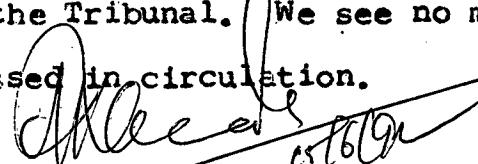
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JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

We have gone through the Review Application carefully. The Review Applicant has challenged the merits of the judgment without dealing with the main grounds on which the judgment is based namely that no person junior to the applicant has been promoted. He concedes that filling up or not filling up the vacancies lies within the discretion of the administration. He relies on some oral statement allegedly made by the learned counsel for the respondents. This cannot be a ground for a decision of the Tribunal. We see no merit in the R.A. which is dismissed in circulation.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

15.6.92

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